

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.883 of 2020

Date of Decision:19.2.2020

Vishav Jyoti

...Petitioner

Versus

Kusum

...Respondent

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.U.S.Rana, Advocate
for the petitioner

RAJIV NARAIN RAINA, J. (ORAL):

1. Prayer in this petition is for setting aside the order dated 4.10.2019 passed by CJM/ACJ(SD), Karnal, whereby defence of the petitioner has been struck off.

2. Heard learned counsel for the petitioner.

3. Striking off defence is a serious matter. The trial Court, before taking this extreme step, must take an overview of the entire case and the conclusions that may follow such an order which might tend to seal the fate of the case and tilt it in favour of the plaintiff.

4. I do not know whether it is pleaded as a fact in the original written statement but learned counsel, at the Bar, submits that the defendant-petitioner had executed a power of attorney in favour of Ramesh Chander. Ramesh Chander under that authority had entered into an agreement of sale with the plaintiff agreeing to dispose of the suit property for a consideration of Rs.30 lakhs of which Rs.15 lakhs have been received as earnest money. Because of this, the husband and wife are disputing over the property and it is for this reason that the delay had occurred in the application under Order 6 Rule 17, CPC. Whether this is true or not, I

accept it at its face value as a statement made at the Bar and deduce from those circumstances a distinct possibility of the couple having fallen apart from of proposed sale of immovable property.

5. For this reason, learned counsel submits that there has been lack of due diligence even to the extent of the previous costs imposed by court not paid. The written statement has been filed, but the petitioner wants to amend his written statement and that opportunity has been shut.

6. Without expressing any opinion on what is in the province of the trial court to consider, the petition is allowed. The impugned order dated 4.10.2019 is set aside. Although the order is not an illegal one but yet in its deleterious effect falls short of doing substantial justice. To compensate the opposite party, costs of Rs.3000/- is imposed on the petitioner to be paid to the plaintiff in the trial Court on the next date of hearing. Previous cost be also deposited as per orders. The learned trial Judge is requested to consider and decide the application for amendment of the written statement in accordance with law within a short span of time and proceed with the matter according to the outcome. Facts sought to be introduced through amendment of pleadings must go to the root of the matter to an extent they can or can tend to change the result of the suit. The defendant-petitioner will not take any adjournments except for exceptional circumstances or for reasons beyond control. Neither would the plaintiff. An attempt shall be made to dispose of the suit pending since 2014 as expeditiously as possible within the constraints of time.

February 19, 2020
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned
Whether reportable-

Yes
Yes/No