

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

C.R. No.969 of 2017 (O&M)
Date of Decision.20.03.2019

Dewan Singh Khaira

...Petitioner

Vs

Balbir Kaur

.Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amardeep Singh Gill, Advocate
for the petitioner.

Mr. Gursimran Singh Madaan, Advocate
for the respondent.

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AMIT RAWAL J. (ORAL)

It is a classic case where the respondent-plaintiff after receiving Rs.1,07,00,000/- again sought substantial amount of maintenance to the tune of ₹30,000/- per month from the petitioner-defendant, by also submitting application under Order 33 Rule 1 CPC seeking permission to sue as an indigent person giving description of various parcels of land in village Khurampur, Tehsil Shahkot, District Jalandhar with alternative relief of recovery of ₹10,80,000/- as arrears for the last three years. The respondent-plaintiff alleged that she and her son Kanwar Sahib Singh had earlier filed suit, which was withdrawn on the basis of compromise dated 17.09.2014.

The respondent-plaintiff alleged that being an indigent person had no source of income of her own or owned any property movable or immovable and being old age was not able to do labour work, thus, had no means to pay court fee. She claimed herself to be legally wedded wife of petitioner-defendant on the basis of solemnization of marriage on 15.03.1971. Out of wedlock, three

children Kanwar Sahib Singh, Rana Partap Singh and Harpreet Kaur were born. In the year 1995, Rana Partap Singh died in a road accident. Other son is residing separate and the daughter after marriage with her in laws. The petitioner-defendant during operation Blue Star left India and went to UK where he solemnized second marriage with one Balwinder Kaur without any divorce from the plaintiff. The petitioner-defendant is alleged to be a man of vices, who did not maintain the respondent-plaintiff contraining her to file the aforementioned case.

In pursuance to the notice, reply (Annexure P-2) was filed on 25.01.2014. It was alleged that the respondent-plaintiff filed the suit for declaration titled as '*Kanwar Sahab Singh and another Vs. Amarjit Kaur and others*' before the Court of Civil Judge (Sr. Division), Sirsa alleging along with her son to be owners in possession of equal share of land in Village Natar, Tehsil and District Sirsa on the basis of Will bearing No.212 dated 11.06.1987. During the pendency of the aforementioned suit, compromise dated 17.09.2014 (Annexure P-4) was effected between Balbir Kaur, Kanwar Sahab Singh and Amarjit Kaur, Kuljit Kaur and Diwan Singh in the presence of witnesses. In lieu of aforesaid compromise received a sum of ₹1,07,00,000- as their share.

Balbir Kaur and Kanwar Sahab Singh submitted an application dated 17.09.014 (Annexure P-5) to put up the case file of Civil Suit No.46-C for withdrawal of the same. Both of them appeared, suffered statements, accordingly the suit was dismissed as withdrawn on 17.09.2014 (Annexure P-7). Respondent-plaintiff on

the same day filed an affidavit (Annexure P-8) that compromise was effected between her, Kanwar Sahab Singh and Amarjit Kaur, Kuljit Kaur and Diwan Singh and nothing was due as they have been duly compensated and undertook to withdraw the complaint filed under the Protection of Women from Domestic Violence Act and pauper suit before the Court at Nakodar and not to file any case, and also in future.

Mr. Amardeep Singh Gill, learned counsel appearing on behalf of the petitioner submitted that in spite of compromise effected between the petitioner, Amarjit Kaur and Kuljit Kaur on one side and respondent and Kanwar Sahab Singh on the other, respondent-plaintiff and Kanwar Sahab Singh deliberately did not withdraw the complaint No.16 under Sections 12, 18, 19, 20 and 22 of the Protection of Women Domestic Violence Act as well as the application under Order 33 Rule 1 CPC before the Additional Civil Judge, Senior Division, Nakodar. In this regard, application (Annexure P-12) was filed, which was duly replied vide Annexure P-13 but the trial Court erroneously dismissed the same, which is not sustainable in the eyes of law, for, there is no iota of averment in the suit with regard to compromise and receipt of money. The person, who does not come to Court with clean hands, can be thrown out at any stage of the suit. The attempt of the respondent-plaintiff is nothing but an act of greed and dishonesty. In order to avoid dismissal of the application under Order 33 Rule 1 CPC as counter-blast filed the suit for permanent injunction and declaration before the Civil Judge, Senior Division Sirsa. Mr. R.P. Sharma, who was

counsel for Balbir Kaur appeared as RW2 and admitted his signature and signatures of respondent Balbir Kaur and Kanwar Sahab Singh on Ex.R2 and on the statement for withdrawing the suit Ex.R3. If at all, if any fraud was committed against the respondent-plaintiff, there was no occasion for waiting for so many years to challenge the same in the Court at Sirsa.

Per contra, Mr. Gursimran Singh Madaan, learned counsel appearing on behalf of the respondent-plaintiff submitted that compromise was an outcome of fraud and misrepresentation compelling the respondent-plaintiff to file other suit for permanent injunction and declaration and rightly the suit was not withdrawn, as the suit in this regard was already pending, therefore, there is no occasion for dismissing the application for granting permission to institute and continue the suit for maintenance as a pauper.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Gill. Bakshish Singh, aged 55 years, in the civil suit for pauper, submitted that Balbir Kaur and her son had received a sum of ₹1,07,00,000/- from the purchaser namely Digvijay Singh in his presence and of the seller and other witnesses on the basis of compromise dated 17.09.2014. Amarjit Kaur, Kuljit Kaur and Diwan Singh executed the sale deed dated 17.09.2014 in favour of Digvijay Singh. Be that as it may, the entire pith and substance of the application as well as the suit would reveal that the respondent-plaintiff did not disclose with regard to receipt of money and filed the present suit for maintenance only without withdrawal of the suit

despite having undertaken in another suit and another suit without noticing the fact that separate suit as per the provisions of Order 23 Rule 3-A CPC was not maintainable. I refrained myself to further comment on the same as it is not subject matter of the suit but the fact of the matter is that a person, do not come to the Court with clean hands cannot be granted the concession of continuing with the suit for maintenance as *forma pauperis*. Annexure P-5 would also reveal that the respondent-plaintiff had submitted an application for withdrawal of the suit for declaration titled as '*Kanwar Sahab Singh etc. vs. Amarjit Kaur etc.*', which was withdrawn vide Annexure P-7 on the basis of statement recorded vide Annexure P-6. The contents of application (Annexure P-5) and the order (Annexure P-7) passed thereon are extracted herein below:-

“Sir,

It is respectfully submitted as under:-

1. *That the above noted case is pending before this Hon'ble Court and the same is fixed for 22.09.2014.*
2. *That the parties have arrived the compromise and the plaintiffs have wants to withdrawn the above said suit on today.*

It is, therefore, prayed that the case taken up today and the plaintiffs have withdrawn the above said suit, in the interest of justice.

Place:Sirsa

submitted by

Date:17.09.2014

1. *Sd/- Kanwar Sahab Singh*
2. *Sd/- Balbir Kaur*

xxxxx

Order (Annexure P-7)

File taken upon the application moved by the plaintiff for withdrawal of their suit. Both plaintiffs are present in the court and have made a joint statement that they have compromised the matter with the defendants and placed on record written compromise Ex.C1. They have further stated that in view of said compromise, they do not want to proceed further with the present suit and the same may be dismissed as withdrawn. Hence, in view of the statement of the plaintiffs duly identified by their counsel Shri R.P. Sharma, Advocate, the present suit is hereby dismissed as withdrawn. File be consigned to the records.

Sd/-

(Pawan Kumar)

Civil Judge (Sr. Divn.)

Pronounced:17.09.2014

Sirsa.”

Vide affidavit (Annexure P-8) dated 17.09.2014, the respondent-plaintiff had undertaken to withdraw the cases. The relevant content of the same is reproduced as under:-

“3. That I and my son Kanwar Sahab Singh have received the money in cash from Diwan Singh s/o Mohinder Singh in lieu of land which comes in our share in village Natar, equal to his share.

4. That the civil suit filed by me and my son titled as Kanwar Sahab Singh etc. versus Amarjit Kaur etc. which was filed in court of Shri Pawan Kumar Civil Judge (Senior Division) in that we in our full senses, with stable mind and without any pressure have by

giving our statement got it dismissed as withdrawn. Regarding this, by our wish, a separate receipt was written and was given to them by us.

5. That I have filed a case against Diwan Singh son of Mohinder Singh in the court at Nakodar (Punjab) regarding domestic violence and pauper suit regarding land. I will withdraw them and I will get the same dismissed as withdrawn by giving my statement. After this, in future I will not file any type of case (civil, maintenance, criminal). If I will file them, then the same be considered as dismissed.

6. That after today, in future, I and my son Kanwar Singh will not file any claim or case of ownership or possession regarding the remaining land of Diwan Singh which may be in the Punjab State, Haryana State

7. That this affidavit has been executed by me out of my free will without any pressure and in my full senses.”

It is strange that on receipt of money of Rs.1,07,00,000/-, a person would not have sufficient amount to pay court fee on the suit seeking maintenance. All these factors have not been adverted to by the Courts below, therefore, there is illegality and infirmity, thus, the orders under challenge are not sustainable and accordingly set aside. The application filed by the petitioner-defendant seeking dismissal of the application filed under Order 33 Rule 1 CPC is allowed, resulting into dismissal of the application seeking permission to sue as an indigent person. The revision petition is allowed in the above terms.

(AMIT RAWAL)
JUDGE

March 20, 2019

Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No