

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.4332 of 2018(O&M)
Date of Decision-07.12.2018

Suman Joshi

... Petitioner

Versus

Sunita Rani and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vivek K. Thakur, Advocate
for the petitioner.

Ms. Shubreet Kaur, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioner/defendant No.2 has preferred this revision petition against the order dated 29.08.2016 passed by Civil Judge (Junior Division), Ludhiana, whereby cross-examination of PW-1 to PW-5 was treated to be *nil* at the instance of defendant No.2/petitioner. Further direction was also sought to direct the trial Court to grant opportunity to cross-examine all the witnesses examined prior to filing of the written statement as the petitioner was granted opportunity to cross examine PW 5 alone vide order dated 24.05.2018.

[2]. On 29.08.2016, none appeared on behalf of respondent No.2 for cross-examination of PW-1 to PW-5. Opportunity given to defendant No.2 for cross-examination of aforesaid witnesses was treated to be *nil* and the case was adjourned to 06.09.2016 for further evidence of the plaintiff. Later on, on the same day, examination-in-chief of PW 5 Jagroop

Singh was recorded and his cross-examination was deferred. An application for summoning the witnesses on depositing of diet money was filed, therefore, opportunity to cross-examine PW 1 to PW 4 was treated to be *nil* at the instance of defendant No.2.

[3]. Plaintiff/respondent No.1 filed a suit for declaration that memorandum of family settlement dated 04.05.2003 is legal, valid and binding between the plaintiff and defendants and further declaration that the plaintiff and defendants No.4 to 10 are owners in possession of properties as mentioned in memorandum of family settlement dated 04.05.2003 and further that defendants No.2 and 3 have already relinquished their shares in the properties vide memorandum of family settlement dated 04.05.2003 and have no right or interest in the properties mentioned in the settlement. Permanent injunction was also sought seeking to restrain the defendants from interfering in the peaceful possession of the plaintiff and also restraining from acting contrary to the memorandum of family settlement.

[4]. It appears from the record that after passing the aforesaid order dated 29.08.2016, defendant No.2 had forgotten to appreciate the rigour of aforesaid order and did not challenge the same in any manner. On 01.07.2016, defence of defendant No.2/petitioner was struck off.

[5]. Defendant No.2/petitioner filed CR No.6816 of 2016 in the High Court, challenging the order dated 01.07.2016 passed

by the trial Court. Order dated 29.08.2016 was not assailed in the aforesaid civil revision. The said revision petition was allowed by the High Court vide order dated 15.02.2017 subject to payment of cost(s) of Rs.20,000/- to be paid to the opposite party. Thereafter, Civil Judge (Junior Division), Ludhiana passed the order dated 06.04.2017 on the premise that defendant No.2 had failed to avail the opportunity provided by the High Court. The case was adjourned to 25.05.2017 for filing replication to the written statement of defendant No.2 (if any). For ready reference, order dated 06.04.2017 is reproduced hereasunder:-

“Present: Sh. Sunil Tiwari, Adv. Counsel for the plaintiff.

Defendants No.1 and 3 ex parte.

Sh. SPS Kanda, Adv. Counsel for defendant No.2.

Suit against defendants No.4 to 10 dismissed as no relief was claimed against them by plaintiff.

Arguments addressed. Heard. Vide my separate detailed order therein of even date, an application for posting the case for ex parte arguments as the defendant No.1 Suman Joshi has failed to avail the opportunity provided by the Hon'ble High Court vide its order dated 15.02.2017 is dismissed. Now to come upon 25.05.2017 for filing replication of written statement of defendant No.2, if any, by the plaintiff. Sh. R.K.Sooden Adv. Counsel for the defendant No.2 suffered a statement that he tender Rs.20,000/- as cost for filing written statement as awarded by Hon'ble High Court for payment to plaintiff. Sh. R.K. Sooden, Adv. Counsel for the defendant No.2 suffered a

statement that he has received back the amount of Rs.20,000/-.

Announced:

(Rajinder Singh, PCS)

06.04.2017

UID Code: PB-0427

Civil Judge Junior Division,
Ludhiana”

[6]. Perusal of the aforesaid order would show that facts have been jumbled to some extent, but fact remained that learned counsel for defendant No.2/petitioner suffered a statement that he has received an amount of Rs.20,000/-. Thereafter, the case was taken up on 25.05.2017 and the following order was passed by Civil Judge (Junior Division), Ludhiana:-

“Present: Sh. Sunil Tiwari, Adv. Counsel for the plaintiff.

Defendants No.1 and 3 ex parte.

Sh. SPS Kanda, Adv. Counsel for the defendant No.2.

Suit against defendants No.4 to 10 dismissed as no relief was claimed against them by plaintiff.

Order dated 04.05.2017 passed by Hon’ble Mrs. Daya Chaudhary Judge, Punjab and Haryana High Court, received whereby this Court was directed to file affidavit by recording the facts before the next date of hearing and the case was ordered to be adjourned beyond the date fixed. So in view of order dated 04.05.2017 the case stands adjourned to 18.07.2017 for awaiting further orders from Hon’ble Punjab and Haryana High Court.

Date of order: (Rajinder Singh Teji, PCS)
25.05.2017 UID Code:- PB-0427
CJJD/Ludhiana”

[7]. It appears from the record that against the orders dated 07.03.2017 and 06.04.2017 passed by Civil Judge (Junior Division), Ludhiana granting another opportunity to defendant No.2/petitioner to file written statement allegedly in contravention of order dated 15.02.2017 passed by the High Court in CR No.6816, plaintiff/respondent No.1 filed CR No.3162 of 2017 in the High Court. The said revision petition was dismissed by the High Court vide order dated 09.01.2018.

[8]. Thereafter, the matter was taken up by the trial Court in due course on 17.01.2018 and the following order was passed:-

“Present: Sh. Sunil Tiwari, Adv. for the plaintiff.

*Sh. SPS Kanda, Adv. for defendant No.2
(defence of defendant No.2 struck off).*

Defendant No.1 and 3 ex parte.

*Suit against the defendant No.4 to 10 dismissed
as no relief was claimed against them by the
plaintiff.*

*Today case was fixed for awaiting orders from
Hon’ble High Court, but learned counsel for the plaintiff has
intimated the Court through an application that the revision
petition has been dismissed by the Punjab and Haryana
High Court.*

Record perused. The perusal of the files reveals that vide order dated 29.08.2016 defence of defendant No.2 was struck off and cross examination of PW-1 to PW-5 were treated as Nil on behalf of defendant No.2 but on the same date PW-5 Jagroop Singh was chief examined and his cross examination was deferred. Similarly vide order dated 06.09.2016 defence of defendant No.2 was struck off and cross examination of PW-6 was treated as Nil on behalf of defendant No.2 and case was adjourned for further evidence of the plaintiff. In view of the same, case is adjourned to 02.02.2018 for cross examination of PW-5 and for remaining evidence of the plaintiff at own responsibility.

Dated: 17.01.2018

(Surekha Rani)

CJJD/Ludhiana

(UID No.PB0341)”

[9]. The factum of order dated 29.08.2016 was duly recorded in the aforesaid order, wherein cross examination of PW 1 to PW 5 was treated to be *nil* on behalf of defendant No.2, but on the same day, examination-in-chief of PW 5 was recorded and his cross-examination was deferred. The case was adjourned to 02.02.2018 for cross-examination of PW 5 and for remaining evidence of the plaintiff at her own responsibility. Thereafter, the case was adjourned on some occasions.

[10]. An application under Section 151 CPC was filed for clarification of order dated 07.03.2018. The filing of CR No.3162 of 2017 was against the orders dated 07.03.2017 and 06.04.2017 which culminated in dismissal of the revision petition filed by the

plaintiff/respondent No.1 on 09.01.2018. A copy of order dated 15.02.2017 passed by the High Court in CR No.6816 of 2016 was filed before the trial Court on 07.03.2017, therefore, trial Court granted opportunity of filing written statement to defendant No.2/petitioner by paying cost(s). The decision rendered in two revision petitions by the High Court would not leave any iota of doubt in respect of clarification of order dated 07.03.2018. Order dated 29.08.2016 passed by the trial Court was practically in respect of treating opportunity for cross-examination of PW 1 to PW 4 by defendant No.2 to be *nil*. Only cross examination of PW 5 was left. There was no requirement for giving any clarification to the order dated 07.03.2018 as the cross-examination of PW 1 to PW 4 had already been treated to be *nil* at the instance of defendant No.2.

[11]. Perusal of various *zimni* orders on record would show that defendant No.2/petitioner was involved in delaying tactics. Even application was filed before the District Judge, Ludhiana for transfer of the case on 24.04.2018. Notice of the said application was issued to the plaintiff. Ultimately, the said application was got dismissed as withdrawn by defendant No.2/petitioner vide order dated 01.05.2018.

[12]. An application under Section 151 CPC filed by the plaintiff was to the effect that while pronouncing the order dated 07.03.2018, the trial Court had already instructed the plaintiff to

bring only PW 5 for cross-examination as the cross-examination of other witnesses was declared to be *nil* at the instance of defendant No.2 by order of the Court. However, when the order was uploaded on the internet, the same revealed that the case was fixed for PWs and not for cross-examination of PW 5 only.

[13]. Order passed on the said application, in my considered, opinion does not call for any interference as the cross-examination qua PW 1 to PW 4 had already been treated to be *nil* on behalf of defendant No.2/petitioner vide order dated 29.08.2016 and the said order was never assailed despite filing of CR No.6816 of 2016 and the factum of aforesaid order was not brought to the notice of the Court when another CR No.3162 of 2017 was decided by the High Court on 09.01.2018.

[14]. Owing to the conduct of defendant No.2/petitioner on record, this Court does not wish to grant any indulgence in favour of the petitioner with leave of the Court or with subject to payment of any cost(s). This revision petition is accordingly dismissed.

07.12.2018

(RAJ MOHAN SINGH)
JUDGE

Prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No