

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.2597 of 2015

Date of Decision: May 23, 2019

Suresh Kumar

...Petitioner

Versus

Laxmi Devi & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.R.K.Verma, Advocate &
Mr. Tahaf Bains, Advocate,
for the petitioner.

Mr. Sachin Mittal, Advocate,
for respondent Nos.1 & 2.

Ms. Archana Vashisht, Advocate for
Mr. Pawan Kumar Longia, Advocate,
for respondent Nos.3 & 4.

AMIT RAWAL, J. (Oral)

The present civil revision is directed against the impugned order dated 07.04.2015, whereby defendant No.2 (attorney holder of defendant No.1) has been permitted to join the proceedings and lead evidence in a suit for specific performance of the agreement to sell.

Mr. R.K.Verma and Mr. Tahaf Bains, learned counsel representing the petitioner submitted that respondent No.1 filed the suit for specific performance of the agreement to sell in respect of a plot No.429, Sector 6, HUDA, Panipat and defendant No.2, i.e., respondent No.2 Dinesh Kumar as attorney of Suresh Kumar defendant No.1 received the earnest money. However, no body came forward on the stipulated date and,

therefore, the aforementioned suit was filed.

Defendant No. 2 in the aforementioned suit was proceeded against ex-parte on 24.04.2013. An application under Order 18 Rule 2 & 3 CPC was submitted for calling upon defendant No.2 to lead evidence as in the written statement of defendant No.1, a specific collusion between him and the plaintiff was attributed. The trial Court called upon defendant No.2, but he did not come forward. Now an application Annexure P-3 dated 06.09.2014 has been filed, which has been allowed subject to payment of ₹3,000/- as costs. The entire defence of defendant No.1 would be going to be closed very soon in case defendant No.2 is allowed to lead evidence after the statement of defendant No.1. The order under challenge, therefore, is not sustainable in the eyes of law and liable to be set-aside.

Mr. Sachin Mittal, learned counsel representing respondent Nos.1 and 2 submitted that the law as applicable to the defendant, even if has been proceeded ex-parte, does not prohibit joining of the proceedings from the stage when the suit was slated. Since the case is listed for defendants' evidence, the order allowing the application cannot be said to be suffering from any illegality and perversity. He also submitted that the general power of attorney was duly executed and, thus, urged this Court for dismissal of the revision petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the impugned order is liable to be modified, for, during the course of hearing, this Court was informed that petitioner-defendant No.1 has already filed the evidence by way of affidavit, i.e., examination-in-chief but was not cross-examined. Since defendant No.2 has been permitted to join the proceedings as per the settled law, in my view, no

harm and prejudice would be caused to join the proceedings and lead evidence. Since there is attribution of the alleged collusion, it is clarified that at the first instance, defendant No.2 will lead evidence and the plaintiff and defendant No.1 are permitted to cross-examine as there is clash of interest between defendant No.1 and defendant No.2.

With the aforementioned observations, the revision petition stands disposed of.

May 23, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No