IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.1869 of 2016(O&M)
Date of Decision-31.01.2019

Sonu Goyal ... Petitioner

Versus

Bachan Lal Goyal ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Amit Jain, Advocate for the petitioner.

Mr. Rahul Sharma, Advocate for the respondent.

***

__RAJ MOHAN SINGH, J.__

[1]. Mr. Amit Jain, Advocate has filed power of attorney on behalf of the petitioner with an endorsement of no objection given by the earlier counsel for the petitioner. Power of attorney is taken on record.

[2]. Petitioner has preferred this revision petition against the order dated 09.12.2015 passed by Civil Judge (Junior Division), Chandigarh whereby the application filed by the petitioner under Order 12 Rule 6 CPC for passing judgment against the respondent on the basis of his admission in the written statement was dismissed.

[3]. SCF Nos.114 and 179 in Sector-26, Grain Market, Chandigarh were jointly owned by Bachan Lal Goyal and his two brothers namely Raj Kumar and Shiv Kumar. Petitioner is son of Bachan Lal Goyal. Petitioner alleged that on 30.03.1984, Bachan Lal Goyal and his brothers entered into family settlement in which SCF

No.114, Sector-26, Grain Market, Chandigarh fell into the share of Raj Kumar and Shiv Kumar, whereas SCF No.179, Sector-26, Grain Market, Chandigarh was under resumption by the Estate Office. Resumption proceedings were under challenge. Civil Writ Petition No.8226 of 1988 was pending in the High Court against the order of resumption and SCF No.179, Sector-26, Grain Market, Chandigarh fell into the share of Bachan Lal Goyal (father of the petitioner). All the three brothers namely Bachan Lal Goyal, Raj Kumar and Shiv Kumar ultimately settled the dispute through a family settlement and an award was passed by the Permanent Lok Adalat, UT, Chandigarh in Civil Suit No.16 dated 27.02.2006 on 12.04.2006 on the basis of family settlement. As per award, SCF No.179 fell into the share of Bachan Lal Goyal and SCF No.114 fell into the share of Raj Kumar and Shiv Kumar.

[4]. During resumption proceedings, Bachan Lal Goyal (father of the petitioner) had also entered into family settlement with the petitioner and sold 30% share of the ground floor of SCF to the petitioner for a consideration of Rs.4,00,000/-. Bachan Lal Goyal also agreed to transfer 7 marlas of land in village Kishangarh, Chandigarh in the name of the petitioner against consideration of Rs.3,00,000/-. Bachan Lal Goyal had already received the aforesaid payment of Rs.4,00,000/- and Rs.3,00,000/- respectively and had also issued receipts to that effect. Later on, he denied the transfer of aforesaid property in the name of the petitioner. The said arrangement was

made by way of family settlement dated 07.10.2008 to which petitioner and respondent were signatories besides brothers of the respondent.

[5]. Thereafter, the respondent did not honour the commitment despite receiving the amount from the petitioner. Respondent along with his brothers Raj Kumar and Shiv Kumar wanted to dispossess the petitioner from the suit property who was in possession of the same as per family settlement. Consequently, the petitioner had to approach Civil Court vide Civil Suit No.7708 of 2010/2011 titled Sonu Goyal Vs. Bachan Lal Goyal and others seeking permanent injunction against the defendants/respondents and to restrain them from forcibly evicting the petitioner from the first floor of SCF No.179, Sector-26, Grain Market, Chandigarh. The suit was filed for mandatory injunction directing the defendants to transfer 30% share of defendant No.1 in SCF No.179, Sector-26, Grain Market, Chandigarh comprising in ground floor in favour of the plaintiff as per family settlement dated 07.10.2008.

[6]. Family settlements were duly enforced and on account of previous settlement, SCF No.114 was duly transferred in the names of Raj Kumar and Shiv Kumar and was so recorded in the Estate Office. SCF No.179 could not be transferred in the name of Bachan Lal Goyal due to resumption proceedings. Since the petitioner and other family members were in possession, therefore, they entered into family settlement dated 07.10.2008 thereby transferring specific portion of the ground floor in favour of the petitioner. Petitioner continued to be

in possession of the ground floor on account of said family settlement. Petitioner had also made payment to defendant No.1/respondent vide receipts dated 07.10.2008. Respondent No.1 has already executed an affidavit on 07.10.2008, acknowledging the family settlement and transfer of right of 30% in the suit property as well as 7 marlas of land in Kishangarh in favour of the petitioner in token of confirmation. These facts were also admitted by respondent No.1 in his written statement in the civil suit filed on 11.08.2011.

[7]. Preliminary objection No.1 of the written statement filed by respondent No.1 and para No.6 on merits are reproduced hereasunder:-

> *"1. That no cause of action arose to the plaintiff to file the present suit. The answering defendant never refused to transfer the 30% share of SCF No.179, Grain Market, Sector-26, Chandigarh his name as per the family settlement dated 07.10.2008. At present the SCF No.179, Grain Market, Sector-26, Chandigarh stands resumed and Civil Writ Petition No.3133 of 1992 to set aside the resumption order and for restoration of the said SCF is pending in the Hon'ble Punjab and Haryana High Court the answering respondent had already deposited Rs.1,57,207.00 vide DD No.309212 dated 16.11.2006 drawn on PNB, Sector-19-D, Chandigarh in the office of Estate Office, U.T. Chandigarh as penalty amount for the restoration of the site No.179, Sector-26, Chandigarh in compliance of the order dated 15.11.2006 passed by the Hon'ble High Court in the above said writ petition. The restoration letter of the said site is awaited as soon the said site is transfer in the name of answering respondent as per award dated 12.04.2006 passed by the Permanent Lok Adalat Chandigarh the answering respondent will transfer 30% share of*

the said SCF No.179, on ground floor shop, adjoining to SCF No.178 Grain Market, Sector 26, Chandigarh in the name of plaintiff.

6. In reply to para No.6 of the plaint it is submitted that SCF No.279, Grain Market, Sector-26, Chandigarh was resumed by the Estate Officer, Chandigarh. The writ petition No.3133 of 1992 for setting aside the resumption order is pending in the Hon'ble Punjab and Haryana High Court. The answering defendant had depositing Rs.1,57,207/- vide DD No.309212, dated 18.11.2008 draw on PNB, Sector 19-D, Chandigarh in compliance of order dated 15.11.2006 passed by the Hon'ble High Court. The writ petition is still pending in the High Court. Therefore said SCF No.179 is still in the name of all the three defendants.

In fact an award dated 12.04.2006 had already been passed by the Permanent Lok Adalat and according to said award the answering defendant has been declared on absolute exclusive owner of the SCF No.179, Grain Market, Sector 26, Chandigarh. Now defendant No.2 and 3 have no concern with the said SCF. It is the answering defendant who has agreed to transfer 30% share on ground floor of SCF No.179, on ground floor shop, adjoining to SCF No.178, Grain Market, Chandigarh in the name of the plaintiff. It is admitted that answering defendant has received a sum of Rs.4,00,000/- from the plaintiff in consideration of transfer of 30% share which would comprise in the ground floor of SCF No.179, on ground floor shop, adjoining to SCF No.178, Grain Market, Sector 26, Chandigarh towards the wall of SCF No.178, Grain Market, Sector-26, Chandigarh measuring 12.4x609."

Other material paragraphs of the plaint were also admitted by defendant No.1 and prayer was made by defendant No.1 in the written statement that the suit of the plaintiff be decreed.

[8]. It appears that due to some dispute between the petitioner and his brothers, Civil Suit No.77 of 2011 titled Satpal Goyal Vs. Sonu Goyal was filed wherein petitioner being defendant was sought to be restrained from forcibly dispossessing the plaintiff/Satpal Goyal from ground floor of SCF No.179, Grain Market, Sector-26, Chandigarh and from hindering the functioning of the business of Satpal Goyal in the said premises. Respondent Bachan Lal Goyal was not party to the said suit, but he had filed affidavit dated 09.02.2011 again admitting the factum of family settlement wherein 30% of the suit property was given to the petitioner. On the basis of said affidavit filed by father of the petitioner/respondent Bachan Lal Goyal, Permanent Lok Adalat vide order dated 17.01.2012 dismissed the suit as withdrawn.

[9]. In the present suit, the petitioner had to implead Raj Kumar and Shiv Kumar (uncles) as the suit property was in their names in the Estate Office since it could not be transferred in the name of the respondent Bachan Lal Goyal alone because of the pendency of resumption proceedings and pendency of Civil Writ Petition No.8226 of 1988. Civil Writ Petition No.8226 of 1988 was ultimately allowed by the High Court vide order dated 08.11.2012. Accordingly, the suit property was transferred in the name of the respondent in the Estate Office vide letter dated 26.03.2005 on the basis of family settlement dated 31.03.1984 and award dated 12.04.2006 was passed by the Permanent Lok Adalat. Thereafter, petitioner moved an application before the trial court for striking out the names of Raj Kumar and Shiv

Kumar from the array of defendants and the said prayer was allowed by the trial Court vide order dated 03.03.2016.

[10]. Since the respondent (father of the petitioner) has already filed admitted written statement dated 11.08.2011, admitting the claim of the petitioner on the strength of family settlement dated 07.10.2008, receipts of the amount from the petitioner and delivery of possession of specific portion to the petitioner, therefore, petitioner filed an application under Order 12 Rule 6 CPC for passing judgment against the respondent on his admission.

[11]. Due to evil design of the respondent in collusion with brothers of the petitioner, the application was contested by the respondent.

[12]. After transfer of SCF in favour of the respondent, due to evil design, he transferred 40% share of the premises in favour of Naresh Kumar, 30% in favour of Sanjay Goyal and kept remaining 30% share with him. This fact is apparent from the letter No.138922 dated 29.01.2016 issued by Estate Office, Union Territory, Chandigarh in favour of Naresh Kumar regarding transfer of ownership in respect of SCF No.179, Grain Market, Sector-26, Chandigarh to the extent of 40% share in his favour on the basis of registered transfer deed dated 01.09.2015.

[13]. The application was dismissed by Civil Judge (Junior Division), Chandigarh vide order dated 09.12.2015 on the ground that defendant No.1 has alleged fraud and mis-representation played by

the petitioner in getting the document executed. Relief in terms of Order 12 Rule 6 CPC being discretionary in nature was not answered in favour of the petitioner and it was also observed that the transfer in question can only be carried effect if other defendants No.2 and 3 also agreed to get the same executed.

[14]. I have heard learned counsel for the parties.

[15]. Evidently, defendants No.2 and 3 were impleaded when the resumption proceedings were pending and Civil Writ Petition No.8226 of 1988 was not decided. After acceptance of the civil writ petition, names of defendants No.2 and 3 were deleted from the array of defendants in the suit vide order dated 03.03.2016 passed by Civil Judge (Junior Division), Chandigarh. Relief under Order 12 Rule 6 CPC is discretionary in nature, but the discretion must be exercised in a judicious manner.

[16]. In ***Uttam Singh Dugal and Co. Ltd. Vs. United Bank of India, 2000(4) RCR (Civil) 89***, the Hon'ble Apex Court has held that where a claim is admitted, the Court has jurisdiction to pass a judgment and decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which the plaintiff is entitled on the basis of admission of the defendant. If the admission for passing the judgment is based on pleadings itself, then it is unnecessary to examine as to what kinds of admissions are covered by Order 12 Rule 6 CPC. In the objects and reasons set out while amending Order 12 Rule 6 CPC, it is stated that

where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The meaning of the Rule should not be narrowed down as the object is to enable a party to obtain speedy judgment on plain admission made by the defendant. The judgment has to be passed on clear admission of facts. The admissions are of many kinds. Admissions are generally arise when a statement is made by a party in any of the modes provided under Sections 18 to 23 of the Evidence Act, 1872. Admission may be considered as being on the record as actual if that is either in the pleadings or in answer to interrogatories or implied from the pleadings by non-traversal. Secondly, as between the parties by agreement or notice. Since the admission has been made in the pleadings itself, therefore, it is unnecessary for the Court to examine as to what kind of admission is covered by Order 12 Rule 6 CPC.

[17]. In the instant case, categoric admission was made in the written statement thereby admitting the factum of family settlement on two occasions and receipts of payment from the petitioner, therefore, the ratio of ***Uttam Singh Dugal and Co. Ltd.'s case (supra)*** duly favours the case of the petitioner. The said judgment was followed by the Hon'ble Apex Court in ***Karam Kapahi and others Vs. M/s Lal Chand Public Charitable and another, 2010(2) RCR (Civil) 683***, wherein it was endorsed that a party can press for judgment on admission of other party as a matter of legal right. The provision is enabling, discretionary and permissive, though the same is neither mandatory nor pre-emptory in nature. In 54th Law Commission Report,

an amendment was suggested to enable the Court to give a judgment not only on the application of a party, but on its own motion. The amendment was brought about to give wider sweep by empowering the Court to use its *ex debito justitial* i.e debt of justice. The thrust of the amendment is to ensure that in an appropriate case, a party on the admission by the other party can press for judgment as a matter of legal right. However, the Court always retains its discretion in the matter of pronouncing judgment. If the provision of Order 12 Rule 1 CPC is compared with Order 12 Rule 6 CPC, it becomes clear that the provision of Order 12 Rule 6 CPC is wider in its application than the provision of Order 12 Rule 1 CPC which is limited to admission by pleading or otherwise in writing, but in Order 12 Rule 6 CPC, the expression 'or otherwise' is much wider in view of words used therein namely: 'admission of fact ……… either in the pleading or otherwise, whether orally or in writing.' In terms of width of the provision, the Rule provides that admission can be inferred from facts and circumstances of the case. It was so held in ***Charanjit Lal Mehra and others Vs. Kamal Saroj Mahajan (Smt.) and another, 2005(3) RCR (Civil) 186***.

[18]. In the instant case, the factum of family settlement on two occasions was not only admitted by the respondent in the written statement, but the same was endorsed by way of affidavit as well. In the suit filed by brother of the petitioner, respondent himself executed the affidavit and the said suit came to be dismissed as withdrawn at a subsequent stage. The view expressed in ***Karam Kapahi and others***

case (supra) was further endorsed by the Hon'ble Apex Court in ***Raveesh Chand Jain Vs. Raj Rani Jain, 2015(2) RCR (Civil) 118***.

[19]. It is a settled position that in terms of Order 12 Rule 6 CPC, the Court can pass a decree not only on the basis of admission made in the pleadings by the defendant, but also on the basis of documents on record. It is a settled principle of law that wherever a document is admitted in the pleadings or otherwise on record, the contents would, obviously, be deemed to have been admitted for all purposes and intents. In view of admission made by the defendant in respect of earlier family settlements, ratio of ***Mahendra Manilal Nanavati Vs. Sushila Mahendra Nanavati, AIR 1965 Supreme Court 364*** can be relied.

[20]. In view of aforesaid factual and legal position on record, the respondent cannot be heard to say that the family settlement being unregistered cannot be relied. Since Permanent Lok Adalat has relied upon the family settlement and passed the award, therefore, the plea taken by the respondent on the said count is not sustainable. Even though, the relief in terms of Order 12 Rule 6 CPC is discretionary in nature and the trial Court has not found favour with the discretion, but this Court finds that the admission made by the respondent in the written statement was categoric. It is not worthy to see that the admission made by the respondent in the written statement was sought to be withdrawn by way of filing an application under Order 6 Rule 17 CPC for amendment of the written statement on 09.09.2015.

The said application was dismissed by the trial Court vide order dated 09.12.2015 and the said order has already attained finality.

[21]. As on date, the admission in the pleadings is still in existence and the respondent has failed to get the admission withdrawn by way of seeking amendment in the written statement, therefore, I deem it appropriate to accept this revision petition. Impugned order dated 09.12.2015 passed by Civil Judge (Junior Division), Chandigarh is hereby set aside. Application under Order 12 Rule 6 CPC for passing the judgment on admission made by the respondent is allowed. Normal consequences to follow.

(RAJ MOHAN SINGH)
JUDGE

31.01.2019
Prince

Whether reasoned/speaking Yes/No

Whether reportable Yes/No