

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.107 and 249

LPA-907-2020 (O&M)

Date of decision : 25.04.2024

Yogesh Maini

..... Appellant

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
 HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present : Ms.Jigyasa Tanwar, Advocate, for the appellant.

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DEEPAK SIBAL, J. (Oral)

1. Through the present intra court appeal challenge is made to the judgment dated 21.09.2020 passed by a learned Single Judge of this Court dismissing the appellant's writ petition on the ground that the appellant had not approached the Court with clean hands.
2. Through filing of a writ petition the appellant sought quashing of a memo dated 15.07.2019 issued by Assistant Town Planner, Zone D, Municipal Corporation, Ludhiana (for short, the MC) through which the irregular construction made by respondents No.4 to 8 was ordered to be compounded. The appellant had further prayed for issuance of directions to the MC to take appropriate action against respondents No.4 to 8 for raising illegal construction with a further prayer for demolishing the illegal construction already raised by respondents No.4 to 8.
3. On being put to notice the respondents submitted that for the same cause, as raised by the appellant through his writ petition, he, alongwith others, had also filed a civil suit which he had withdrawn on 29.07.2020. At the time of withdrawal of his civil suit no permission had been granted to the appellant to either institute a fresh civil suit or file a writ petition before this Court and that the fact of filing and withdrawal of the civil suit had been intentionally withheld by the appellant in his writ petition.

Thus, both on the grounds of *res judicata* as also for having not come to the court with clean hands, the appellant deserved no relief.

4. The appellant did not deny the factum of filing and withdrawal of the civil suit. He also did not dispute that the afore facts had not been disclosed by him in his writ petition.

5. In the light of the above, the learned Single Judge was of the view that the appellant had not come to the Court with clean hands and therefore, on this ground, dismissed his writ petition with costs. Such order of the learned Single Judge is the subject matter of challenge through the instant appeal.

6. Learned counsel for the appellant does not dispute that for the same cause as raised by the appellant through his writ petition he had earlier filed a civil suit which he had withdrawn on 29.07.2020 and that this fact, due to a *bonafide* error, could not be disclosed by him in his writ petition but for this inadvertent lapse on his part, the learned Single Judge erred in dismissing his petition without even deciding the issues taken up by the appellant against the illegal construction by respondents No.4 to 8.

7. After considering the afore submission made on behalf of the appellant we do not find the same to be worthy of acceptance.

8. It is not disputed that for the same cause as raised by the appellant through his writ petition he, alongwith others, had earlier filed a civil suit which, through the following order dated 29.07.2020, on his asking, was permitted to be withdrawn: -

“Plaintiff No. 5 Yogesh Maini had got his statement recorded to the effect that he did not wish to pursue the present suit and that the same might be dismissed as withdrawn. The remaining plaintiffs, some of them appeared in person and the remaining through their counsel, had given their consent with regard to withdrawal of the suit by plaintiff No.5. Accordingly, the application stands disposed of and the case stands dismissed as withdrawn qua plaintiff No. 5. The case stands adjourned to 04.09.2020 for the purpose already fixed.”

9. A perusal of the afore quoted order clearly reveals that through such order no permission had been granted to the appellant to file a fresh suit and/or a writ petition.
10. It is not disputed before us that the afore civil suit was withdrawn by the appellant after he, alongwith others, had failed to get interim injunction from the civil court.
11. Admittedly, the appellant neither sought any review of the afore quoted order nor challenged it.
12. In the writ petition preferred by the appellant he did not disclose the filing and withdrawal of his civil suit.
13. Filing and withdrawal of a civil suit on the same cause of action was a crucial fact which the appellant should have disclosed in his writ petition especially when he had withdrawn his civil suit only after he had failed to get interim injunction prayed for by him. Such a crucial fact was withheld by the appellant. Thus, he did not approach this Court with clean hands. Therefore, he disentitled himself to be heard even on merits.
14. In the light of the above, we find no error, in law or in fact, in the dismissal of the appellant's writ petition by the learned Single Judge.
15. Dismissed.

[DEEPAK SIBAL]
JUDGE

25.04.2024
shamsher

[DEEPAK MANCHANDA]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No