IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2442-2021(O&M)
Date of decision:-14.2.2023

Satish Kumar Saini

...Petitioner

Versus

Jasbir Kaur and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Petitioner – Sh.Satish Kumar Saini in person.

Mr.Jagtar Kureel, Advocate
for respondent No.1.

Mr.Aman Joon, Advocate for
Mr.O.P. Narang, Advocate
for the respondent No.2.

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H.S. MADAAN, J.

1. In nutshell, facts of the case are that plaintiff Jasbir Kaur, a resident of Chandigarh had brought a suit against defendants i.e. LIC Housing Finance Limited, Sector 22-C, Chandigarh and Satish Kumar Saini son of Sh.Baldev Raj Saini, resident of Phase 9, Mohali, seeking a declaration that plaintiff is owner to the extent of 63.70% share, whereas defendant No.2 is owner to the extent of 36.30% share in six plots situated at village Bhankarpur, Tehsil Derabassi, besides craving for grant of mandatory injunction directing defendant No.1 to hand over the possession of 63.70% share of the abovesaid suit property to the plaintiff

and 36.30% share of the above suit property to defendant No.2 and issue and get registered the sale certificate accordingly, in addition seeking a decree for partition of that property and so also for permanent injunction.

2. On notice, the defendants appeared. Since defendant No.2 did not file written statement despite availing of several opportunities his defence was struck off on 9.2.2017. He had filed an application under Order 7 Rule 11 CPC, which was dismissed by the trial Court. He had filed a revision petition bearing CR-2301-2017(O&M) before this Court, which too was dismissed on 21.5.2019. Defendant No.2 had filed a consumer complaint before District Consumer Disputes Redressal Forum-1, U.T. Chandigarh, which was allowed vide order dated 2.2.2012 and defendant No.1 was directed to issue sale certificate in favour of the complainant alone and then to get it registered.

3. Feeling aggrieved, LIC Housing Finance Limited had filed an appeal before State Consumer Disputes Redressal Commission, Chandigarh, which was allowed on 11.9.2012 and order of District Consumer Disputes Redressal Forum-1, U.T. Chandigarh was set aside.

4. The defendant No.2 had unsuccessfully challenged that order before National Consumer Commission, New Delhi. Defendant No.2 is said to have filed a separate suit for declaration in the Court at Derabassi without impleading the present plaintiff as a party.

5. It may be mentioned here that petitioner had filed an application under Order 7 Rule 11 CPC on issue of jurisdiction, which had been dismissed. The revision petition against that had also been dismissed. Thereafter, he filed an application for treating the issue framed

regarding territorial jurisdiction as preliminary issue, which was resisted by the plaintiff. Vide the impugned order dated 24.9.2021, the same was dismissed. For ready reference, the operative part of the order is being reproduced as under:

> *I have heard the arguments advanced by both the counsels and perused the case file very carefully. Perusal of the plaint reveals that the plaintiff seeks declaration to the effect that he is owner to the extent of 63.70% share in the suit property. Further perusal of the head note of plaint reveals that all the 6 properties mentioned in the plaint are situated within the territorial jurisdiction of village Bhankarpur, Tehsil Derabassi, Punjab. Further, perusal of the plaint reveals that defendant No.1 who had acquired the ownership rights of the said property by virtue of provisions of Securitisation and Reconstruction of Financial Assets and Endorsement of Security Interest Act, 2002 has its office at Chandigarh. Perusal of the plaint reveals that the payments were deposited by the plaintiff at Chandigarh and the plaintiff prays that defendant No.1 be directed to to issue sales certificate in favour of the plaintiff qua the suit properties. The sale certificate is to be issued by defendant No.1 who has its head office at Chandigarh.*
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> *As per proviso to Section 16 of CPC where the reliefs claimed in respect of immovable property can be obtained through personal obedience of the defendant, the suit may be situated in the Court within whose local limits such defendant resides or carries on business. Therefore, as defendant No.1 carries on business*

within the local limits of Chandigarh, it cannot be said that this Court does not have jurisdiction. Thus, it transpires that the question of jurisdiction in the present suit is a mixed question of fact and law and only on the basis of issue of jurisdiction, the present suit cannot be decided. Therefore, no purpose would be served by treating issue number 4A as a preliminary issue, rather it would result in sheer wastage of time and energy. The authorities relied upon by defendant No.2 are distinguishable on facts and therefore not applicable to the rpesent case.

So far as the right of defendant No.2 to move the present application after striking off of his defence is concerned, it is settled law that once the defence has been struck off, the defendant cannot be precluded from participating in the proceedings of the case and the present application is therefore maintainable. Thus, in view of the above discussion, the application stands dismissed.

A perusal of the file reveals that the defence of the applicant was struck off vide order dated 9.2.2017. Thereafter, the applicant filed the present application on 23.1.2020 despite the fact that he could have argued that issue number 4A be treated as a preliminary issue at that very stage when this issue was framed by the Court on 10th December, 2019. Further, the applicant went on to file written submissions qua this application on 7.2.2020 and he further filed replication to the reply of the plaintiff on 25.2.2020. The conduct of the applicant clearly exhibits his intention to waste *the time of the Court as he preferred to proceed in piecemeal manner. Consequently, I deem it appropriate to dismiss the present application with costs of Rs.2000/- to be paid by defendant No.2 to the plaintiff.*

6. This order left defendant No.2 aggrieved and he has filed the present revision petition. The respondents have put in appearance through counsel.

7. I have heard learned counsel for the parties besides going through the revision and I find that the revision petition is without merit.

8. The judgments i.e. ***Harshad Chiman Lal Modi Versus DLF Universal & Anr., 2005(4) RCR(Civil)260, Begum Sabiha Sultan Versus Nawab Mohd. Mansur Ali Khan & Ors. 2007(2) RCR(Civil) 837, Vipul Infrastructure Developers Ltd. & anr. Versus Rohit Kochhar and another, 2008(41) RCR(Civil)886, Arun Agarwal Versus Nagreeka Exports (P) Ltd. & Anr., 2002(10) SCC 101*** and ***Santosh Kumar @ Rana Ram Kalal Versus Ashok Chand and others, 2021(3) SCC 385*** referred to by the petitioner are not applicable to the present case due to different facts and circumstances and the context in which such observations had been made.

9. The impugned order passed by the Civil Judge(Jr.Divn.), Chandigarh is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to

interfere with the impugned order by way of exercising the revisional jurisdiction.

10. Finding no merit in the revision petition, the same stands dismissed.

Interim order dated 13.1.2022 stands vacated.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

14.2.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No