

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

126

CR No.4709 of 2022

Reserved on : 27.10.2022

Date of Decision: 01.11.2022

Kirna Rani (since deceased)

....Petitioner

VERSUS

Jagrup Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajan Singh Dadwal, Advocate for the petitioner.

ALKA SARIN, J.

The present revision petition under Article 227 of the Constitution of India has been filed impugning the order dated 21.09.2022 (Annexure P-9) passed by the Trial Court whereby the application of the petitioner for framing of additional issue has been dismissed.

The brief facts relevant to the present *lis* are that plaintiff-respondent no.1 filed a suit for recovery of Rs.2,01,000/- along with future interest *pendente lite* @ 1% per month till realization against the defendant-petitioner as well as defendant-respondent nos.2 and 3. The suit was decreed vide judgment and decree dated 02.06.2011. On 19.12.2017 the plaintiff-respondent no.1 filed an execution application for execution of the decree. During the pendency of the execution application, an application for impleading the legal representatives of defendant no.3 was filed. The said application was allowed on 01.03.2019. The present petitioner is one of the legal representatives of defendant no.3. The petitioner herein filed an objection petition stating therein that the petitioner had only one house

wherein he is residing with his family and the same could not be attached as the said property falls in *gair mumkin* and was reflected as such in column no.7 of the *jamabandi*. It was further stated that M/s Ajay Kumar & Co. has three partners, namely, Ajay Kumar, Kirna Rani and Monika Rani. However, the plaintiff-respondent no.1 had not impleaded Monika Rani as a party respondent despite the fact that she is also a partner in the firm. A reply was filed to the said application. *Qua* the objections raised by the petitioner that the attached property was a residential house, the Trial Court opined vide order dated 29.04.2022 (Annexure P-6) that a definite conclusion could be arrived at after proper evidence was led. Hence, the issues were framed. The said order was challenged in CR No.3952 of 2022 which was dismissed as withdrawn vide order dated 16.09.2022. Thereafter, an application for framing of an additional issue was filed by the petitioner, which proposed issue reads as under :

“Whether the plaintiff/deGREE holder has not intentionally made Monika Rani wife of Raman Kumar in the array of defendant/JD in the Civil Suit No.64 of 2004 ? OP/DH”

The said application was contested and vide the impugned order dated 21.09.2022 the said application was dismissed.

Learned counsel for the petitioner would contend that the said proposed issue was a relevant issue inasmuch as Monika Rani was a necessary party who was not impleaded in the suit.

Heard.

Civil Suit No.64 of 05.02.2004 was filed by the plaintiff-respondent no.1 for recovery of Rs.2,01,000/- along with interest. The said suit was contested. On the basis of the pleadings in that suit the issues were

framed and evidence was thereafter led. In the suit no such plea was raised that the suit was bad for non-joinder or mis-joinder of necessary parties. A perusal of the judgment dated 02.06.2011 reveals that it was neither a plea raised in the written statement nor even argued. Having not raised the plea of non-joinder of necessary parties at the time when the suit was argued and decided and the judgment and decree passed having attained finality, the said plea cannot now be permitted to be raised in the execution proceedings. The petitioner appears to be attempting to stall the execution proceedings on one pretext or the other by filing totally frivolous applications. The present application also appears to be nothing but an endeavour to delay the execution proceedings.

In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

01.11.2022
jk

(ALKA SARIN)
JUDGE

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