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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7921-2015 (O&M)

Date of decision : 16.02.2018

Vishwa Mittar Nayyar and another

... Petitioner(s)

Versus

Avinash Chander Nayyar (deceased through LRs) and
others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Navkesh Singh, Advocate
for the petitioners.

Mr. Vinay Puri, Advocate
for respondent No.1.

Mr. D.K. Batti, Advocate
for respondent Nos.2 to 4.

AMIT RAWAL, J. (ORAL)

The petitioners-defendants are aggrieved of the impugned order dated 03.11.2015 (Annexure P-5), whereby an application moved by the respondents-plaintiffs for summoning the witnesses has been allowed.

The respondents-plaintiffs instituted the suit claiming declaration that the plaintiffs are the exclusive owners in possession of Building No.86 (B.XXIII.2582/1), Industrial Area-A, Ludhiana, as per the site plan, with consequential relief of permanent injunction on the premise that the plaintiffs and the defendants were closely related to each other and there were two firms being run under the name and style of M/s Hind Hosiery and M/s O.K. Hosiery Mills. The Firm M/s Hind Hosiery Mills

was having a different partnership. The intention of the defendants became dishonest and they started denying the title of the plaintiffs qua the suit property, therefore, a necessity arose to file the suit.

The aforementioned suit was contested by taking all preliminary objections that they were not owners of the property and had no right and concern with the property, but the factum of existence of two firm was not denied. It was rather stated that all the properties were still joint i.e. there was no partition and the remedy for the plaintiffs was elsewhere. During the pendency of the suit, the respondents-plaintiffs wanted to summon the following witnesses:-

- (i) *Sudarshan Lal Nayyar,*
- (ii) *Avinash Chander Nayyar,*
- (iii) *Krishna Nayyar,*
- (iv) *Vishwa Mittar Nayyar*

The application was opposed as the witnesses being not necessary and essential for the adjudication of the suit, but the same has erroneously been allowed, thus, there is illegality and perversity.

Learned counsel appearing on behalf of the respondents-plaintiffs submits that the petitioners-defendants cannot oppose the application for summoning the witnesses, particularly when the purpose in the application for adjudication of the *lis*, had been mentioned, thus, urges this Court for dismissal of the present revision petition.

I have heard the learned counsel for the parties and appraised the paper book. The relief noticed above and the witnesses, reproduced above, in my view, cannot be objected to by the defendants by opposing the application as the same was moved as per the provisions of Order 16 Rule

1-A of the Code of Civil Procedure, which reads thus:-

“Production of witnesses without summons- Subject to the provisions of sub-rule (3) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.”

The order of the Court below, rejecting the objections of the petitioners-defendants is perfectly legal and justified and do not call for interference. In my view, it was an intentional act on the part of the defendants to delay the adjudication of the suit, yet audacity of filing of the revision petition.

The present revision petition stands dismissed with the payment of ₹10,000/- as cost.

16.02.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**