

2024:PHHC:121593



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

107

CWP-23512-2024 (O&M).
Date of Decision: 16.09.2024.

PRABHA SABIKHI @ PRABHA BAJAJ AND ANOTHER

... Petitioners

Versus

PERMANENT LOK ADALAT (PUBLIC UTILITY SERVICES), U.T.
CHANDIGARH AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. S.M. Tripathi, Advocate,
for the petitioners.

VINOD S. BHARDWAJ, J. (ORAL)

CM-15077-CWP-2024

Present application has been filed under Rule 3-A (I) Chapter
VI Part B, Vol. V of the High Court Rules and Orders seeking grant of
leave to file the present petition.

Application is allowed as prayed for.

2024:PHHC:121593

**Main case**

Challenge in the present petition is to the order dated 21.08.2024 (Annexure P-8) passed by respondent No.1-the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh, wherein respondent No.3-Bhupinder Singh was impleaded as a respondent in the proceedings initiated by the petitioner against the Chandigarh Housing Board.

2 It is contended that the above said application moved by the respondent No.3 for being impleaded as a necessary party in the present petition has been wrongly allowed without taking the judgment of the Hon'ble Supreme Court and without passing any speaking order. He places reliance on the judgment of the Hon'ble Court in the matter of **Mohamed Hussain Gulam Ali Shariffi Vs. Municipal Corporation of Greater Bombay and others, reported as 2020 (14) SCC 392**. Relevant paragraphs No.13 to 15 are extracted as under:-

“13) In our considered opinion, having regard to the nature of the controversy, which is the subject matter of the suit, respondent Nos. 2 and 3 are neither necessary nor proper parties. As would be clear from mere perusal of the plaint, the basic question, which is required to be decided in the suit, is whether notice issued under Section 351 of the Act by respondent No. 1 (Corporation) to the appellant is legally valid or not (see prayer(a) in the plaint - page 251 of Volume II of S.L.P. Paper Book).

2024:PHHC:121593



14) To decide this question, in our considered opinion, the only necessary and proper party to the suit is the Mumbai Municipal Corporation, Greater Mumbai, i.e., Respondent no 1, who has issued such notice, and for deciding this question either way, the presence of respondent Nos. 2 and 3 is not at all required. In other words, the suit can be decided even in the absence of respondent Nos. 2 and 3.

15) It is a settled principle of law, which does not need any authority to support the principle, that the plaintiff being a dominus litis cannot be forced to add any person as party to his suit unless it is held keeping in view the pleadings and the relief claimed therein that a person sought to be added as party is a necessary party and without his presence neither the suit can proceed and nor the relief can be granted. It is only then such person can be allowed to become party, else the suit will have to be dismissed for non-impleadment of such necessary party. Such does not appear to be a case here.”

3 He also places reliance on the order dated 21.08.2024 passed by the Hon’ble Supreme Court in the matter of **State Project Director, U.P. Education for All Project Board and others Vs. Saroj Maurya and others, Civil Appeal No.3465 of 2023**. The relevant extract reads as under:-

“3. We are of the opinion that in the absence of any reasoning in the impugned judgment, the same cannot be sustained. In this regard, we are benefitted by the following observations made by this Court in CCT v. Shukla & Bros. (2010) 4 SCC 785. The relevant paragraphs of the judgment are extracted hereinbelow: -

2024:PHHC:121593



“23. We are not venturing to comment upon the correctness or otherwise of the contentions of law raised before the High Court in the present petition, but it was certainly expected of the High Court to record some kind of reasons for rejecting the revision petition filed by the Department at the very threshold. A litigant has a legitimate expectation of knowing reasons for rejection of his claim/prayer. It is then alone, that a party would be in a position to challenge the order on appropriate grounds. Besides, this would be for the benefit of the higher or the appellate court. As arguments bring things hidden and obscure to the light of reasons, reasoned judgment where the law and factual matrix of the case is discussed, provides lucidity and foundation for conclusions or exercise of judicial discretion by the courts.

24. Reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases (Wharton's Law Lexicon). Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty. As a matter of fact it helps in the observance of law of precedent. Absence of reasons on the contrary essentially introduces an element of uncertainty, dissatisfaction and give entirely different dimensions to the questions of law raised before the higher/appellate courts. In our view, the court should provide its own grounds and reasons for rejecting claim/prayer of a party whether at the very threshold i.e. at admission stage or after regular hearing, howsoever concise they may be.

25. We would reiterate the principle that when reasons are announced and can be weighed, the public can have

2024:PHHC:121593



assurance that process of correction is in place and working. It is the requirement of law that correction process of judgments should not only appear to be implemented but also seem to have been properly implemented. Reasons for an order would ensure and enhance public confidence and would provide due satisfaction to the consumer of justice under our justice dispensation system. It may not be very correct in law to say, that there is a qualified duty imposed upon the courts to record reasons.

26. Our procedural law and the established practice, in fact, imposes unqualified obligation upon the courts to record reasons. There is hardly any statutory provision under the Income Tax Act or under the Constitution itself requiring recording of reasons in the judgments but it is no more res integra and stands unequivocally settled by different judgments of this Court holding that the courts and tribunals are required to pass reasoned judgments/orders. In fact, Order 14 Rule 2 read with Order 20 Rule 1 of the Code of Civil Procedure requires that, the court should record findings on each issue and such findings which obviously should be reasoned would form part of the judgment, which in turn would be the basis for writing a decree of the court.

27. By practice adopted in all courts and by virtue of judge-made law, the concept of reasoned judgment has become an indispensable part of basic rule of law and, in fact, is a mandatory requirement of the procedural law. Clarity of thoughts leads to clarity of vision and proper reasoning is the foundation of a just and fair decision. In Alexander Machinery (Dudley) Ltd. [1974 ICR 120 (NIRC)] there are apt observations in this regard to say “failure to give

2024:PHHC:121593



reasons amounts to denial of justice”. Reasons are the real live links to the administration of justice. With respect we will contribute to this view. There is a rationale, logic and purpose behind a reasoned judgment. A reasoned judgment is primarily written to clarify own thoughts; communicate the reasons for the decision to the concerned and to provide and ensure that such reasons can be appropriately considered by the appellate/higher court. Absence of reasons thus would lead to frustrate the very object stated hereinabove.”

4 Relying on the above, learned counsel has vehemently argued that the petitioner is a *dominus litis* in the proceedings and that there was no relief which has been claimed against respondent No.3 and therefore, the application for impleadment of respondent No.3 ought not to have been allowed.

5 I have heard learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition with their able assistance.

6 It is evident from a perusal of the above that the application under Section 22 – C of the Legal Services Authorities Act, 1987, was preferred by the petitioner against the Chandigarh Housing Board. It was claimed by the petitioner that he is owner in possession of the house i.e. Dwelling Unit No.3079/1, Sector 47-D, Chandigarh and is residing there for the last more than 20 years. Initially the above said site was allotted to petitioner No.1 vide allotment bearing Memo No.5069 dated 15.01.1980

2024:PHHC:121593



and possession slip was also issued on 13.06.1980. Thereafter, by executing the General Power of Attorney, agreement to sell, affidavit, Special Power of Attorney and Will dated 28.11.1994 registered in the office of Sub Registrar U.T. Chandigarh. Petitioner No.1 sold the said dwelling unit to Sh. Raghbir Singh father of petitioner No.2 Gurnam Singh. The dwelling unit was further transferred in the name of petitioner No.2 vide agreement to sell dated 28.02.2008. On the basis of the transaction, petitioner No.2 approached the Chandigarh Housing Board vide application dated 25.07.2008 for transfer of the above said dwelling unit, on the strength of the GPA in his favour. It is contended that Raghbir Singh, however, unfortunately died on 03.03.2015 leaving behind petitioner No.2 as sole legal heir in respect of the above dwelling unit. After about 12 years, vide letter dated 17.02.2020 bearing Memo No.2100, the official respondents called petitioner no.2 for taking back the original document that were submitted by him on 25.07.2008 for transfer of the dwelling unit in his own name on the basis of the GPA without assigning any reason. Petitioner No.1 accordingly approached the respondent vide application No.CHB/2023/00795 dated 15.04.2023 i.e. after a period of almost three years for the grant of No Objection Certificate (NOC) for sale of lease hold rights of the subject cited dwelling unit in favour of petitioner No.2.

7 The respondent-Chandigarh Housing Board asked petitioner No.1 to carry out necessary corrections in the name of her father by submitting self attested copies of PAN and at the same time, petitioner No.2 was also asked to submit the clearance/NOC in respect of FIR No.183 dated

2024:PHHC:121593



18.09.2020, registered under Sections 427, 506 and 509 of the Indian Penal Code, 1860 registered at Police Station Sector 31, Chandigarh.

8 In response thereto, the petitioner No.1 submitted an affidavit dated 19.06.2023 stating that the actual name of her father was Nand Gopal Sabikhi but he was called as Muni Lal in the family and due to said reason, his name was inadvertently recorded as Muni Lal in the allotment letter issued by the office of the respondents. It was averred that Muni Lal and Nand Gopal Sabikhi are one and the same person and he is father of petitioner No.1. It was submitted that since name of her father was recorded as Muni Lal in the allotment letter itself, therefore, all the documents executed by her while selling the above said dwelling unit in favour of father of petitioner No.2, recorded the name of her father as Muni Lal. Further, petitioner No.2 has informed that the said FIR is in relation to a quarrel and was not related at all with the ownership of the house in question and therefore, the pendency of the same has no bearing on the final outcome Hence, the said application was filed before the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh, contending that the transfer of the house was not being done and was rejected on the ground that there was a mismatch of the name of the father of petitioner No.1 in the documents which are part of the record of the Chandigarh Housing Board as well as the documents that had been submitted by petitioner No.1.

9 It is also noticed that the application for impleadment had been filed by respondent No.3-Bhupinder Singh claiming that he was one of the co-owners of the above said dwelling unit No.3079/1, Sector 47-D,

2024:PHHC:121593



Chandigarh and that it was purchased by the applicant-respondent No.3 Bhupinder Singh and his two brothers Gurnam Singh and Satnam Singh in equal shares. It is submitted that one brother namely Gurnam Singh has colluded with the above said Prabha Sabikhi to get the house transferred in his name only when the said house was purchased jointly by all the three brothers and hence, they are necessary party in the present case.

10 Reply was filed by the petitioners in the above said application for impleadment and on consideration of the rival contentions, the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh, recorded as under:-

“The impleadment of the Intervener has been strongly resisted by the Learned counsel for the respondent stating that the Intervener is stranger to the proceedings. He has got no direct and legal interest, whatsoever, in the present proceedings.

Resultantly, it has been argued that the Intervener-Bhupinder Singh has got no right, title, interest or authority to be impleaded as a party.

On the other hand, it has been submitted that the property in question was not purchased by the brother of the Intervener alone. Rather, it was purchased long ago, by all the three brothers and now while hobnobbing with the owner-Prabha Sabikhi, Gurnam Singh has no right to get the property, transferred only in his name to the exclusion of other brothers.

After hearing rival contentions and perusing the file carefully, this Court is of the opinion that prima facie, it

2024:PHHC:121593



appears that the Intervener is a necessary party. The brother of the main applicant does not seem to be a stranger to the proceedings.

No doubt, the main applicant is dominus litis. But, it is true that when the Intervener has got direct and legal interest in the property, then tredding on the principle of "Audi Alteram Partem", this Court is of the opinion that opportunity should be given to the Intervener to be brought on record as respondent. This will also facilitate the Court to reach at just conclusion.

Resultantly, the application Under Order 1 Rule 10 of CPC is allowed. Intervener is ordered to be impleaded as a party. Let, the amended caption be placed on record while arraying the said Intervener as respondent.

To come up on 10.09.2024 for the said purpose.”

11 It is evident from the above that the petitioner No.2 is seeking a transfer of the above said dwelling unit in his own individual name whereas a rival claim is being set up by the applicant-respondent No.3 that the above said house was purchased by him along with the two brothers including petitioner No.2 herein and that the transfer of the property solely in favour of petitioner No.2 would have seriously affected their rights and that he is entitled to be heard.

12 Hence, the rights of an individual including the respondent No.3-applicant Bhupinder Singh would be prejudiced in the event of property being transferred exclusively in favour of petitioner No.2, more-so

2024:PHHC:121593



when a claim of ownership is raised with respect to the dwelling unit by the other two brothers. In so far as the judgment in the matter of Mohamed Hussain Gulam Ali Shariffi (supra) is concerned, the same would not be applicable to the facts of the present case since challenge in the said civil suit was to a notice issued by the Municipal Corporation, Mumbai against an illegal construction being raised. Since there was no element of a title dispute or any prejudice to the rights of the parties therein, hence, the applicant was held by the Hon'ble Supreme Court to not be a necessary party. The same is not the case in the facts of the present case. Further, the judgment in the matter of State Project Director, U.P. Education for All Project Board and others (supra) as referred to in para No.3 is an undisputed proposition in law. By impleading somebody as a party, the competent Court is required to examine the prima facie sustainability of an application and entitlement of the person showing semblance of prejudice to his rights. They thus become a necessary party since the order passed by the Permanent Lok Adalat (Public Utility Services), shall have a bearing on the rights of respondents No.3-applicant Bhupinder Singh in the event of the application being allowed by the Permanent Lok Adalat (Public Utility Services). Besides, I do not see as to what is the substantive prejudice that would be caused to the petitioner on the impleadment of respondent No.3 who claims to be a co-owner of the property having been jointly purchased by them.

13 In catena of cases the Hon'ble Supreme Court has held that if a party is able to prove that he is a necessary or proper party for the

2024:PHHC:121593



adjudication of a *lis*, they should be impleaded as party. A necessary party is one without whom, no order can be made effectively, a property party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings.

14 It is trite law that any party which may be adversely affected or may suffer civil consequences by such determination, must be heard before passing any order by the authority/Court. In the case of **Sumitbai and others Vs. Paras Finance Co. reported as (2007) 10 SCC 82** it was held:-

*“09. Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in **Kasturi vs. Iyyamperumal and others - (2005) 6 SCC 733**. He has submitted that in this case it has been held that in a suit for specific performance of a contract for sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. In our opinion, the aforesaid decision is clearly distinguishable. In our opinion, the aforesaid decision can only be understood to mean that a third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute. Obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit. That would unnecessarily protract or obstruct the proceedings in the suit. However, the aforesaid decision will have no application where a third party shows some semblance of title or interest in the property in dispute. In the present case, the registered sale deed dated 12.8.1960 by which the property was purchased shows that the shop in dispute was sold in favour of not only Kapoor Chand, but also*

2024:PHHC:121593



his sons. Thus prima facie it appears that the purchaser of the property in dispute was not only Kapoor Chand but also his sons. Hence, it cannot be said that the sons of Kapoor Chand have no semblance of title and are mere busybodies or interlopers.

*10. As observed by this Court in **State of Orissa vs. Sudhansu Sekhar Misra (AIR 1968 SC 647** vide para 13):-*

*13. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, LC said in *Quinn v. Leathem*, 1901 AC 495:*

*Now before discussing the case of *Allen v. Flood* (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all.*

2024:PHHC:121593



11. In Ambica Quarry Works vs. State of Gujarat & others (1987) 1 SCC 213 (vide para 18) this Court observed:-

18. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.

12. In Bhavnagar University vs. Palitana Sugar Mills Pvt. Ltd (2003) 2 SC 111 (vide para 59), this Court observed:-

59. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

13. As held in Bharat Petroleum Corporation Ltd. & another vs. N.R.Vairamani & another (AIR 2004 SC 4778), a decision cannot be relied on without disclosing the factual situation. In the same Judgment this Court also observed:-

9. Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

2024:PHHC:121593



In London Graving dock co. Ltd. vs. Horton (1951 AC 737 at p. 761), Lord Mac Dermot observed:

The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge.

10. *In Home Office vs. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said, Lord Atkin's speech is not to be treated as if it was a statute definition it will require qualification in new circumstances. Megarry, J. in (1971)1 WLR 1062 observed:*

One must not, of course, construe even a reserved judgment of Russell L. J. as if it were an Act of Parliament. And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said:

There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.

11. *Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*

12. *The following words of Lord Denning in the matter of applying precedents have become locus classicus:*

19. *Each case depends on its own facts and a close similarity between one case and another is*

2024:PHHC:121593



not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo, J.) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

xxx xxx xxx

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it.

14. In view of the aforesaid decisions we are of the opinion that Kasturi's case (supra) is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced."

15 Under the given circumstances, I find that the order passed by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh does

2024:PHHC:121593



not suffer from the vice of any illegality, impropriety or mis-appreciation of the evidence and documents before it as also the controversy before it. The instant writ petition is accordingly **dismissed in limine**.

September 16, 2024
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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