

(107) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5537 of 2016
Date of decision:25.10.2018

Smt. Raj Rani and another Petitioners
Versus

Nisha Rani Respondent

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Kanwaljeet Singh, Advocate for the petitioners.
Mr. S.K. Jain, Advocate for the respondent.

B.S. Walia, J. (ORAL)

[1] Challenge in the revision petition is to order dated 02.08.2016 (Annexure P-5) passed by the learned Additional Civil Judge (Sr. Div.), Dera Bassi partly allowing the application for additional evidence as filed by the respondent/plaintiff.

[2] At the very outset, learned counsel for the respondent/plaintiff contended that application for additional evidence was allowed in part and respondent/plaintiff-applicant was permitted to examine Krishan Latava, resident of Gali No.1, Jujhar Nagar, Patiala i.e. attesting witness of agreement to sell Ex.PA only subject to payment of costs of Rs.5000/-.

[3] Per contra, learned counsel for the petitioners by relying upon a decision of this Court in **Shamsher Singh and others v. Joginder Singh and another, 2012 (1) PLR 205** contended that the acceptance of costs was under protest, therefore, there was no bar to the petitioners challenging the impugned order. Para 9 of the decision in Shamsher Singh's case (Supra) is

reproduced as under:-

“9. It may be made clear at the outset that acceptance of costs under protest is different from acceptance of costs without any such protest. Acceptance of costs without any protest would estop the party accepting the costs from challenging the order, but acceptance of costs under protest would not estop a party from challenging the order. Therefore, the ratio of Raj Kumar's case (supra) would not apply to the facts of this case.

[4] I have considered the submissions of learned counsel for the parties and am of the view that the plea on behalf of the respondent/plaintiff is liable to succeed and the petitioners are estopped from challenging the impugned order on account of having accepted the costs even though the same was accepted under protest in view of decision of the Division Bench of this Court in **Amar Singh v. Perhlad and others decided on 04.10.1988 in CR No.845 of 1987** followed by a Single Bench of this Court in **Sandeep and others v. Surender and others, 2010 (1) Law Herald 259.**

Relevant extract of the Division Bench of this Court in Amar Singh's case (Supra) is reproduced as under:-

5. In the present case, the petitioner having accepted costs awarded in the order while allowing amendment of the plaint further mentioned that he was accepting the amount under protest. This was a unilateral act on the part of the petitioner. Even if he had not accepted the costs, the same would have been deposited in the Court by the plaintiff. If the petitioner had withdrawn the costs from the Court unilaterally stating that the withdrawal would be under protest, he could not approbate and reprobate, that is accepting benefit of the order and at the same time objecting to the passing of the order. He had to accept the order as a whole. What he did was that he accepted the costs and thereby acquiesced in the correctness of the order passed. Although at the time of

acceptance of the costs the petitioner stated that he was doing so under protest, that will not make any difference as the opposite party had not consented to the statement of the petitioner in this respect. If in fact the petitioner wanted to challenge the order of amendment of the plaint, there was no compulsion for him to accept the costs. The costs would have remained deposited in the Court. The right of the petitioner to the costs imposed by the Court on the plaintiff while allowing amendment of the plaint was not based on any right of the petitioner in the suit. The costs were ordered by the Court to compensate the petitioner for the inconvenience caused during the pendency of the suit till the plaint was amended. Such an order regarding costs was made on term or condition for amendment of the plaint in view of Order 6 Rule 17 Civil Procedure Code. Such an order could not be accepted in part by either of the party while denouncing the other part. The plaintiff could not file amended plaint stating that he could pay costs at the time of final decision of the suit. Likewise the defendant could not say while accepting the costs that he would challenge the order in appeal or revision or that he would return the costs withdrawn if the order of amendment of plaint is set aside. The crux of the matter to be seen is as to what the petitioner did and not what he said. By acceptance of costs, he accepted the order as correct. He has taken benefit of the order. He cannot now turn around and say he will also challenge the order. By allowing him to challenge the order would amount to nullifying the effect of acceptance of costs. In such circumstances, he cannot approbate and reprobate. His own act would estop him. At the most it can be said that the petitioner had two options, one to accept the costs and to treat the order as correct, the other not to accept the costs and to challenge the same in revision. He having elected to accept the costs, he exercised his

choice in accepting the order as correct. His lodging the protest in such circumstances is meaningless. Reference here may be made to the decision of Madras High Court in R. Samudra Vijayam Chettiar v. Srinivasa Alwar and others, AIR 1956 Madras 301, laying down the following principle : --

"Where a man is entitled to one of two inconsistent rights and he has with full knowledge done an unequivocal act indicating his choice of the one he cannot afterwards pursue the other which after the first choice is by reason of the inconsistency no longer open to him. Such cases do not require detriment to the other party as foundation for their application,"

Similar view was taken by the Madras High Court in K. Shanmugham Pillai and others v. S. Shanmugham Pillai and others, AIR 1968 Madras 207. The view expressed by the Madras High Court in Ramaswami Chettiar v. Chidambaram Chettiar's case appears to be correct. The said High Court reiterated the view subsequently in H.G. Krishna Reddy v. M.M. Thimmiah's case. The view expressed in Randhir Singh v. Kamleshs case, thus, cannot be accepted.

[5] Reference is also made to a decision of this Court in Sandeep's case (Supra). Relevant extract of the same is reproduced as under:-

4. At the outset, learned counsel for the contesting respondents contended that the plaintiffs have accepted the cost amount of Rs.2,000/- pursuant to impugned judgment dated 07.03.2009 without any protest, and therefore, the petitioners are debarred from challenging the impugned judgment. There is considerable merit in the contention. Learned counsel for the respondents, in support of the aforesaid contention, has placed reliance on a judgment of Hon'ble Supreme Court in the case of

Krishan Kumar Khanna vs. International Society for Krishna Consciousness reported as Vol. CXXVII – (2001-1) P. L. R. 704 and on various judgments of Single Benches of this Court namely Sushil Kumar vs. The Panchayat Samiti, Kaithal reported as 1989 P. L. J. 451, an unreported judgment dated 15.07.2008 passed in Civil Revision No. 4286 of 2007 and also a judgment of Division Bench of this Court in the case of Amar Singh vs. Perhlad and others reported as 1989 P. L. J. 496. The ratio of all these judgments is that if cost amount is accepted, the party accepting the cost amount is debarred from challenging the order. Even if cost amount is accepted under protest, even then the order cannot be challenged by the party accepting the cost. In the instant case, the cost amount was accepted unconditionally and therefore, the petitioners are debarred from challenging the impugned judgment of the Appellate Court.

[6] However, in the light of the Division Bench judgment of this Court in Amar Singh's case (Supra), I am of the view that the petitioners cannot avail of the decision in Shamsheer Singh's case (Supra) as the law as laid down by the Division Bench would prevail over the law laid down by the Single Bench.

[7] Accordingly, in view of the position as noted above, the Revision Petition is dismissed as not maintainable with costs assessed at ₹ 1,000/- to be deposited with the Punjab and Haryana High Court Legal Services Committee. Registry to report compliance.

(B.S. Walia)
Judge

25.10.2018
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