

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

CIVIL REVISION No.4445 of 2022 (O&M)
DATE OF DECISION : 15.02.2023

Santokh SinghPetitioner

versus

Surinder Singh Parmar and OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. N.S. Minhas, Advocate for the petitioner

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ALKA SARIN, J. (Oral):

The present revision petition has been filed under Article 227 of the Constitution of India for modifying the impugned order dated 14.11.2018 and for setting aside the order dated 20.05.2022 passed by the Trial Court vide which the second application filed by the plaintiff-petitioner for leading secondary evidence has been dismissed.

The brief facts relevant to the present *lis* are that a civil suit was filed by the plaintiff-petitioner on 06.03.2017 for recovery of Rs.66,69,568/- along with interest and damages of Rs.5 crores along with interest for loss and damages caused to him by the defendant-respondents with a view to cheat the family of the plaintiff-petitioner and to send defendant-respondent No.3 to Canada fraudulently who married the

daughter of the plaintiff-petitioner. During the pendency of the suit an application (Annexure P-2) was filed by the plaintiff-petitioner for producing secondary evidence qua the existence of documents regarding the grant of immigrant visa of Canada to defendant-respondent No.3. Vide order dated 14.11.2018 the said application was partly allowed holding as under :

“6. This Court has gone through the contents of the application, its reply and the whole file. Perusal of the file reveals that the plaintiff has produced photocopy of affidavit of Arjun Singh Parmar, defendant No.3 (exparte), which proved prima facie its existence. Since the defendant No.3 did not come present and out of reach of the process of this court and there is no need to issue notice to defendant No.3 as per proviso of Section 66 of the Indian Evidence Act, 1872 and plaintiff proved prima facie the existence of the above affidavit, therefore, as per Section 65(a) of Indian Evidence Act, 1872, permission is granted to plaintiff to prove the affidavit of Arjun Singh Parmar dated 29.7.2013 by way of secondary evidence subject to proof of its existence, loss and execution, but regarding the other documents i.e., file of WWICS deals and contains all the requisite declaration, self declaration submitted by Arjan Singh (defendant No.3) for procuring immigration visa from Canadian Govt, this

court is of the view that since plaintiff has not produced copies of the above said declarations etc., to prove prima facie the existence of the above documents, therefore, no permission to prove the same by way of secondary evidence can be granted to the plaintiff.”

The aforesaid order was never challenged by the plaintiff-petitioner and the same attained finality. Thereafter, a second application (Annexure P-8) for secondary evidence was filed by the plaintiff-petitioner for producing secondary evidence qua the existence of documents regarding the grant of immigrant visa of Canada to defendant-respondent No.3. This second application (Annexure P-8) is a verbatim copy of the first application (Annexure P-2) and relates to the very same documents as mentioned in the first application (Annexure P-2). Vide the impugned order dated 20.05.2022, the second application for secondary evidence was dismissed on the ground that the earlier application was dismissed vide order dated 14.11.2018 and the contents were similar and that the said order dated 14.11.2018 was neither challenged in appeal nor in revision and the same had attained finality. Hence, holding the second application for secondary evidence not maintainable, the same was dismissed.

Learned counsel for the plaintiff-petitioner would contend that the Trial Court has not appreciated all the documents that were appended with the case. He has further relied upon a decision of the Supreme Court in the case of **Dhanpat vs. Sheo Ram (Deceased) through LRs. & Ors.**

[2020 (2) RCR (Civil) 437] to contend that leading of secondary evidence was essential for the just decision of the suit.

Heard.

In the present case, when the revision petition was filed it was argued by the learned counsel for the plaintiff-petitioner that an application dated 17.12.2018 (Annexure P-7) for review of the order dated 14.11.2018 had been filed, however, he was not aware of the outcome. This Court vide order dated 09.12.2022 had asked for a report from the Court concerned qua the status of the review application. A report dated 19.01.2023 has been received wherein it has been stated that no review application was ever filed on 17.12.2018. There is no explanation forthcoming as to why an incorrect statement was made before this Court. Further, counsel for the plaintiff-petitioner has been unable to convince this Court as to how a second application (Annexure P-8) for secondary evidence was maintainable for producing secondary evidence qua the existence of certain documents after the first application (Annexure P-2) had been decided on merits and the desired relief was not granted to the plaintiff-petitioner. There is no difference in the contents of both the applications, they are precisely identical. The learned counsel is also not in a position to dispute that the order dated 14.11.2018 passed on the first application was never challenged by the plaintiff-petitioner and that the same has attained finality. No change in circumstances between the filing of the two applications has been pointed out by counsel for the plaintiff-petitioner.

It is well settled that interlocutory orders do not impinge upon the legal rights of parties to a litigation and the principle of *res-judicata*

does not apply to the findings on which these orders are based. However, it is equally well settled that if repeated applications are made for similar reliefs on the same basis after the same has once been disposed off, the Court would be justified in rejecting the same as an abuse of the process of the Court. The judgement cited by counsel for the plaintiff-petitioner is not applicable to the facts of the present case.

In view of the above, I do not find any merit in the present revision petition which is dismissed. Pending applications, if any, also stand disposed off.

Nothing mentioned in this order shall be construed to have any bearing on the merits of the suit.

15.02.2023
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(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
