

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

104

CR No.6493 of 2018

Date of decision:19.3.2019

Sunil Joshi

... Petitioner

versus

Sawitri Devi

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Kulwinder Singh, Advocate, for
Mr.S.S.Sarwara, Advocate,
for the petitioner
...

AMOL RATTAN SINGH, J. (Oral)

1. By this petition, the petitioner seeks a direction to the trial Court (Additional Civil Judge, Senior Division, Mohali), before which the suit filed by the petitioner, seeking a decree of specific performance, is pending, to the effect that the proceedings in the suit be taken from the stage at which they were last pending before the learned Civil Judge (Junior Division), Rajpura, which Court had transferred the suit to Mohali vide an order dated 24.8.2017 (copy Annexure P-2) on the ground of lack of jurisdiction.

2. That having been done, the first order shown to have been passed by the Court at Mohali is seen to be dated 7.10.2017 (part of Annexure P-3 collectively), by which notice was directed to be issued to the respondent, in an application filed before that Court (with it not clear whether the plaintiff or the defendant had filed the application).

Thereafter the notices not having been received back on two

dates and thereafter learned counsel having put in appearance for the respondent on 14.2.2018, the matter was adjourned to 14.3.2018 'for filing the written statement on behalf of respondent'. However, on the next date of hearing that order not having been complied with, it was still adjourned to 31.3.2018, and on 31.3.2018 that Court recorded an order to the effect that counsel for the defendant had suffered a statement that the written statement that was already on record be read as his written statement, with him further stating that since the plaintiff had failed to avail the offer as was given in paragraph 8 of the written statement, the offer so given stood withdrawn.

Upon that statement having been made, issues were framed by the learned trial Court on that very date and the matter was adjourned to 19.4.2018 for the entire evidence of the plaintiff to be led, i.e. evidence of the present petitioner.

The matter was adjourned thereafter on five occasions right uptill 11.5.2018, as no evidence had been led by the plaintiff. However, learned counsel for the petitioner submits that thereafter the plaintiff had actually led his evidence by way of examination of one witness.

He therefore submits that the trial having been reopened, the plaintiff is having to go through the rigours of re-proving his case, which he had already done before the Court at Rajpura.

3. Upon query to learned counsel as to how many witnesses had been examined at Rajpura before the evidence of the plaintiff was closed, he expressed his ignorance on that aspect.

That being so, Section 24 of the Code of Civil Procedure, 1908, needs to be noticed, which is reproduced as under:-

“24. General power of transfer and withdrawal.- (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-

- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or
- (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and
 - (i) try or dispose of the same; or
 - (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or
 - (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) The the purposes of this section,-

- (a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;
- (b) “proceeding” includes a proceeding for the execution of a decree or order.
- (4) The court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.
- (5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.”

Hence sub section (2) of the said provision gives the discretion to the Court to which any case has been transferred, to either re-try it or to proceed from the point at which it was so transferred.

The learned Court at Mohali having exercised its jurisdiction to rehear the case, obviously for better adjudication thereof, and the petitioner himself not having led evidence on 5 occasions, for him to thereafter come before this Court and say that the matter be taken from the stage that it was left at Rajpura, is not only a wholly unsustainable argument on the merits of it, but also in the opinion of this Court takes away the discretion vested in the Court to which the matter has been transferred, to properly appreciate evidence and to thereafter adjudicate upon it.

Consequently, finding no merit in this petition, it is dismissed *in limine*.

However, if the petitioner is unable to produce his witnesses again before the trial Court for examination and they do not respond to even

the summons issued by the Court, he would be at liberty to apply to that Court in such a situation, to accept the testimonies already recorded in respect of such witnesses, at Rajpura, when the trial was initially going on there prior to its transfer to Mohali. Obviously, only such testimonies would be acceptable (in a situation where the witnesses are not turning up) if those witnesses had already been cross-examined at Rajpura.

19.3.2019
pk/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No