

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-70-2018

Date of decision: 10.01.2018

M/s Sarvpriya Tubes Pvt. Ltd. and another

..... Petitioners

Versus

M/s Madhav Udyog Pvt. Ltd. and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Avnish Mittal, Advocate for the petitioners.

RAMENDRA JAIN, J. (ORAL)

1. Through the instant revision under Article 227 of the Constitution of India, challenge has been laid to the order dated 24.10.2017 (Annexure P-11) of the trial Court, dismissing the application of the petitioners-defendant dated 18.09.2017 (Annexure P-9) for dismissal of the suit.

2. Put pithily, respondent No. 1-M/s Madhav Udyog Pvt. Ltd., filed a suit for permanent injunction for restraining the petitioners-defendant, their agents and servants from manufacturing the TMT Bar under the name and trademark "Jeevan Jyoti". During the pendency of suit, respondent No. 1-plaintiff assigned all its rights and interests in favour of M/s Madhav Alloys Pvt. Ltd. (hereinafter referred to as 'the assignee') on 31.05.2017 and moved an application dated 04.08.2017 (Annexure P-7) under Order VI Rule 17 read with Section 151 CPC for amendment of the plaint. Simultaneously, the petitioners-defendant moved an application

Annexure P-9 for dismissal of suit on the ground that after assigning its rights and interests by respondent No. 1-plaintiff to the assignee, no cause of action remain survived in its favour, therefore, the suit was liable to be rejected.

3. The trial Court after hearing both the sides rejected both the applications vide impugned order Annexure P-11.

4. Relying upon judgments in **(i) Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman Vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee, 2012 (3) RCR (Civil) 811; (ii) Kanwal Kishore Manchanda and another Vs. S.D. Technical Services Pvt. Ltd., 2005 (121) DLT 98 and (iii) T. Arivandandam Vs. T.V. Satyapal, 1977 AIR (SC) 2421**, learned counsel for the petitioners-defendant *inter alia* contends that since no cause of action had survived in favour of respondent No. 1-plaintiff, therefore, the trial Court ought to have reject the plaint by allowing the application Annexure P-9 of the petitioners-defendant in this respect, inasmuch as the assignee-Company was a separate legal entity, which never came forward to become a party to the *inter se* dispute between the petitioners-defendant and respondent No. 1-plaintiff. Therefore, the suit of respondent No. 1-plaintiff could not have been continued further, after transfer of its rights and interests in favour of a distinct entity.

5. Having given thoughtful considerations to the submissions made by learned counsel for the petitioners-defendant, I find the instant revision completely devoid of any merit for the reasons to follow:

6. Perusal of the impugned order Annexure P-11 shows that the trial has reached to its final stage inasmuch as the petitioners-defendant

have been granted last opportunity to conclude their evidence. There is no dispute with the judgments relied upon by learned counsel for the petitioners-defendant referred to above, but with due respect, it is add here that each case has its own peculiar facts and circumstances. Since, in the instant case, the trial has reached at its final stage, therefore, in the interest of justice it would be expedient that a verdict should come resolving *inter se* disputes between the parties on merits for all intents and purposes.

7. More so, the petitioners-defendant cannot force a person to become a party. In the instant case, it is the choice of the assignor/respondent No. 1-plaintiff in what manner they have to pursue their suit. Contention that no cause of action remained survived in favour of respondent No. 1-plaintiff, at this stage is premature inasmuch as, the trial Court would take care of this fact, while deciding the suit.

8. In view of the discussion made above, the instant revision being completely devoid of any merit, is dismissed.

January 10, 2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No