

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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CR No.8217 of 2018

Date of decision:8.1.2019

Ranjit Singh

... Petitioner

versus

Tarlochan Singh

... Respondents

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

Present: Mr.S.K.Singla, Advocate,
for the petitioner
Mr.J.S.Saneta, Advocate,
for the respondent

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AMOL RATTAN SINGH, J. (Oral)

1. By this petition the petitioner challenges the order of the learned trial Court dated 15.10.2018 (Annexure P-8), by which the application of the petitioner, (defendant in the suit before the trial Court), seeking that the said Court 'withdraw its order dated 13.2.2015', has been dismissed.

The order dated 13.2.2015 is reproduced in the impugned order itself, a perusal of which (i.e. the order dated 13.2.2015) shows that vide the said order, the application filed by the respondent herein (plaintiff in the suit) under Order 11 Rules 14 and 15 CPC, seeking a direction to the defendant (present petitioner) to produce the agreement of sale dated 3.9.2009, agreement of lease dated 29.9.2011 and an alleged writing qua the purchase of 1/3rd share of the suit property, (as was stated in paragraph 3 of the preliminary objections filed by the present petitioner), was dismissed, i.e. the application of the plaintiff seeking that the present petitioner-defendant produce the aforesaid documents, was dismissed.

The reasoning given by the learned trial Court in the order dated 13.2.2015 was that the present petitioner-defendant had taken a specific stand in his reply that he was not in possession of the agreement of sale dated 3.9.2009 or the agreement of lease dated 29.9.2011, with the notarized copy of the writing dated 11.8.2013 already on file, a copy of which had been supplied to the plaintiff.

Thus the reasoning given by the learned trial Court was that with the petitioner-defendant having taken a stand that he did not have two of the three documents sought by the plaintiff, he could not be directed to place them on record, but he (the present petitioner-defendant) too was barred from placing them on record without the permission of the Court, with it further stated in the order that if he did, an adverse inference would be taken against him.

Thus, it is that part of the order dated 13.2.2015 that the petitioner was seeking withdrawal of, vide the application that was dismissed on 15.10.2018, i.e. the impugned order.

2. As already noticed in the last order passed by this Court, by which notice of motion was issued, learned counsel for the petitioner submits that as a matter of fact what is recorded by the learned trial Court to the effect that the petitioner-defendant has stated in his reply that he was not in possession of the documents dated 3.9.2009 and 29.9.2011, is factually incorrect, because in his reply to the application filed by the respondent-plaintiff at that stage (copy of the reply being Annexure P-5 with the present petition and the copy of the application under Order 11 Rules 14 and 15 CPC being Annexure P-4), he had nowhere stated that he did not have the

copies of the said documents.

3. A perusal of Annexure P-5 shows that indeed he had not stated that he did not have the copies of the documents, but had stated as follows in the preliminary objections:-

Preliminary Objections:-

1. That the application is not maintainable in its present form.
2. That the application is mala fide and same has been filed to delay the proceedings of the case. Kesar Singh American and Jasbir singh are the real brothers of plaintiff Tarlochan Singh, therefore, the plaintiff can get the copies of the same from his real brothers. Notarized copy of writing dated 11.08.2013 is already on the file.”
4. Thus his stand actually was that the documents being with the brothers of the plaintiff (respondent herein), he could obtain a copy from them, with a notarized copy of the document dated 11.8.2013 already being on record.

(Even in the very short reply on merits, only the preliminary objections have been reiterated).

5. As also recorded in the previous order, learned counsel for the petitioner had submitted that the respondent-plaintiff would not be prejudiced by production of the said documents, because once they were being produced at the first instance at the time that the petitioner-defendant had sought to lead his evidence, the right of cross-examination and even rebuttal would be available with the respondent-plaintiff, who in any case

had earlier also sought that the said documents be produced.

6. Upon notice having been issued in this petition, learned counsel for the respondent-plaintiff has submitted that the application now filed by the petitioner-defendant, 4 years after the application of the respondent-plaintiff had been filed seeking production of the same document, is only a delaying tactic and therefore the learned trial Court had correctly passed the impugned order dismissing the petitioners' application.

7. He further submits that a perusal of the impugned order shows that the learned trial Court has stated that the petitioner-defendant intentionally did not place on record 'photocopies of the documents' for reasons best known to him, with his conduct being that he had actually evaded production of such documents by giving an evasive reply.

It has further been stated that the issues were framed in the suit on 15.2.2015, with the plaintiffs' evidence having concluded on 10.5.2018. In that period of 2-1/2 years also, the petitioner had never disclosed that he was in possession of either the original writing dated 11.8.2013, or the originals/photocopies of the of the agreement of sale and lease agreement dated 3.9.2009 and 29.9.2011 respectively.

Hence, that court took an inference that the needful was not done intentionally, only to deprive the plaintiff of his right to lead evidence in order to refute those documents.

Consequently, holding that the delay itself reflected the *mala fides* on the part of the petitioner-defendant, the application was rejected, with the order dated 13.2.2015 not withdrawn/modified by the learned trial Court.

8. Having considered the matter, though learned counsel for the respondent is absolutely right in my opinion, as has rightly been held by the learned trial Court also, that the petitioner-defendants' entire attitude has been one fraught with *mala fides*, however, since the respondent-plaintiff himself had also asked for the same documents more than 4 years ago, it is considered appropriate that this petition be allowed subject to the petitioner paying very heavy costs for the delay that would be caused by production of the said documents, which the petitioner himself now wants to lead in evidence.

Consequently, this petition is allowed, with the impugned order set aside, subject to the petitioner paying costs of Rs.40,000/- to the respondent-plaintiff for the delay of 4-1/2 years he has caused in the aforesaid circumstances, with the right of the respondent-plaintiff to file even a replication at this stage, subsequent to any application being filed by the petitioner to produce any documents, and further, with of course a right of rebuttal and cross-examination always available to the respondent-plaintiff.

9. It is to be noticed here that learned counsel for the petitioner has relied upon judgments of coordinate Benches of this Court in (i) Sewa Singh vs. M/s Ganpati Trading Company, 2015(1) RCR (Civil) 297, (ii) Lajpat Rai vs. Smt.Vidya Wati, 1997(4) rcr (cIVIL) 130 and (iii) State of Punjab vs. R.K.Gupta, 2009(26) RCR (Civil) 262, to submit that no penal provision can be attracted upon an application filed under Order 7 Rule 14 CPC.

Undoubtedly, in all the judgments cited, the issue is whether

production of documents at a subsequent stage can be barred or not, with learned counsel for the petitioner-defendant submitting that in none of these cases, costs have been imposed.

The proposition of law is obviously not in doubt, with it being the discretion of the trial Court to allow or disallow an appropriate application for production of documents at a subsequent stage, as per the circumstances of the case, but in the present petition, to repeat, the petitioner not having annexed the documents initially with his written statement, and thereafter having refused to produce them when the respondent-plaintiff sought the same 4-1/2 years ago, now at the fag end of the trial, with him seeking to produce the said documents himself, thereby delaying the trial considerably, in my opinion the cost imposed is not unreasonable.

8.1.2019
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No