IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.6978 of 2016
Date of Decision: May 17, 2018

Mohan Singh

...Petitioner

Versus

Kesar Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Hitesh Ghai, Advocate,
for the petitioner.

Mr.Mohd.Yousaf, Advocate,
for respondent No.1.

*****

AMIT RAWAL, J. (Oral)

Petitioner-plaintiff (respondent in the counter claim) is aggrieved of the order dated 11.8.2016, whereby the trial Court dismissed the application for seeking permission to file the written statement to the counter claim.

Mr.Hitesh Ghai, learned counsel representing the petitioner-plaintiff submitted that the petitioner-plaintiff filed a suit claiming declaration that he is joint owner in possession of half share of property with consequential relief of perpetual injunction restraining the defendants from alienating, transferring or changing the nature of the suit property. The defendants filed written statement and denied the claim of the plaintiff. They also filed a separate counter claim. The Court below did not notice the aforementioned fact and the matter continued. Even the issues were framed without noticing the fact that the counter claim has been filed and when the suit was slated for plaintiff's evidence, the aforementioned fact came to the

Ramesh Kumar
2018.05.24 16:15
I attest to the accuracy and
integrity of this document

knowledge of the plaintiff. It is in these circumstances, the application aforementioned was filed and, thus, prayed for setting-aside the impugned order.

Mr.Mohd.Yousaf, learned counsel representing respondent No.1 submitted that the reply to the counter claim was to be filed within some reasonable time and, thus, the petitioner-plaintiff lost the right to file the written statement. Parameters of Order 8 Rule 1 CPC would be applicable to the counter claim and rightly so, the application has been dismissed. The plaintiff should have been vigilant in filing the written statement to the counter claim or sought leave of the Court at appropriate stage when the copy of the counter claim was already handed over. Even the zimni order dated 13.9.2010 also reflected that Court had given opportunity to file the written statement.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the impugned order is not sustainable in view of the Maxim "actus curiae neminem gravabit", for, it is not disputed before me that in none of the zimni orders, the Court granted liberty to the plaintiff to file the written statement to the counter claim except for 13.9.2010.

Before I could give my reasoning, learned counsel for the petitioner-plaintiff had given me copy of the zimni orders, particularly of 13.9.2010. The same reads thus:-

> "*Present: cl. for the parties.*
>
> *To come upon 10/11/10 for consideration on application u/o 39 rule 1 & 2.*
>
> *CJJD/LDH 13.9.10"*

In my view, the Court below has committed illegality and

Ramesh Kumar
2018.05.24 16:15
I attest to the accuracy and
integrity of this document

perversity in not passing the zimni order in correct perspective. It is only pertains to continuing the matter for consideration on the application under Order 39 Rule 1 & 2. All the zimni orders seen by me do not reflect any iota of application of mind of giving opportunity to the petitioner (respondent in the counter claim) to file written statement. The aforementioned clincher had been noticed by the Hon'ble Supreme Court in **Jang Singh Versus Brij Lal and another, 1966 AIR SC 1631,** where it has been held that the act of the Court prejudice none. In such circumstances, the Court below ought to have accepted the factual aspect and granted liberty to the petitioner to file the written statement.

Resultantly, the impugned order is set-aside. Petitioner-plaintiff (respondent in the counter claim) is directed to file written statement to the counter claim.

Revision stands allowed.

May 17, 2018 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**

Ramesh Kumar
2018.05.24 16:15
I attest to the accuracy and
integrity of this document