

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

**CM No.19908-CII of 2019 in/and
CR No.5632 of 2019
Date of Decision: 25.09.2019**

Viney Goel and another

..... Petitioners

Versus

Rakesh Goyal

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Karambir S. Chawla, Advocate
for the applicants/petitioners.

SUDIP AHLUWALIA J. (ORAL)

CM No.19908-CII of 2019

Prayer in this application is for preponing the date of hearing
of the main revision petition.

For the reasons mentioned in the application, the prayer for
preponement is allowed.

Let the main revision petition be taken up on Board today
itself, in the Urgent List, for consideration.

CM stands disposed off.

CR No.5632 of 2019

This revision is directed against the impugned order dated
02.07.2019 (Annexure P-20) passed by the Ld. Civil Judge (Junior
Division), Dera Bassi, District Mohali.

2. It may be mentioned that in their application under Order XVIII Rule 18 read with Section 151 of the CPC (Annexure P-18), the prayer of the Petitioners, who are both the Defendants in the Suit pending before the Ld. Court below, was to direct the Respondent-Plaintiff to produce the Vehicle being Maruti Omni Van having registration No.CH 01 AG 3702, in the name of Petitioner No.2 along with its original Registration Certificate and Insurance Documents before the Court.

3. The Ld. Court below rejected the aforesaid application by observing *inter alia*:

*“Present suit has been filed by plaintiff for seeking rendition of accounts with respect to partnership firm namely Goel Brothers and Company. It is the claim of plaintiff that he and defendant No.1 started the business under partnership and such **partnership was oral**. Further, it is claimed by plaintiff that one car Maruti Omni Van was purchased in the name of defendant No.2 because of the reason that she could easily avail loan being public servant and since then the car is being used for partnership business and the installments of car were being paid from the income of business of firm. The case is at stage of plaintiff evidence and plaintiff was partly cross-examined when present application has been filed by defendants for seeking possession of vehicle. Although, it is admitted fact that the ownership of vehicle is recorded in the name of defendant No.2 but the same **shall not 'ipso-facto' entitle defendant No.2 to seek possession of car during the proceedings** of present case. There is no counter claim filed by defendant No.2. The suit of plaintiff regarding rendition of accounts is subject to*

*evidence. The part cross examination of plaintiff as PW1 does not nullify the plea that partnership existed between plaintiff and defendant No.1. Since, it is categorically pleaded in plaint that the vehicle was put into common pool of partnership business, therefore, there is no reason with defendants to seek custody of vehicle at this stage of the case. Hence, application under Order XVIII Rule 18 CPC read with Section 151 of CPC filed by defendants **for claiming possession of Maruti Omni Van car bearing CH-01AG-3702 is hereby dismissed.** However, **Plaintiff is directed to keep the car in safe custody** till decision of present suit. Nothing in this order shall affect the merits of case.”*

4. For deciding whether the Ld. Court below was justified in refusing the Petitioners' prayer for a direction upon the Respondent to produce the disputed Vehicle and its Registration Certificate before the Court, it is to be considered whether such a course could have been helpful for the purpose of deciding any of the issues actually framed in the Suit. For this purpose, it is necessary to advert to the issues framed by the Ld. Court below, which are set out as below:-

- “1. Whether the suit of the plaintiff is entitled for rendition of account is liable to be decreed as prayed for? OPP*
- 2. Whether the suit of the plaintiff has not approached the court with clean hand and has suppressed material facts from this court? OPD*
- 3. Whether the suit of the plaintiff is not legally maintainable? OPD*
- 4. Whether the suit of the plaintiff is bad for misjoinder of the necessary parties? OPD*

5. *Whether the plaintiff has not affixed the proper court fee of the plaint? OPD*
6. *Whether the suit of the plaintiff has no cause of action to file the present suit? OPD*
7. *Relief.*

5. Thereafter, three more additional issues were framed by the Ld. Court below which are as follows:-

- “6. Whether the suit of the plaintiff is not maintainable due to bar under Section 69(1) of the Indian Partnership Act due to alleged partnership being unregistered? OPD***
- 6-A Whether the suit of the plaintiff is not maintainable due to the proper ad-volerum court fee not affixed on the plaint? OPD***
- 6-B Whether no cause of action for the present suit have arisen within the territorial jurisdiction of this court? OPD”***

6. Submission of the Ld. Counsel for the Petitioners is that the decision in respect of issue No.2 as noted above, i.e., *“Whether the suit of the plaintiff has not approached the court with clean hand and has suppressed material facts from this court?”*, could have been decided against the Respondent, since while claiming the disputed Car to be included in the joint pool of the partnership, he had illegally sold the same to some outsider, which would have shown that he had not approached the Court with clean hands. This Court is however, not in agreement with such submission because it has nowhere been made out on the record on behalf of the Petitioners that the allegation of having sold the Vehicle, even assuming the same to be true, pertained to a period prior to filing of

the Suit and not thereafter, because conduct of the Plaintiff/Respondent only before actual filing of the Suit is relevant for deciding whether or not he had filed the Suit after willfully suppressing such material fact, on account of which he had not approached the Court with clean hands.

7. Even otherwise, if the matter was restricted to a question of the entitlement of Petitioner No.2 being owner of the Vehicle in question as claimed by her, still she could not have insisted on production of the vehicle in the absence of any counter claim to that effect. Of course, she has the option to take recourse to her independent proceedings for recovery of the vehicle in accordance with law, but seeking its production without raising a counter claim in a suit filed against her is certainly uncalled for. At any rate, even in the impugned order the Petitioners' interest in the disputed vehicle has nevertheless been protected by the Ld. Court below by way of directing the Respondent to keep the same in safe custody till decision of the Suit.

8. This Court, therefore, finds no merit in the present revision petition and the same, thus, stands dismissed.

(SUDIP AHLUWALIA)
JUDGE

September 25, 2019

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No