

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

RA-CR-49-2021 in
CR-722 of 2020 (O&M)
Date of decision: 14.09.2021

Ajay Gupta

...Petitioner

Versus

Darbara Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Ms. G.K. Mann, Sr. Advocate with
Mr. Sunil Kumar, Advocate
for the applicant/respondent No.2.

H.S. MADAAN, J.

Case taken up through video conferencing.

Briefly stated facts of the case are that plaintiff Ajay Gupta had brought a suit for specific performance of agreement to sell dated 18.08.1994 entered into between plaintiff and defendant No.1 for sale of suit land with consequential relief of permanent injunction, restraining defendant No.1 to execute the sale deed in favour of defendant No.2 on the basis of allegedly forged and fabricated agreement dated 13.06.1996, judgment and decree dated 15.01.2001 against defendants Darbara Singh and Charan Singh, seeking possession of the suit land.

On notice, both the defendants appeared and filed written statements. Issues on merits were framed. The plaintiff concluded his evidence and when the case was at the stage of evidence of defendants, defendant No.1 Darbara Singh appeared as DW-2 and tendered his

affidavit in examination-in-chief, then counsel for defendant No.2 requested that since there was a conflict of interest between defendant No.1 and defendant No.2, whereas, there was no such conflict between plaintiff and defendant No.1, so cross-examination of DW-2 be got conducted prior to his cross-examination on behalf of defendant No.2. That request was opposed by counsel for the plaintiff. The trial Court of Civil Judge (Jr. Divn.) Rupnagar, vide order dated 18.12.2019, observed that there appears to be conflict of interest between defendants No.1 and 2 with regard to suit property, therefore, defendant No.2 cannot be directed to be cross examined DW-2 prior to cross-examination by plaintiff. As such, the plaintiff was directed to cross-examine DW-2 Darbara Singh, defendant No.1 in the suit, prior to cross-examination by defendant No.2.

Feeling aggrieved by the said order, plaintiff Ajay Gupta had preferred a revision petition bearing No.CR-722-2020 before this Court, which was disposed of by a Single Judge (Hon'ble Mr. Justice Rajiv Narain Raina), vide order dated 17.02.2020. For ready reference, the said order is reproduced as under:-

“1. Having heard the learned counsel for the petitioner on who should start first to cross-examine DW-2 Darbara Singh, this petition is disposed of with a request direction to the Civil Judge (Junior Division), Rupnagar seized of the matter, while upholding the impugned order dated 18.12.2019, to advise the Junior Judge that when DW-2 Darbara Singh is first cross-examined by the counsel for the plaintiff, neither would the counsel for defendant No.2 nor defendant No.2 be present in the court room or in sight

and in ear-shot during the process of recording the cross examination of DW-2 Darbara Singh. This would ensure that neither defendant No.2 nor his counsel have heard the testimony of the witness during the first leg of the cross-examination. Only after the cross-examination by the plaintiff is over, the learned counsel for defendant No.2 and defendant No.2 shall be allowed to enter the court room and permitted to cross-examine DW-2 Darbara Singh. This exercise should be completed on a single day one after the other with the witness present in court while ensuring that there is no adjournment even for a single day or any gap between the two and well before the testimony in the first cross-examination is known to defendant No.2 or his counsel. Thereafter, the trial court will record further evidence, if any, and proceed with the suit in accordance with law. This arrangement would put an effective end to the anxiety expressed in this petition of the sequential order of the two cross-examinations of the same witness. Neither would any prejudice be caused to the parties by the sequential order of the cross-examination or any prompting during the recording of the depositions.

2. It is ordered accordingly.”

Now defendant No.2 Charan Singh has filed an application for review of the order passed by this Court, contending that there is patent illegality, which is apparent on the face of order passed by this Court on various grounds:-

- i. that the order has been passed at the back of applicant/defendant No.2;
- ii. that it is pleaded case of applicant/defendant No.2 that plaintiff had brought the suit in question in collusion with defendant No.1 in order to defeat rights of defendant No.2,

- thus, not allowing the applicant/defendant No.2 to be present in Court or to hear the testimony of respondent No.1 when he is cross examined by the petitioner, shall be detrimental to the legal and statutory right of applicant/defendant No.2;
- iii.that given the history of litigation between applicant/defendant No.2 and defendant No.1 it becomes imperative that defendant No.1 is cross examined by petitioner first and then by applicant/defendant No.2;
- iv.that the order under review passed by this Court has caused prejudice to the legal and statutory right of applicant/defendant No.2 to be present during the cross-examination of defendant No.1 and object to any leading questions posed by the plaintiff to defendant No.1 which support the case of defendant No.1, plaintiff and defeats the rights of applicant/defendant No.2.

Therefore, by acceptance of the review application, the order be modified in the interest of justice.

Notice of the application was given to respondent No.1 and plaintiff in the main suit, who had put in appearance through counsel. However, subsequently, the said counsel stopped putting in appearance.

I have heard learned counsel for the applicant/defendant No.2 besides going through the record.

At the very outset, it will have to be seen as to whether the order passed can be reviewed as prayed for. The relevant provisions which deal with power of review is in the form of Order 47 CPC. For ready reference, this provision is reproduced as under:-

Application for review of judgment -

“(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.”

It becomes crystal clear that the present controversy does not fall within four corners of power of review. The order in question is quite detailed and well reasoned. It is not a case of some mistake apparent on the face of the record. No sufficient reason exists to review the same.

As regards the objections raised by learned counsel for applicant/defendant No.2 that the order was passed without hearing the applicant. It may be observed here that power of revision is dealt with by Section 115 CPC that when appears to the High Court that if subordinate Court has exercised jurisdiction not vested in it by law or have failed to exercise so vested or have acted in the exercise of its jurisdiction illegally

or with material irregularity, the High Court may make such order in the case as it thinks fit. It is satisfaction of the High Court without there being any necessity of issuing notice to the parties or hearing them.

Article 227 of the Constitution of India deals with power of the High Court to have superintendence over all Courts and Tribunals within its jurisdiction. That also does not provide issuance of notice to parties and affording hearing to them. Therefore, the order cannot be condemned for the reason that applicant/defendant No.2 was not heard in the matter before passing of the order.

With regard to the second objection taken that the order shall be detrimental to the legal and statutory right of applicant/defendant No.2. Again that objection lacks merit. The evidence is to be recorded under superintendence and control of the Presiding Officer, who can certainly issue necessary directions, if he finds that the witness is not being examined in accordance with law and leading questions are being asked from him that the order passed sending defendant No.2 and his counsel outside the Court when cross-examination of DW-2 is being conducted does appear to be somewhat unusual but no interference therewith is permissible while exercising power of review, though, legality and validity of such order could be examined, while sitting in appeal, which is not the case here. The parties have filed their pleadings. Issues on merits had been struck. Now the case is at stage of evidence of defendant No.1. The parties know the case of each other and any evidence led beyond pleadings cannot be taken into consideration by the Court. Thus, there is hardly any possibility of any prejudice being caused

to applicant/defendant No.2.

Counsel for applicant/defendant No.2 has referred to various judgments, first being Amrik Singh Vs. Smt. Surjit Kaur in RA-44-1996 decided on 08.11.1973; that judgment provided that review of an order can be only done by the Bench that passed the order or by at least one of the judges forming that Bench, possibly for the reason that one of the judges, who was on the Bench is supposed to know the reasons for which the order was made and, therefore, in a better position to know whether a review was called for or not.

In the present case, the Hon'ble Judge who had passed the order has since retired. The order in question is quite detailed and reasons for passing the same have been mentioned therein. The judgment related to reviewing the order, dismissing an appeal in limine. The present controversy is quite different.

The next judgment was Mohinder Kaur Vs. Kundan Singh in CM-1345-C-2000 in/and RA-8-C-2020 in RSA-1050-1991 decided on 16.11.2020, by a Division Bench of this Court, wherein it was observed that while hearing the review application, one has to keep in mind that it is not an appeal that is being heard and error should be on the face of the record. This judgment rather than helping the applicant goes against him. Here, I do not find any error apparent on the face of the record. Therefore, this judgment does not come to rescue of the applicant.

With regard to next judgment Parsion Devi Vs. Sumitri Devi, in CA-5245-1997 decided on 14.10.1997, wherein it was observed that while discussing the scope of review, the proceedings are not by way

of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC and further review of a judgment may be if there is a mistake or an error apparent on the face of the record and further an error which is not self evident and has to be detected by a process of reasoning, cannot be termed as an error apparent on the face of record. Again this judgment is not helpful to the applicant. As already observed, I do not find any error on the face of order, thus, it cannot be reviewed.

As a matter of fact, the applicant/defendant No.2 wants this Court to set aside the order in question and modify it substantially. Rather the attempt is to get altogether a new order from this Court, which is way outside the scope of Order 47 CPC and is not permissible under law. Thus, the application is bound to fail and is dismissed accordingly.

14.09.2021

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(H.S. MADAAN)
JUDGE

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