

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5790 of 2017(O&M)
Date of Decision: 12.09.2018

Inderpal Singh

.....Petitioner

Versus

Pritpal Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ankur Bansal, Advocate
for the petitioner.

Mr. Mansur Ali, Advocate and
Mr. Imran Ali, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 05.08.2017 passed by Civil Judge (Junior Division), NRI Cases, Jalandhar, whereby order dated 03.07.2017 passed by the trial Court was reviewed subject to costs of Rs.5000/- in total, out of which Rs.3000/- was payable to the defendant and amount of Rs.2000/- was to be deposited in the District Legal Services Authority, Jalandhar for single opportunity to tender the evidence by way of affidavit.

[2]. The evidence on record would show that issues were framed on 17.10.2015. The evidence of the plaintiff started w.e.f

19.11.2015. Perusal of the interlocutory orders from 19.11.2015 onwards would show that 25 opportunities were availed by the plaintiff before closure of his evidence. Perusal of the *zimni* orders on record would show that however all the opportunities were not attributable to the plaintiff, but the fact remains that the plaintiff did not conclude his evidence within numerous opportunities, rather got examined two PWs namely Arshdeep Singh and Harjinder Singh who were attesting witnesses to the sale deed. Plaintiff did not examine himself ahead of aforesaid witnesses in terms of Order 18 Rule 3-A CPC.

[3]. The evidence of the plaintiff was closed vide order dated 03.07.2017 after finding that the plaintiff has availed numerous effective opportunities for leading his evidence. Trial Court did not consider further adjournment to be valid and closed the evidence of the plaintiff by order on 03.07.2017. The case was adjourned for defendant's evidence who did not lead any evidence and close the same. The case was fixed for final arguments.

[4]. Review application was filed by the plaintiff on 11.07.2017 on the ground that during summer vacations, the plaintiff got prepared his affidavit for tendering in evidence, but could not come present in the Court on 03.07.2017 due to hospitalization of his father who died later on.

[5]. Perusal of the order dated 03.07.2017 would show that presence of Mr. N.K. Aggarwal, Advocate on behalf of the plaintiff was marked. Correct address for the service of PW R.K. Sodhi was not filed, nor any evidence of the plaintiff was present for providing correct address of the witness. Plaintiff had already availed five opportunities in addition to numerous opportunity availed for leading his evidence. No medical of the father of the plaintiff was attached with the application for reviewing the order dated 03.07.2017, nor any affidavit was filed in support of the application, except the verification of the application done at the tail.

[6]. Trial Court allowed the application vide impugned order dated 05.08.2017 after finding that the order dated 03.07.2017 cannot be reviewed. However, in view of procedural law being handmade of justice, opportunity was granted subject to costs.

[7]. On 29.08.2017, at the time of issuance of notice of motion, following order was passed:-

“Learned counsel for the petitioner has come up in revision petition against the order dated 05.08.2017 (Annexure P-1) where, vide order dated 03.07.2017 (Annexure P-19), the evidence of the plaintiff has been closed as he has been granted 25 effective opportunities to complete his evidence. He further submits that , the plaintiff has been granted an opportunity to file an affidavit to tender his evidence but as of today i.e. 29.08.2017, no affidavit

has been filed by the plaintiff and even as per order Annexure P-19, numerous opportunities have been granted to conclude his evidence. He has referred to the order of Supreme Court in the case of **Kamlesh Verma Vs. Mayawti and Others 2013 (4) RCR (Civil)75**, in paragraph 16, it has been held that review proceedings cannot be equated with the original hearing of the case and the same will not be maintainable unless the material error or as laid down guidelines revisional order which in the present case is not made out.

Notice of motion for 27.11.2017.

In the meantime, proceedings before the trial Court shall remain stayed subject to condition that plaintiff has tender his affidavit till today.”

[8]. From perusal of paragraph No.16 of **Kamlesh Verma's case (supra)**, it can be seen that review proceedings cannot be equated with the original hearing of the case. Even trial Court while reviewing the order has endorsed the fact that order dated 03.07.2017 cannot be reviewed, but still indulgence was granted on the basis of procedural law being handmade of justice and opportunity was granted to the plaintiff to tender his affidavit in examination-in-chief subject to payment of costs. Review of order can be made if the party has discovered a new and important matter or evidence, which after the exercise of due diligence, was not within knowledge of the party or he/she could not produce the same at the time of leading evidence or at the time of passing of the order or the same was on account of

some mistake apparent on the face of the record or for any other sufficient reason. The case of the plaintiff even if considered at the threshold of “any other sufficient reason”, the same would be wanting on the parameters of the review in terms of Order 47 Rule 1 CPC as the trial Court has found that the order dated 03.07.2017 cannot be reviewed legally. Review is not akin to original hearing of the case.

[9]. The application for review was not accompanied by medical certificate of father of the plaintiff, nor the same was supported with affidavit of the plaintiff. The absence of the plaintiff on 03.07.2017 was not noticed in the order dated 03.07.2017 passed by the trial Court, rather Mr. N.K. Aggarwal, Advocate had duly appeared in the case on behalf of the plaintiff. The said order was revolving around failure on the part of the plaintiff in not submitting the correct address of PW R.K. Sodhi consecutively on sixth occasion. Plaintiff had availed five opportunities for filing the correct address of aforesaid witness. On 03.07.2017, same was the position and the learned counsel for the plaintiff requested for adjournment for the same purpose. It was nowhere recorded in the order that the plaintiff intended to file his affidavit in examination-in-chief, nor any request was made on account of absence of the plaintiff from the record. Leading of evidence of two plaintiff's witnesses

namely Arshdeep Singh and Harjinder Singh would show that the plaintiff never examined himself in terms of Order 18 Rule 3-A CPC. After closure of the plaintiff evidence, defendant evidence has also been closed and the case was adjourned for arguments.

[10]. In my considered opinion, the indulgence granted by the trial Court despite noticing the fact that the order dated 03.07.2017 cannot be reviewed is illegal. Plaintiff has already availed numerous effective opportunities to complete his evidence. He did not adhere to the provision in terms of Order 18 Rule 3-A CPC by leading his own evidence ahead of two PWs examined by him. After closure of the evidence of the plaintiff, defendant evidence has also been closed and the case was fixed for arguments.

[11]. At this stage, allowing the plaintiff to lead his affirmative evidence would amount to re-opening of the case. The case does not fall under the ambit of Order 47 Rule 1 CPC. Even for granting permission for any other sufficient reason, no sufficient reason has been brought on record as the application for review was deficient in terms of production of medical certificate of father of the plaintiff and the application was not supported by any affidavit of the plaintiff.

[12]. For the reasons recorded hereinabove, impugned order

dated 05.08.2017 passed by Civil Judge (Junior Division), NRI Cases, Jalandhar is set aside. Revision petition is allowed, dismissing the application for review altogether. Normal consequences to follow.

September 12, 2018	(RAJ MOHAN SINGH)
Prince	JUDGE
Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No