

105 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7105-2012 (O&M)
Date of decision :27.07.2023

Ziley

...Petitioner

Vs.

Sukhpal Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shiv Kumar, Advocate
for the petitioner.

Mr. Alok Jain, Advocate
for the respondents.

ANIL KSHETARPAL, J.

The petitioner herein was defendant No.3 in a suit filed for grant of decree of possession by way of specific performance of the agreement to sell. The suit was disposed of on the basis of settlement arrived at between the parties. The petitioner was one of the defendants alongwith his mother and brother. In fact, the suit was based upon an agreement to sell executed by Late Sh. Kaptan Singh, predecessor-in-interest of the defendants.

During the pendency of the suit, an application under Order 32 Rule 7 CPC was filed for permission to enter into a settlement on behalf of minor. The trial Court granted permission, after noticing that on the basis of settlement the defendants would get additional amount of Rs. 1,18,000/- apart from the balance sale consideration. A certificate of the Advocate to the effect that such settlement is in the interest of the minor was also produced. Ultimately, the suit was decreed in terms of settlement. After a period of nearly 4 years of the decree, petitioner filed an application for setting aside the decree

passed on the basis of settlement on the ground that his mother has not paid his share. The trial Court on appreciation of evidence more particularly after noticing that the mother and the brother of the petitioner were represented and the Court vide order 15.10.2007 did grant permission to enter into settlement, dismissed the application.

This revision petition has been filed to challenge its correctness.

Learned counsel representing the petitioner contends that suit for possession by way of specific performance was not properly instituted as neither an application under Order 32 Rule 3 CPC was filed nor any specific order thereon was passed. He relies upon the judgment passed by the Division Bench in '*Gurpreet Singh v. Chaterbhuj Goel*', 1991 PLJ 570.

On the other hand the learned counsel representing the respondents submits that the interest of the petitioner was protected because his mother and another major brother were co-defendants in the suit. He further submits that the petitioner's father on receipt of 90% of the sale consideration had executed an agreement to sell. He also relies upon Three Judge Bench judgment in '*Amrik Singh and another v. Karnail Singh and others*', 1974, PLR 744.

This Court has considered the submission while analyzing the arguments of learned counsel representing the parties. The requisitioned record has also been perused.

On a Court question, learned counsel representing the petitioner admits that this argument is being taken for the first time in the revision petition and it was never put forth before the trial Court. However, he submits that the interest of minor is involved, hence the Court should permit him to

press this issue.

Order 32 Rule 3 CPC requires the Court to appoint guardian where the defendant is a minor. Normally, unless there is conflict of interest, the natural guardian namely mother or father are appointed as a guardian. Undoubtedly, a formal application under Order 32 Rule 3 CPC was not filed. However, the petitioner was represented by his mother and another brother who was major. Moreover, the defect, if any, stood cured once, an application under Order 32 Rule 7 was filed. The Court after examining the proposed settlement alongwith the certificate issued by the Advocate passed a specific order to the effect that such compromise is in the interest of minor. In such circumstances, the question which arises for consideration is “whether the Court should set aside the decree passed on the basis of settlement in the facts of the case or not?”.

A Full Bench of this Court in *Amrik Singh’s case* (Supra) after considering the provisions of Order 32 Rule 3 has held as under:-

“After going through the case law cited before me, I have come to the conclusion that each case must be settled on its own facts and it would not be appropriate to lay down any general rule. The crux of the matter is that it has to be seen whether the minor was effectively represented in the litigation. If he was, then the non-compliance with the provisions of Order 32, Rule 3, which are mandatory, would not render the decision void. But if the non-compliance has caused prejudice to the minor or he was not effectively represented, the decision will be void, i.e., the minor can either ignore it or avoid it. This approach is in consonance with justice because where the matter has been properly contested and no prejudice has been caused to the minor, it will be sheer injustice to the other side to re-open the matter again. Litigation is a very expensive affair and the general principle of law is that it should not be encouraged. In this view of the matter, so far as the facts of the present case are concerned, there can be no two opinions that the minors were effectively represented and no prejudice has been caused to them. Their interests were effectively safeguarded by their brothers, who were co-defendants with them and whose interests were identical. They contested the suit on all conceivable grounds. The learned counsel for the minors has been unable to bring to our notice any evidence or any contention which would enable us to hold that a wrong decree was obtained.”

It is evident that the Court has held that though the provision is mandatory, however, if the minor was effectively represented in the litigation then small error would not render the decision void. The Division Bench judgment cited by learned counsel representing the petitioner in *Gurpreet Singh's case* also took notice of the judgment passed in *Amrik Singh's Case (Supra)*. In *Amrik Singh's case (Supra)*, the Full Bench has held that in the facts of the case the Court is required to come to the conclusion with respect to protecting the interest of the minor.

At the cost of repetition in the present case, there is a specific order passed by the Court granting permission to enter into settlement. It is also not in dispute that the defendants received Rs. 1,50,000/- under the settlement though as per agreement they were to receive Rs.28,000/-. Moreover, the petitioner complains that his mother has not paid him his share. This application has been filed through maternal uncle. If the mother has failed to pay the share of the petitioner then the remedy is against the mother and not against the plaintiff, who has admittedly paid the entire amount.

In view of the aforesaid, no ground for interference is made out.

Hence dismissed.

(ANIL KSHETARPAL)
JUDGE

27.07.2023
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No