

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. R. No. 681 of 2017

Pronounced On : January 04, 2024

Johny Mathew		Petitioner
vs.		
Sunil Panwar		Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Petitioner in person.

Mr. Divanshu Jain, Advocate and
Mr. Prateek Sodhi, Advocate
for the respondent.

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GURBIR SINGH, J. :

1. The prayer in the present Civil Revision filed under Article 227 of the Constitution of India is to impose exemplary cost under Section 35 and 35-A CPC for filing vexatious suit by the plaintiff/respondent, which stands dismissed as withdrawn vide order dated 24.12.2015 passed by learned Civil Judge (Junior Division), Gurgaon (for brevity – Trial Court) and appeal against the said order was dismissed vide order dated 26.08.2016, passed by learned Additional District Judge, Gurgaon (for brevity – Lower Appellate Court).

2. The brief facts, as culled out from the paper book, are that the plaintiff/respondent filed a suit for mandatory injunction and recovery of mesne profit against the defendant/petitioner. At a later stage, he made statement before the learned Trial Court that he did not wish to proceed further with the suit but defendant/petitioner opposed the prayer for

withdrawal of suit stating that his application dated 19.03.2015 for perjury against the plaintiff/respondent was pending in the said suit. However, the suit was dismissed as withdrawn vide order dated 24.12.2015 and it was held by the learned Trial Court that since application of perjury is criminal in nature, separate proceedings can be initiated by the defendant/petitioner in the competent court of law.

3. Aggrieved by the aforesaid order dated 24.12.2015, the defendant/petitioner preferred appeal praying that the learned Trial Court should have imposed exemplary cost upon the plaintiff/respondent. The learned Lower Appellate Court, while observing that the Trial Court was having discretion in imposition of costs, dismissed the appeal filed by defendant/petitioner, vide order dated 26.08.2016.

4. The defendant/petitioner, who has appeared in person, has stated that plaintiff/respondent filed a suit for mandatory injunction against him and his wife to hand over possession of House No.F-009, Block-A, Executive Floors, Ist Floor, South City-II, Gurgaon (hereinafter referred to as – house in question) and to pay a sum of Rs.3,40,000/- along with interest on account of mesne profit for use and occupation of the house in question. He contested the suit and denied the claim of the plaintiff/respondent. He also filed an application for dismissal of suit with exemplary cost. On one date, he did not appear and was proceeded ex-parte. He again moved application for setting aside ex-parte order. On the very next date, without even filing reply to the application for setting aside ex-parte order, the suit of the plaintiff/respondent was dismissed as withdrawn on the basis of his statement. He filed appeal and before the Lower Appellate Court, where it

was clarified that he received notice from the District Magistrate for delivering the possession of the house in question, only after filing of the suit by the plaintiff/respondent. Thus, it is evident that the possession of the house was never taken from him. It was further contended by him that all the proceedings taken under the SARFAESI Act are illegal and a fraud has been played upon him since the possession was never taken from him, so, there was no question of mandatory injunction and payment of mesne profits. Thus, the suit filed by the plaintiff/respondent was vexatious and deserved dismissal with heavy costs. To add to his plight, the plaintiff/respondent has further submitted that during this whole process of litigation, he had to attend the hearings more than 40 times, had to file written replies twice, had to spend various charges i.e. copying/typing/stationery etc. So, the revision petition be allowed.

5. On the other hand, learned counsel appearing for plaintiff/respondent, has submitted that the defendant/petitioner took loan against the house in question by mortgaging the house. Since he failed to repay the loan, symbolic possession of the house was taken by the Bank under Section 13 of the SARFAESI Act. The defendant/petitioner filed Scrutinization Application before the Debt Recovery Tribunal-I, Chandigarh, which was dismissed vide order dated 08.11.2013. Several rounds of litigation in the form of appeal/review/application etc. before the learned Tribunal and this Court met the same fate as there was nothing in accordance with law, but pressure tactics to misuse the process of law. It is the further contention of the learned counsel for the plaintiff/respondent that the defendant/petitioner is a habitual litigant. The litigation contains a very

small aspect that the plaintiff/respondent purchased the house in question from the Bank in open auction and he was delivered symbolic possession. On that ground only, the present suit was filed. Further, when the learned District Magistrate ordered on 09.06.2015 for delivery of possession, the plaintiff/respondent preferred to withdraw the suit in order to avoid further litigation. So, the plaintiff/respondent has committed nothing wrong, either by filing the suit or by later withdrawing the same. As far as the question of imposition of costs was concerned, it has been submitted that it is always the discretion of concerned Court to impose or not to impose the costs. It has, therefore, been prayed that revision petition deserves dismissal.

6. I have heard submissions made by the defendant/petitioner himself and learned counsel for the plaintiff/respondent and have also perused the record of the case.

7. Sub-Sections (1) and (2) of Section 35-A of the Civil Procedure Code, which deal with the compensatory costs in respect of false, frivolous or vexatious claim or defence, read as under :-

“35A. *Compensatory costs in respect of false or vexatious claims or defences -*

(1) *If in any suit or other proceedings including an execution proceeding but (excluding an appeal or a revision) any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or*

in part, the Court, (if it so thinks fit) may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the object or by the party by whom such claim or defence has been put forward, of cost by way of compensation.

(2) No Court shall make any such order for the payment of an amount exceeding three thousand rupees or exceeding the limits of its pecuniary jurisdiction, whichever amount is less :

Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, or under a corresponding law in force in any part of India to which the said Act does not extend]] and not being a Court constituted under such Act or law, are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees :

Provided, further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this Section.”

7. Three conditions are to be satisfied before the Court proposes to award costs :-

1. The claim or defence must be false or vexatious.
2. Objections must be taken that the claims or defence is

false or vexatious to the knowledge of the party raising it.

3. Such claim or defence must have been disallowed or withdrawn or abandoned in whole or in part.

8. The compensatory or exemplary costs under Section 35-A CPC can be awarded by Trial Court. In the case in hand, objection was raised in the written statement that the suit was false and vexatious. The suit was withdrawn by the plaintiff/respondent and same was not decided on merits. The discretion given to the Trial Court is to be exercised in accordance with the law. It is judicial discretion. The Trial Court failed to pass any order about payment of costs. Keeping in view the settled principles mentioned above, the impugned order deserves to be set aside.

9. As a result, this revision petition is allowed. The order passed by the learned Appellate Court is set aside. The learned Trial Court is directed to pass order in accordance with law, whether petitioner/defendant is entitled for costs. If so, to award costs accordingly.

10. Parties are directed to appear before the Trial Court on 30.01.2024.

11. The learned Trial Court shall not be influenced by any observation made herein above while passing order as to costs.

12. Pending applications, if any, shall stand disposed of along with this judgment.

January 04, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.