

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

**CR-5142 of 2023 (O&M)
Pronounced on: 30.04.2024**

LT. COL. PARAMJIT SINGH DHILLON @ PARAMJIT SINGH

...Petitioner

Versus

HARINDER KAUR @ HARINDER GHUMAN

...Respondent

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Divanshu Jain, Advocate
for the petitioner.

Harinder Kaur-Respondent- in person.

RITU TAGORE, J.

1. This revision petition is directed against the order dated 18.01.2020 (Annexure P-16) whereby an application under Order 7 Rule 11, CPC has been dismissed and the order dated 14.08.2023 (Annexure P-20) by virtue of which an application under Section 151, CPC (Annexure P-17) for recall of the order dated 18.01.2020 has also been dismissed.

2. Learned counsel for the petitioner contended that the parties to the petition are legal heirs of the deceased Col. K. S. Dhillon, who died on 06.01.2012, leaving behind petitioner (son) and respondent (daughter). As such, parties are brother and sister, engaged in litigation over the estate left by their father, as detailed in the petition.

3. Learned counsel submitted that a suit for partition (Annexure P-2) filed by respondent against the petitioner is pending before Delhi High

Court, and another suit (Annexure P-1) for declaration, based on the Will of their late father, filed by petitioner against the respondent is pending in Courts of SBS Nagar. It is stated that respondent filed an application under Section 10 CPC, for stay of aforementioned suit, but same was dismissed. She also moved a transfer application before Hon'ble the Supreme Court for the suit filed by the petitioner be transferred to Delhi but later withdrew it. Additionally, she filed an application under Order 7 Rule 11 read with Section 16, CPC for the rejection of plaint of the aforesaid suit of declaration, which was dismissed vide order dated 03.09.2016. Learned counsel stated respondent again moved an application for transfer of above suit for declaration filed by the petitioner to some another Court, but again, this application was dismissed vide order dated 19.09.2016 by District Judge, SBS Nagar, with observation that trial of the case was unnecessarily delayed and directed its expeditious hearing. It is stated that revision filed by the respondent against the aforementioned order was dismissed with a direction to decide the suit within the period of one year. However, the husband of respondent filed an application under Order 1 Rule 10, CPC for his impleadment that was allowed. Later on, respondent moved an application for hearing legal issues as preliminary issue, but it was dismissed vide order dated 15.04.2017 (Annexure P-4), again with an observation that respondent and her husband are trying to prolong the litigation. The respondent filed revision against the order but it was dismissed as well.

4. Learned counsel stated that despite the ongoing legal battle between the parties, the respondent filed one more suit for recovery of tentative amount of Rs.500/- against petitioner by way of rendition of account and share in properties, before the Civil Judge (Senior Division) SBS Nagar (Annexure P-5). The petitioner filed a reply (Anneuxre P-6), and

trial Court framed the issued in said case. It is stated that in aforementioned suit, petitioner filed an application under Order 7 Rule 11 CPC for rejection of plaint citing grounds that the Court lacks territorial jurisdiction and plaint has no merits (Annexure P-8). Learned counsel submits that order dated 18.09.2019 (Anneuxre P-12) indicates that respondent filed the reply and case was adjourned to 05.10.2019, and thereafter to 05.11.2019, 06.12.2019 and then to 18.01.2020 as revealed from orders (Annexures P-13 to P-15).

5. Learned counsel stated that on 18.01.2020, learned Court disposed of the application under Order 7 Rule 11 CPC, observing that petitioner was not interested in pursuing application and dismissed it as not pressed. Learned counsel has challenged these observations of the learned trial Court by urging that parties are vigorously fighting their legal battles, so the question that petitioner was not interested in pursuing the application is altogether incorrect. Furthermore, this observation is not supported by any explicit facts or circumstances. On the contrary, the fact that petitioner immediately filed an application for the recall of the order dated 18.01.2020, makes it amply clear that petitioner is very much interested in pursuing the application.

6. Learned counsel further submits that order dated 14.08.2023 (Annexure P-20), declining to recall the order dated 18.01.2020 (Annexure P-16), is incorrect regarding the observation of petitioner availing several opportunities to address arguments. Learned counsel stated that, in fact, 06.12.2019 was first effective date of hearing provided for addressing arguments on the application under Order 7 Rule 11 CPC and from order dated 06.12.2019, it is not clear, who sought adjournment to address arguments on the application in hand. It is stated that on the second date of

hearing on 18.01.2020 the application was disposed of as not pressed by the petitioner.

7. Learned counsel stated that impugned orders are factually and legally wrong. The learned trial Court without any basis, observed that petitioner was not interested in pursuing the application under Order 7 Rule 11 CPC. It is stated, to the contrary, the petitioner and his counsel, have always been ready to address the arguments and there is no evidence on record suggesting that petitioner ever showed any interest in withdrawing the application in question. It is stated that learned trial Court disposed the application in a perfunctory manner, without deciding it on merits, thus committed a material jurisdictional error. A prayer is made to set aside the impugned orders. In support of his submissions, learned counsel referred to **Dr. Brig. (Retd.) Manmohan Singh Vs. Manjit Manmohan Singh, 2014(7) R.C.R. (Civil) 118, Sucha Singh and others Vs. The State of Punjab through the Collector, Faridkot and others, 1990 (2) PLR 492 and State of Punjab and others Vs. Ajmer Singh, 2009(2) PLR 749.**

8. On the contrary, the respondent appeared in person expressed her intention to argue the matter herself. She stated that orders are valid and revision petition is not maintainable against the orders. It is stated that some of the facts stated in the revision are also incorrect. It is further stated that application under Order 7 Rule 11, CPC itself is not maintainable as it does not meet the requirements of law. The application for recall was also ill founded just to delay the matter. It is stated that Section 151, cannot be invoked for review of an order. Section 151 CPC can only be applicable if there is no alternate remedy available. No revision was filed to challenge the validity of order dated 18.01.2020 (Annexure P-16). It is stated that the order dated 14.08.2023 (Annexure P-20) was rightly passed with correct

observations made therein. It is stated no ground is made out warranting any interference in the impugned orders. In support respondent referred to judgment of Hon'ble the Supreme Court in **My Palace Mutually Aided Co-operative Society Vs. B. Mahesh and others, 2022 (4) R.C.R. (Civil) 9, Budhia Swain and others Vs. Gopinath Deb and others, 1999 AIR (SC) 2089 and Daya Engg. Works (Sleeper) Ltd. Vs. Union of India and another, 2023 SCC Online Del 178.**

9. I have heard learned counsel for the petitioner and the respondent and have gone through the paper book and photocopies of downloaded *zimini* orders of the learned trial Court placed on record by both the parties, which are taken on record, subject to just exceptions.

10. It is not in dispute that parties to present revision have filed suits against each other, which are pending at SBS Nagar and Delhi High Court, regarding the inheritance of the estate of their father late Col. K. S. Dhillon. It is a matter of record that civil suit No.960-2018 for recovery has been filed by respondent against the petitioner claiming tentative amount of Rs.500/- or any other amount, payable by way of rendition of accounts regarding the share of respondent in the produce/income of the agricultural land, citing the grounds, as detailed in the plaint (Annexure P-5). The petitioner, upon being put on notice, filed a written statement (Annexure P-4), contesting the suit *inter alia* on the preliminary grounds of its maintainability with respect to territorial jurisdiction, being barred by Order 2 Rule 2 and Section 10 CPC, while denying the other averments on merits and pleading for its dismissal. It is also a matter of record that petitioner filed an application under Order 7 Rule 11 CPC (Annexure P-8), in the aforementioned suit and respondent contested the same by filing its response.

11. Perusal of various *zimini* orders, placed on record by both the parties, reveal that learned trial Court disposed of the application (Annexure P-8) vide impugned order dated 18.01.2020 (Annexure P-16) observing that petitioner, who is defendant in aforesaid suit, seems uninterested in pursuing the application, and disposed it off as not pressed upon. The petitioner's application (Annexure P-17) to recall the order dated 18.01.2020 (Annexure P-26) was also dismissed by the learned trial Court by observing no ground for recall was made out as despite availing several opportunities petitioner (defendant before the trial Court), did not address the arguments, and application was rightly disposed of as 'unpressed'.

12. The facts as gathered from the paper book, do not suggest that the petitioner was not interested in pursuing the application under Order 7 Rule 11 CPC (Annexure P-8). Learned trial Court presumed unwillingness on part the petitioner on the premise that arguments were not addressed on the application. To the considered opinion of this Court, said observation is not supported by an evidence or circumstance, much less by the impugned order (Annexure P-16) or the previous *zimini* order recorded in this regard. The impugned order does not record that petitioner or his counsel requested for any adjournment on the date of hearing. The *zimini* order dated 06.12.2019 also does not indicate on whose behalf any request for adjournment was made or which party was unwilling to address the argument.

13. Upon reviewing of the *zimini* orders, it is evident that application under Order 7 Rule 11 CPC was filed by petitioner on 09.07.2019 and case was posted for 30.07.2019 for reply to said application by the respondent/defendant, which was not filed. The case was then adjourned for same purpose for 16.08.2019 and a reply was filed. Thereafter, the case

further adjourned for 18.09.2019. Once again, the filing of reply to application under Order 7 Rule 11 CPC was recorded in order dated 18.09.2019 (Annexure P-12), and the case was adjourned to 05.10.2019 for arguments. On 05.10.2019, the same order was repeated, and case was adjourned to 05.11.2019. Since Presiding Officer was to proceed on leave, case was rescheduled and adjourned to 06.12.2019. Again, on 06.12.2019 the case was adjourned to 18.01.2020, recording that arguments were not addressed. On 18.01.2020, the order for disposing of the application as unpressed was passed.

14. The above facts show that only one effective date was given to parties to address arguments. Thus, to presume that petitioner was not interested in pursuing the application under order 7 Rule 11 CPC, is not at all made out from the record. Likewise, the observation of learned trial Court in impugned order dated 14.08.2020 (Annexure P-20) that numerous opportunities were given to the petitioner to address arguments is clearly against the record. Keeping in view the fact that parties are involved in exhaustive litigation against each other, which is evident from the pleadings of the parties, it is difficult to assume and presume that petitioner was not interested in pursuing his application.

15. By closing the right of the petitioner in the manner it has been done by the trial Court is certainly against the settled canons of law and the procedure laid down. The learned trial Court committed serious jurisdictional error in closing the right of the petitioner in an unjustified and botched manner. Thus, the impugned order dated 18.01.2020 (Annexure P-16) does not withstand the judicial scrutiny.

16. It is true that Court while exercising the power under Section 151 CPC is not to by-pass the procedural safe guards in built in CPC, but at

the same time the Court is not precluded from passing such orders, while exercising its inherent power, to do complete justice between the parties. Various *zimini* orders reveal that application filed under Section 151 CPC, was adjourned umpteen number of times for arguments and was finally dismissed, observing no ground for recall is made out, based on premise that petitioner had already availed several opportunities, which is certainly contrary to the own record of the learned trial Court. Thus, same is required to be set aside. Accordingly, the orders dated 14.08.2023 (Annexure P-20) and 18.01.2020(Annexure P-16) are, hereby set aside.

17. The learned trial Court on the due date of hearing as fixed before the Court, or the date as given by the learned Court, by considering the convenience of the parties and its own board, but not within 15 days thereafter, shall fix the date for hearing the arguments on the application under Order 7 Rule 11 CPC. The learned trial Court shall give one effective opportunity to both the parties to address arguments on the application under Order 7 Rule 11 CPC. This Court is sanguine that both the parties shall cooperate with the Court in the prompt decision of the application as well as the main case, which is pending adjudication since 2018.

18 The revision petition is allowed in above terms.

19. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

30.04.2024
Rimpal

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