

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

C.R. No.14392 of 2018 (O&M)
Date of Decision.06.05.2019

Darshan Singh

...Petitioner

Vs

Akash Mittal

..Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rohit Suri, Advocate
for the petitioner.

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AMIT RAWAL J. (ORAL)

The present revision petition is directed against the impugned order whereby application for amendment of written statement in suit for specific performance titled as 'Akash Mittal Vs. Darshan Singh' seeking amendment to incorporate the relief of cancellation of the agreement, has been dismissed.

It is matter of record that vide civil suit dated 13.05.2014, Akash Mittal sought specific performance of agreement to sell dated 02.02.2011 with regard to plot No.1074 measuring 388.33 sq. yards situated at Phase III, Urban Estate Dugri Road, Ludhiana. Even petitioner also filed civil suit bearing civil suit No.43663 of 2014 dated 09.10.2014 seeking cancellation of agreement.

During the pendency of both suits, on an application for consolidation of the suit, the trial Court vide order dated 12.09.2018 consolidated the same by observing that evidence in both the suits be read as the same. It is matter of record that before the aforementioned order could be passed, petitioner-defendant had already moved an application for amendment of the written statement for incorporating

the relief of cancellation vide application dated 11.12.2017, which has resulted into dismissal.

Mr. Suri, learned counsel appearing on behalf of the petitioner submits that innocuous prayer would not take away right of respondent-plaintiff Akash Mittal in civil suit for specific performance and amendment in second suit regarding cancellation of the agreement but the trial Court has erroneously rejected the same.

I am afraid aforementioned argument is not sustainable, as the application dated 11.12.2017 had rendered infructuous in view of the order dated 12.09.2018. It would be apt to reproduce para 4 of the order dated 12.09.2018, which reads as under:-

“4. Perusal of the both the files titled as “Akash Mittal Vs Darshan Singh and Darshan Singh Vs Akash Mittal” shows that both the civil suits are between the same parties regarding the one agreement to sell dated 02.02.2011. Akash Mittal want the relief of specific performance whereas the Darshan Singh want the relief that the agreement stood cancelled. If the consolidation of the said civil suit is not allowed, there is certainly risk of conflicting judgments on the same matter involving same premises, parties, execution etc. This eventually would further cause irreparable loss and injury to the both the parties. Hence it is in the interest of justice that the application in hand be allowed. This Court further rely upon judgment of Hon'ble Supreme Court of India titled as Maha Laxmi Cooperative Housing Society Limited Vs Asha Bhai AtmaRam Patel(D) through LRS, 2013(3), RCR (Civil), 435(P&H), wherein it has been held that there is indeed no provision in CPC for consolidation of the suit, such a power can be exercised only under Section 151 CPC. The purpose of consolidation is to save cost, time and effort and to make conduct of several actions more

convenient while treating them as one action. The two suits in question are regarding same property and one agreement to sell between the same parties. The only difference between two suits is that defense of one party in one suit is an averment of other party in other suit. The evidence in both the civil suits will certainly be same as such the undersigned sees no reason why two separate civil suits be allowed to proceed, separately when the same could be consolidated and dealt with together for the sake of convenience and interest of justice. The consolidation will definitely save the time, expenses, efforts of both the parties and certainly of court too. The undersigned finds force in arguments in Ld.Counsel for the plaintiff. Hence, the application in hand stands allowed and civil suit titled as “Darshan Singh Vs Akash Mittal” is hereby consolidated with the civil suit titled as “Akash Mittal Vs Darshan Singh”. Ahlmad is directed to do the needful. The application stands disposed off accordingly.

Now, to come upon 27.09.2018 for Pws.”

On going through the contents of the application for amendment, the identical relief has already been sought as primary relief in the second suit, which has already been consolidated.

In view of aforementioned fact, I do not find any illegality and infirmity in the impugned order and the same is hereby upheld. The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

May 06, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No