

CR-2858-2017

**SHRI JAIN MOHAMMAD (SINCE DECEASED) THROUGH HIS
LEGAL HEIR**

VERSUS

.....RESPONDENTS

Present: Mr. Amandeep Soni, Advocate
for the petitioner.

Mr. Sandeep Bansal, Advocate
for the respondents.

VIKRAM AGGARWAL, J (ORAL)

1. The present revision petition, preferred under Article 227 of the Constitution of India lays challenge to the order dated 07.01.2017 (Annexure P-5) passed by the Civil Judge (Junior Division), Jalandhar vide which the application filed by the petitioner seeking examination of a witness Manoj Kumar through Video Conference/Skype was dismissed.

2. The facts, briefly put, are that respondents No.1 and 2 filed a suit against the present petitioner for possession of land measuring 14Kansals-8Marlas (fully described in the plaint) situated in Bahadarpur, District Hoshiarpur by way of specific performance of the agreement dated 02.07.2004 executed by the defendant in favour of Manoj Kumar. The Agreement to Sell is stated to have been executed on 02.07.2004. The total sale consideration was fixed at ₹36,00,000/- and ₹5,00,000/- is stated to have been paid as earnest money. However, on account of non-execution of the sale deed, the suit was filed.

3. The suit was contested by the defendant that in terms of the agreement, Manoj Kumar had transferred his rights in favour of Hardeep Singh-respondent No.2 vide transfer deed dated 08.03.2007. Jan Mohammad, the present petitioner denied about the Agreement to Sell deed having been executed.

4. During the pendency of the Civil Suit, an application was filed by the legal heirs of Jan Mohammad for examining Manoj Kumar as a witness through Video Conferencing/Skype as he was a resident of USA. This application dated 11.11.2016 (Annexure P-3) was contested by way of a reply (Annexure P-4) stating that earlier, an application filed under Order 1 Rule 10 CPC seeking impleadment of Manoj Kumar as a party had been dismissed and, therefore, the application seeking to examine him as a witness deserved dismissal. This application was dismissed by the trial Court by way of the impugned order dated 23.01.2017 (Annexure P-5) leading to the filing of the present revision petition.

5. I have heard learned counsel for the parties and have perused the paper book.

6. Learned counsel for the petitioner has submitted that the trial Court erred in dismissing the application for examination of Manoj Kumar as a witness. It has been submitted that the examination of Manoj Kumar would be essential for the just decision of the case as he was the person with whom, originally, the alleged Agreement to Sell had been executed.

7. On the other hand, learned counsel representing respondents No.1 and 2 submitted that there is no illegality in the order under challenge. Learned counsel has contended that once an application filed under Order 1 Rule 10 CPC to implead Manoj Kumar as a party to the suit had been dismissed, there was no occasion to permit his examination as a witness. It has been submitted

that the application was moved just with a view to delay the proceedings. Learned counsel stated about the sequence of events starting from 24.04.2008 when the suit in question was filed till the passing of the impugned order and has submitted that respondents No.1 and 2 made every possible effort to delay the decision of the suit and in fact had succeeded in doing so since even the present revision petition is pending since 2017. The sequence of events shall be discussed during the findings.

8. I have considered the submissions made by learned counsel for the parties and find the present revision petition to be devoid of merit. The Agreement to Sell dated 02.07.2004 is stated to have been executed by Jan Mohammad in favour of Surinder Pal and Manoj Kumar. However, the said Manoj Kumar transferred his rights in favour of Hardeep Singh vide transfer deed dated 08.03.2007 as a result of which the suit was filed by Jan Mohammad against Surinder Pal and Hardeep Singh. It is an admitted fact that an application moved by the petitioner-Jan Mohammad under Order 1 Rule 10 CPC seeking to implead Manoj Kumar as a party was dismissed by the trial Court. Not only this, as has been pointed out by learned counsel for the respondents and not denied by learned counsel for the petitioner, the suit in question was filed on 24.04.2008. Since Jan Mohammad did not appear, he was proceeded against ex parte on 29.08.2008. Ex parte evidence of the plaintiff started. In September 2010, when evidence of the plaintiff was about to end, an application for setting aside the order vide which Jan Mohammad had been proceeded against ex parte was moved and the same was allowed. On 11.07.2011, the transfer application moved by Jan Mohammad seeking transfer of the trial from Hoshiarpur to Jalandhar was allowed. However, Jan Mohammad did not appear as a result of which he was again proceeded against exparte and subsequently he was again allowed to join proceedings. He filed

his written statement on 13.12.2013 and, thereafter filed an application for amendment of the written statement in February 2015. This application was declined which was challenged by way of a Civil Revision but the same was dismissed. Jan Mohammad then filed an application on 27.03.2015 for filing of an additional written statement. This application was also dismissed on 30.04.2015. Thereafter on 25.05.2015, an application under Order 1 Rule 10 CPC was filed to implead Manoj Kumar as a party which was dismissed on 10.08.2015. Thereafter another application was filed seeking direction to Hardeep Singh to produce IT returns which was dismissed. Thereafter other applications were also filed including an application again for amendment of written statement. These were also dismissed and thereafter, this application for examining Manoj Kumar through Video Conferencing was filed which was dismissed by way of the impugned order. It is, therefore, clear that the intention of the present petitioner was only to delay the decision of the case and otherwise, there was no occasion for him to examine Manoj Kumar who had already transferred his share and had even not been found to be a necessary party. Still further, he was never sought to be examined when the evidence was going on and an application was subsequently filed only with a view to delay the proceedings. In the considered opinion of this Court, the trial Court rightly dismissed the application.

In view of the aforesaid, I do not find any merit in the present revision petition and the same is accordingly dismissed.

17.07.2023

Prince Chawla

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No