

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**Sr. No.206**

**CR-96-2018**

**Date of decision: 08.04.2019**

Shri Krishan

....Petitioner

versus

Silver Line Builders Private Limited and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL**

Present: Mr. Hemant Bassi, Advocate  
for the petitioner.

Mr. Ashish Aggarwal, Senior Advocate with  
Ms. Shemona Sabharwal, Advocate  
for respondent No.1.

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**DEEPAK SIBAL, J. (Oral)**

The present petition is directed against the order dated 21.09.2017 passed by the Additional District Judge, Gurugram (for short – the Appellate Court) rejecting the prayer made by the petitioner for transposing him as an appellant in the appeal filed by his co-defendant against the decree dated 28.01.2014 passed by the Additional Civil Judge (Senior Division), Gurugram (for short – the Trial Court) through which respondent No.1's suit was accepted.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that respondent No.1 filed a suit seeking therein specific performance of agreement to sell dated 15.12.2005 allegedly executed between the petitioner and respondent No.1. On being put to notice, the petitioner, who was defendant No.1 in the suit, appeared

before the Trial Court and not only refuted the claim set up by respondent No.1 but also went on to state that through relinquishment deed dated 18.09.2006, the suit property had been transferred by him in favour of respondents No.2 to 5. After considering the entire matter, which included the evidence led by the parties, the Trial Court, through judgment and decree dated 28.01.2014 decreed respondent No.1's suit. The Trial Court inter-alia observed that the petitioner had executed the relinquishment deed dated 18.09.2006 in favour of respondents No.2 to 5 only to frustrate the aforesaid agreement to sell dated 15.12.2005. Against the judgment and decree of the Trial Court dated 28.01.2014 respondents No.2 to 5 filed an appeal in which the petitioner was arrayed as respondent No.2. While such appeal was pending, the petitioner filed an application under Order 23 Rule 1A read with Order 1 Rule 10 CPC seeking his transposition as an appellant. Such application has been dismissed by the Appellate Court through the order under challenge in the present proceedings.

Learned counsel for the petitioner submitted that as per Order 41 Rule 33 CPC, the petitioner, as a respondent in the appeal preferred by respondents No.2 to 5 could always assail the observations made against him in the judgment appealed against as also defend those portions of the judgment which were favouring him. Thus, even if, the petitioner is not formally transposed as an appellant in the pending appeal preferred by respondents No.2 to 5, the purpose for which the petitioner had filed his application under Order 1 Rule 10 CPC would be achieved if, as a respondent he is permitted to assail the observations made against him in the judgment appealed against and defend the findings made therein in his favour. It was further submitted that only to avoid any technical objection

which could have been raised by respondent No.1 had the petitioner filed an application under Order 1 Rule 10 CPC to be formally transposed as an appellant.

Learned Senior counsel appearing on behalf of respondent No.1 submits that he has no objection if, in the pending appeal filed by respondents No.2 to 5, the petitioner is permitted to make submissions to assail the findings of the Trial Court which may be against him as also to defend those portions of the judgment which are in his favour.

In view of the above statement made by the learned Senior counsel appearing for respondent No.1 and in the light of the provisions of law contained in Order 41 Rule 33 CPC as also for the reason that the judgment of the Trial Court appealed against by respondents No.2 to 5 contains findings, which if allowed to stand, would be to the petitioner's prejudice, the petitioner, as respondent No.2 in the appeal preferred by respondents No.2 to 5, would be at liberty to raise all submissions which may be available to him, in accordance with law, against the findings which may have been returned against him in the decree appealed against as also to support the findings returned in his favour.

Such pleas to be raised by the petitioner would be considered by the Appellate Court in accordance with law and uninfluenced by the observations made in the order impugned in the present proceedings.

The petition is disposed of in the above terms.

**(DEEPAK SIBAL)**  
**JUDGE**

**April 08, 2019**  
*Jyoti 1*

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No