

2023:PHHC:122425

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

120

CR-4170-2023

Date of decision : 15.09.2023

Sudesh Rani

.....Petitioner

Versus

Toresh Meenal Uppal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Raj Kumar Bhatia, Advocate for the petitioner.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has filed the present revision petition under Article 227 of the Constitution of India for setting aside the impugned order dated 15.07.2023 (Annexure P-1) passed by learned Civil Judge (Junior Division), Dera Bassi, whereby an application filed by the respondents/defendants for grant of permission to place on record affidavit in support of written statement filed in Civil Suit No.376 of 2023, has been allowed.

2. The brief facts leading to the filing of the present petition as has been narrated in the petition are that the petitioner/plaintiff has filed a suit bearing No.CS-376-2023 titled as 'Sudesh Rani Vs. Toresh Meenal' along with an application under Order 39 Rules 1 & 2 read with Section 151 of CPC for permanent injunction for restraining the respondents/defendants from interfering into peaceful easement rights of petitioner/plaintiff i.e. natural light air of House No.65, Vasant Vihar,

Phase-1, Dhakoli, Tehsil Zirakpur, SAS Nagar (Mohali) and further decree of mandatory injunction directing the respondents/defendants to remove the wall from back side. Respondent No.1/defendant No.1 filed written statement and reply to the application filed under Order 39 Rules 1 & 2 of CPC without attaching an affidavit in support of written statement. When the petitioner/plaintiff has filed an application for appointment of local commission raising objection that the written statement filed by respondent No.1 is without supporting an affidavit then respondent No.1 filed an application seeking permission to place on record affidavit in support of written statement, which has been allowed by learned Civil Judge (Junior Division), Dera Bassi vide impugned order dated 15.07.2023. Aggrieved against the said order, the petitioner/plaintiff has filed the instant revision petition.

3. Learned counsel for the petitioner submits that respondent No.1 has not attached an affidavit along with the written statement filed before the Court below, as he wants to hide some facts from the Court and later on, filed the application seeking permission to place on record the affidavit when the objections have been raised by the petitioner. Learned counsel for the petitioner while referring to Order VI Rule 15 of CPC submits that the person verifying the pleadings shall also furnish an affidavit in support of his pleadings. Learned Civil Judge (Junior Division), Dera Bassi without considering these aspects has wrongly allowed the application filed by respondent No.1. Therefore, the present

revision petition may be allowed and impugned order dated 15.07.2023 may be set aside.

4. I have heard learned counsel for the petitioner and perused the relevant documents.

5. The concluding para of impugned order dated 15.07.2023 passed by learned Civil Judge (Junior Division), Dera Bassi reads as under:-

“Heard Record perused. Perusal of the record reveals that contesting defendant no.1 has filed the written statement and to the stay application on 13.07.2023. However, no affidavit in support of his pleadings was annexed at that time. Now the instant application has been moved for placing affidavit of defendant on record which was required to be filed earlier along with his pleadings. Though objection has been raised by the plaintiffs, however, it can not be forgotten that procedure is hand made of justice and technicalities of law can not be allowed to come in the way of justice. Though the contested defendant no.1 has not filed the affidavit earlier, however, there is no bar to take the affidavit later on also. Therefore, application is allowed. Affidavit is taken on record. Application is disposed off.”

6. Provision of Order VI Rule 15(4) of CPC provides that the person verifying the pleadings shall also furnish an affidavit in support of his pleadings, however, there is no bar to place on record the affidavit in support of pleadings later on. Moreover, learned counsel for the petitioner has not been able to dispute or controvert the abovesaid findings as recorded by the trial Court. Even nothing has been produced

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before this Court to show as to why the abovesaid findings are incorrect or ought to be rejected.

7. Keeping in view the facts and circumstances of the present case, I do not find any infirmity or illegality in the impugned order dated 15.07.2023 passed by learned Civil Judge (Junior Division), Dera Bassi. Consequently, the instant revision petition, being devoid of any merit, is hereby dismissed.

15.09.2023
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No