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

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**CR-3575-2017 (O&M)
Date of decision : 06.07.2022**

Harish Goyal

...Petitioner

versus

Puneet Jain and Another

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Arihant Jain, Advocate for the petitioner.

Mr. Deepak Gupta, Advocate for respondent No.1.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 01.03.2016 whereby the application filed under Order 6 Rule 17 of the Code of Civil Procedure (hereinafter referred to as CPC) for amendment of the plaint was allowed, as well as order dated 28.03.2017 whereby notice has been issued to the petitioner-defendant No.2.

The brief facts relevant to the present *lis* are that the respondent No.1-plaintiff filed a suit for recovery of Rs.94,40,000/- on the basis of an agreement to sell dated 04.10.2010 alongwith future interest @12% per annum from the date of filing of the suit till realization. Written statement as well as an application under Order 7 Rule 11 CPC was filed on behalf of the petitioner-defendant No.2. The application under Order 7 Rule 11 CPC filed by the petitioner-defendant No.2 was dismissed vide order dated 09.12.2014. The said order was challenged by the petitioner-defendant No.2 by filing Civil Revision

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No. 1314 of 2015. Vide order dated 08.09.2015 (Annexure P-3) the said revision petition was allowed with the following observations :

“ The perusal of the plaint shows that according to the plaintiff total amount of Rs.47,20,000/- was paid to defendant No.1 on the representation of defendant No.1 that he is holding an agreement to sell in his favour. In the plaint, it is nowhere alleged that the money was also paid to defendant No.2 as well. Therefore, if on account of some wrong representation, plaintiff has paid some money to defendant No.1, he is entitled to recover the same from defendant No.1 only and if defendant No.1 has a further separate claim against defendant No.2, it is always open to him to file a separate suit to recover damages from defendant No.2. However, the controversy between defendant Nos. 1 and 2 is separate. Here, the plaintiff is seeking refund of money paid to defendant No.1. Therefore, defendant No.2 at present is not necessary party. It being so, name of defendant No.2 is deleted from the arrays of defendants.

Learned counsel for the petitioner has informed that he has already filed an application for amendment of plaint alleging that money was paid to both the defendants. Let the said application be decided on its own merits without being influenced by this order.

The question of again impleading defendant No.2 as

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party on the basis of fresh amendment, if allowed, is also left open.

Revision is accordingly allowed.”

At the time of passing of the order dated 08.09.2015, it was specifically brought to the notice of the Court that an application for amendment of the plaint alleging that the money had been paid to both the defendants was pending and therefore it has been noticed in the said order that the application for amendment be decided on its own merits without being influenced by the said order. Further, the question of again impleading the petitioner-defendant No.2 as a party on the basis of the fresh amendment was left open.

Vide the impugned order dated 01.03.2016 the application for amendment was allowed. The petitioner-defendant No.2 claims that he did not have knowledge of the said order and it was only when vide impugned order dated 28.03.2017 he was summoned, for the second time, in the suit that he became aware of the amendment having been allowed. Hence, the present revision petition was preferred by him.

Learned counsel for the petitioner-defendant No.2 would contend that the name of the petitioner-defendant No.2 had been deleted vide order dated 08.09.2015 (Annexure P-3) and hence by way of the amendment his name could not have been added again as a party to the same suit. It is further the argument that even as per the averments in the amended plaint, there is no allegation qua the petitioner-defendant No.2 that money was ever handed over to him. It is further contended by the learned counsel for the petitioner-defendant No.2 that the impugned order dated 01.03.2016 has been passed behind his back.

Per contra, learned counsel appearing for the respondent No.1-

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plaintiff has stated that the amendment to the plaint has been allowed at the initial stage of the suit and at a time when even the issues have not been framed. Learned counsel for the respondent No.1-plaintiff placed reliance upon the judgments of this Court in **Rajinder Singh Vs. Manjit Kaur @ Jeeto & Ors. [2017(1) Law Herald 668]; Kanwalpreet Singh Vs. Gurpreet Kaur & Anr. [2021(2) RCR (Civil) 770]** and **Mahipal Singh Vs. Papu Rana & Ors. [2015(49) RCR (Civil) 1]**. It is further the contention of learned counsel for the respondent No.1-plaintiff that vide order dated 08.09.2015 passed in Civil Revision No.1314 of 2015 the question of impleadment of the petitioner-defendant No.2 on the basis of the fresh amendment was left open.

Heard.

In the present case vide order dated 08.09.2015 passed in Civil Revision No.1314 of 2015, the name of the petitioner-defendant No.2 was deleted from the array of parties in the suit. This order was passed on an application under Order 7 Rule 11 CPC. While passing the said order dated 08.09.2015, an observation was made by this Court that since the application for amendment of the plaint was pending, the said application was to be decided uninfluenced by the order as also the question of again impleading defendant No.2 i.e petitioner herein as a party was left open. That being so, the argument raised by the counsel for the petitioner-defendant No.2 that by way of amendment the name of the petitioner could not have been added, deserves to be rejected. Order dated 08.09.2015 passed by this Court specifically left the question open and the Trial Court, after considering the facts as also the fact that the suit itself was at the initial stage and the trial had not begun, allowed the amendment.

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The next argument raised by the learned counsel for the petitioner-defendant No.2 that even in the amended plaint there is no allegation against the petitioner-defendant No.2 also deserves to be rejected. A perusal of the application for amendment (Annexure P-5) clearly reveals that the respondent No.1-plaintiff sought to add para-7 which reads as under :

“That during this the defendant No.1 further received Rs.18,00,000/- on 25.05.2011 as additional earnest money from the plaintiff and executed receipt dated 25.05.2011 and in this way defendant No.1 has received total Rs.47,20,000/- (Forty Seven Lac Twenty Thousand Rupees Only) from the plaintiff regarding the plot in dispute. Defendant No.1 after receiving the said amount of Rs.18,00,000/- handed over the same to defendant No.2 on 25.05.2011 and defendant No.2 executed a receipt dated 25.05.2011 in the name of defendant No.1 The defendant No.1 supplied the Photostat copy of the said receipt to the plaintiff and the Photostat copy of the same is hereby attached with the plaint. Defendant No.1 has also admitted in para No.7 of his written statement that he has handed over the said amount to defendant No.2 on the same day and defendant No.2 even extended the time for execution of the sale deed till 07.10.2011. In this way defendant Nos.1 and 2 have both received the consideration amount from the plaintiff mentioned above. Thus both defendant No.1 and 2 are jointly and severally liable to pay the amount to the

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plaintiff received by them as mentioned above.”

A plain reading of the above reproduced paragraph clearly reveals that there are allegations which have been made against the petitioner-defendant No.2 and it has specifically been averred that the defendants are jointly and severally liable to pay the amount to the respondent No.1-plaintiff. The argument raised is hence rejected.

The third argument raised by the counsel for the petitioner-defendant No.2 is that the order dated 01.03.2016 was passed behind his back and is therefore illegal and erroneous. This contention also deserves to be rejected inasmuch as the petitioner-defendant No.2 was not a party to the proceedings on 01.03.2016. The parties to the *lis* at that time were all represented before the Trial Court and had infact even filed their replies to the amendment application. When the petitioner was not a party to the *lis* at the relevant point of time, there was no question of calling upon him while deciding an application for amendment of the plaint. But once the amendment was allowed it related back to the date of the suit when the petitioner-defendant No.2 was a party to the suit.

In view of the above, I do not find any illegality or infirmity in the order passed by the Trial Court. The revision petition is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

July 06, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO