

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.1288 of 2018 (O&M)
Date of Decision.20.03.2019

Malkit Singh

...Petitioner

Vs

Sadhu Singh

.Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Hem Raj Kapil, Advocate
for the petitioner.

Mr. Eashan Menon, Advocate
for the respondent.

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AMIT RAWAL J. (ORAL)

The present revision petition is directed against the impugned order at the instance of defendants against the impugned order dated 24.11.2017 (P-10) and 08.01.2018 (P-12) passed in the review petition of the said appeal (P-12) whereby orders dated 13.01.2015, 18.02.2015 and 03.04.2017 passed by the Civil Judge, Senior Division, Barnala were set aside.

Respondent-plaintiff instituted the civil suit for specific performance of agreement to sell dated 31.12.1996. During the pendency of the suit against the order of the trial Court dismissing the application for additional evidence sought by the defendants, a civil revision filed before this Court was allowed subject to depositing ₹2,40,000/- along with ₹10,000/- as costs.

Mr. Hem Raj Kapil, learned counsel appearing on behalf of the petitioner submitted that the aforementioned order was complied with. Vide Annexure P-1 dated 19.11.2014, an application

for producing the plaintiff/respondent was filed on the ground that he was not residing in the village or not attending the court, much less, having declared proclaimed offender in criminal complaint No.47. On receipt of reply from the plaintiff-respondent, the trial Court vide order dated 13.01.2015 (Annexure P-5) disposed of the application and directed the counsel for the plaintiff to produce Sadhu Singh in person on the next date of hearing. In the meantime, suit was dismissed in default on 18.02.2015 on account of non-compliance of order dated 13.01.2015. Against the aforesaid order, the plaintiff filed an appeal before the Ld. District Judge, Barnala which was withdrawn vide order dated 28.04.2016 with liberty to file an appropriate application before the trial Court. An application for recalling and setting aside the order dated 18.02.2015 was submitted but the same was dismissed by the trial Court on 03.04.2017. Against the said order, respondent-plaintiff filed an appeal before the lower Appellate Court and the lower Appellate Court vide order dated 24.11.2017 set aside the orders dated 13.01.2015, 18.02.2015 and 03.04.2017 restored the suit on its original number.

Learned counsel appearing on behalf of the petitioner submitted that the impugned order is not sustainable in the eyes of law as the order dated 13.01.2015 could not have been challenged in appeal by filing application under Order 9 Rule 9 CPC. Despite the objection, lower Appellate Court only rectified the presence of counsel in the review order but did not pay heed towards the law laid down. The lower Appellate Court cannot be allowed to perpetuate the fraud as the trial Court observed that to avoid presence in the

criminal case and to get benefit in the case of specific performance of contract through counsel did not appear despite direction, thus, appeal was not maintainable and the order was without jurisdiction.

Per contra, learned counsel appearing on behalf of the respondent submitted that against the dismissal of application under Order 9 Rule 9 CPC, as per the provisions of Order 43 CPC, appeal is maintainable, thus, supported the order under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit for the simple reason that the facts noticed above are not in dispute. The only point to be seen is whether the impugned order was maintainable in law or not. The lower Appellate Court, in my view, correctly appreciated that there was no occasion for the trial Court to entertain and allow the application of the petitioner-defendant directing the plaintiff to produce Sadhu Singh as per orders dated 13.01.2015 and 18.02.2015 wherein some observations were reiterated while dismissing the application under Order 1 Rule 10 CPC submitted by Prem Singh impleaded as legal representatives of Sadhu Singh. The suit was dismissed in default as per Order 9 Rule 8 CPC. The remedy was to move an application for restoration of the suit but preferred an appeal before the Court which was registered as Civil Appeal No.104 and the same was withdrawn with liberty to file application. The said application was filed on 28.03.2016 but dismissed vide order dated 03.04.2017 and in these circumstances, it cannot be said that the order dated 03.04.2017 was not appealable as per provisions of Order 43 Rule 1 CPC. Filing of the review petition would reveal that

defendant wants to avoid adjudication of trial in suit for specific performance and contesting the same on merits.

In view of such circumstances, the impugned orders cannot be said to be suffering from illegality and infirmity, much less, cannot be said to be passed without or beyond jurisdiction. The impugned orders are upheld and resultantly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

March 20, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No