

252 (2 cases)

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

Date of Decision: 17.05.2023

1) CR No.348 of 2018 (O&M)

Sukhbir Singh Malik

....Petitioner

Versus

Daya Kishan Gill

....Respondent

2) CR No.358 of 2018 (O&M)

Jasbir Singh Malik

....Petitioner

Versus

Daya Kishan Gill

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Saurabh Dalal, Advocate
for the petitioner(s).

Mr. Munish Kumar Garg, Advocate,
Ms. Bhawna Thakur, Advocate and
Mr. Tajveer, Advocate
for the respondent.

ARUN MONGA, J. (ORAL)

Vide this common order/judgment, above-mentioned two petitions are being disposed of, since facts are analogous and issues raised therein are common. For brevity, recitals are taken from CR-348-2018.

2. Petition herein is for setting aside order dated 06.12.2017 passed by learned Civil Judge (Junior Division), Jind vide which application filed by petitioner/plaintiff for impleading a company under the name and style of M/s Shree Dham Developer Pvt. Limited, Chandigarh as defendant No.2, was dismissed.

2.1. Succinct facts first, as pleaded in the instant petition.

2.2. Petitioner filed a suit for recovery of Rs.9,15,000/- along with interest against respondent/defendant with the averments that he had invested Rs.8 Lakh (by way of cheques) with the proposed defendant No.2 i.e., the company and defendant Daya Kishan Gill as its Director on 10.06.2011, which was developing a Group Housing/Commercial/ Residential Colony. However, defendant/respondent and proposed defendant No.2 failed to launch the project.

2.3. Initially, respondent/defendant and his wife were the Directors, but it was not in the knowledge of Petitioner/plaintiff that respondent had resigned as Director and his wife, namely, Mrs. Seema Gill is still the Director besides others. Respondent filed written statement (Annexure P-2).

2.4. Said amount was received in the account of the firm i.e. proposed defendant No.2, namely, M/s Shree Dham Developers Pvt. Ltd. and being a necessary party, petitioner filed application (Annexure P-3) for impleading the said company as defendant No.2. Reply (Annexure P-4) to the said application was filed by respondent/defendant.

2.5. Vide impugned order, the application filed by Petitioner/plaintiff, was dismissed.

3. Learned counsel for petitioner/plaintiff would *inter alia* argue that Petitioner did not have the knowledge that respondent/defendant had resigned and therefore could not have mentioned in the plaint that he was not the Director anymore. Had this fact been in the knowledge of Petitioner, then the said company would have been made party instead of respondent. Therefore, Ld. Trial Court is wrong in construing that the case can be

decided in absence of the company as the amount was received by the said company i.e. proposed defendant No.2 and not by respondent herein.

4. *Per contra*, learned counsel for respondent would argue that Petitioner/plaintiff was having every knowledge of the fact that with which company or firm he had deposited the alleged amount and which company or firm had issued receipt of the said amount and petitioner ought to have impleaded the said company at the initial stage. He further contends that plaintiff filed the application for impleadment on 06.07.2017 and suit for recovery against aforesaid company is barred by limitation on that date.

5. I have heard competing arguments of learned counsel for parties and have perused the case file with their able assistance.

6. When a suit is filed in the Court, the counsel or even the party on whose asking the suit is filed may not know all the parties involved in the suit. As such, relief cannot be claimed without joining the other affected parties as a plaintiff or defendant (as the case may be). The object underlying this provision i.e., Order 1 Rule 10 of the Code of Civil Procedure, 1908 (for brevity, 'CPC'), is to save honest litigants, believing *bona fide* in the maintainability of their claims, and they cannot be non-suited on a mere technical ground that the required person(s) were not impleaded in the suit initially.

7. Order 1 Rule 10(2) of the CPC gives a very wide discretion to the Court to deal with the situation where the impleadment of necessary and/or proper party is needed and is vital for the decision of the suit. In this regard, reference may be had to a decision of the Supreme Court in the matter of *Hirachand Kundanmal Vs. Municipal Corporation of Greater*

Bombay.¹ Order 1 Rule 10 of the CPC enables the Court to add or substitute:

1. Any person as a party at any stage of the proceedings;
2. The person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit.
3. This also enables the Court to avoid multiplicity of proceedings.

8. “*Dominus litis*” is the person to whom a suit belongs. This also means master of a suit. This is the party who has a real interest in the decision of a case. It is this person who will be affected by the decision in a case. This person derives benefits if the judgment is in his favour, or suffers the consequences of an adverse decision. Avoidance of multiplicity of proceedings as also conflicting decisions being passed in different suits which will be safeguarded as a result of allowing necessary party to be impleaded in the suit, are also objects of Order 1 Rule 10 of the CPC.

9. In the instant case, petitioner/plaintiff is the “*dominus litis*”. On one hand, he cannot be compelled to fight against a person against whom he does not wish to fight and against whom he does not claim any relief, while on the other hand, he has all the rights to implead proper and/or necessary party. Instant is a suit for recovery and presence of proposed defendant No.2 before learned Court below is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. The proposed defendant No.2 is thus necessary as well as proper party.

10. In the overall premise, in order to balance the equities as well as to meet the ends of justice and in view of the fact that by allowing the

application to implead defendant No.2 will not change the nature of the case as defendant/respondent is/was the Director of defendant No.2-company to whom the payments were made and it came to the notice of petitioner/plaintiff after filing of the written statement. Moreover, law is so settled that the impleadment can be allowed even at the appellate stage, while in the instant case, admittedly the suit is still pending adjudication before the concerned civil Court and not yet heard and finally decided.

11. Limitation, in any case, is a mixed question of fact and law. It will thus be open to defendant-respondent to take appropriate objection in this behalf and the learned Court below will decide the same in accordance with law.

12. Learned Court below erred in dismissing the application filed by petitioner/plaintiff for impleading M/s Shree Dham Developers Pvt. Ltd. as defendant No.2. Consequently, both the revision petitions are allowed and impugned orders dated 06.12.2017 are set aside.

13. Pending application/s, if any, shall also stand disposed of.

14. A photocopy of this order be placed on the connected case file.

(ARUN MONGA)
JUDGE

May 17, 2023
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Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No