

114 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23358-2024 (O/M)
Date of decision : 13.09.2024

Charanjit Kaur (deceased) through LRs Petitioner

Versus

Financial Commissioner (Appeals) Punjab, and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sandeep Arora, Advocate
for the petitioner.

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HARSH BUNGER, J.

1. Petitioner has filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 02.08.2024 (Annexure P-8), passed by the learned Financial Commissioner (Appeals), Punjab (in short 'Financial Commissioner'), whereby the application filed by the petitioner seeking restoration of the revision petition (ROR-27-2024) was dismissed.

2. The operative part of impugned order dated 02.08.2024 (Annexure P-8) is reproduced as under :-

“2. The case was first listed on 19.01.2024 but the case could not be taken up and the case was adjourned to 01.03.2024 but proxy Counsel for the petitioner requested an adjournment and the case was adjourned to 19.04.2024 being last opportunity. However, case could not be taken up on 19.04.2024. The case was adjourned to 24.05.2024. The case was listed

on 24.05.2024 but neither petitioner nor any Counsel appeared till the rising of the Court. Therefore, the case was ordered to dismissed-in-default for non-appearance as well as for non-prosecution.

3. The Counsel for the applicant/petitioner filed restoration application which was listed on 19.07.2024 but the same could not be taken up and case was adjourned to 30.08.2024. Meanwhile, the applicant filed CWP No. 17372/2024 before the Hon'ble Punjab and Haryana High Court, who vide order dated 26.07.2024 remanded the case to this Court with direction to hear the case within four days from filing the application of pre-poning the case. Accordingly, the date was preponed from 30.08.2024 to 02.08.2024 which was scheduled to be listed on 30.08.2024. The Counsel for the petitioner/applicant heard. It was argued that Counsel could not come present on 24.05.2024 as Counsel got struck up in Hon'ble High Court. It transpires from the order of the Hon'ble High Court that the applicant has not disclosed the factum of restoration application. The applicant/petitioner, before the Hon'ble High Court, had requested to hear the revision petition along with stay application but did not disclose that their restoration application has not been restored yet. This is the concealment of facts, which shows that the petitioner/applicant has not approached this Court with clean hands. It shows the laxity on the part of the petitioner. The Courts cannot allow such waste of time of Court.

4. Accordingly, the restoration application is dismissed.”

3. In reference to the above extracted order, it would be apposite to notice a few facts, as would be necessary for the adjudication of the present case.

3.1 In the year 2008, respondent No. 2 (Mandeep Kaur) and one Devinder Singh filed an application for partition of joint land, situated at village Ganga Chak, Tehsil Dasuya, District Hoshiarpur, wherein the petitioner was also a co-sharer. The said partition application was decided by the Assistant Collector 1st Grade, Dasuya, vide order dated 21.03.2011.

3.2 An appeal filed by the petitioner against the aforesaid order dated 21.03.2011 was allowed by the learned Collector, Dasuya and the matter was remanded to the Assistant Collector for fresh decision. Thereafter, the partition case was again decided by the concerned Assistant Collector, vide order dated 05.03.2015.

3.3 It transpires that the petitioner preferred an appeal against the aforesaid order dated 05.03.2015, which was dismissed by the learned Collector, vide order dated 08.03.2016. A further revision petition filed by the petitioner before the learned Commissioner, Jalandhar Division, Jalandhar (in short 'Divisional Commissioner') was also dismissed, vide order dated 08.11.2023 (Annexure P-1).

3.4 Thereafter, the petitioner filed a revision petition (ROR-27-2024) before the learned Financial Commissioner, however, on account of non appearance of the counsel for the petitioner, the aforesaid revision petition (ROR-27-2024) was dismissed in default on 24.05.2024. It is noticed that a copy of the said order dated 24.05.2024 has not been attached with the writ petition.

3.5 According to petitioner, an application for recalling of order dated 24.05.2024 was filed, which was listed on 19.07.2024; however,

since learned Financial Commissioner was not holding court on said date, the case was adjourned to 30.08.2024.

3.6 Thereafter, the petitioner approached this Court by filing a writ petition (CWP-17372-2024) with the following prayer :-

“2. Issue a Writ in the nature of Mandamus seeking appropriate directions to the learned Financial Commissioner, Punjab to adjudicate the Stay application along with revision bearing No. 27 of 2024 as preferred by the petitioner challenging order dated 08.11.2023 passed by learned Commissioner, Jalandhar Division, Jalandhar as on 19.07.2024. Ld. Financial Commissioner has not taken up the matters while adjourning the same, no decision pertaining to the stay application has been passed and on the other hand, private respondents under the garb of the earlier orders passed in their favour are bent upon dispossessing the petitioner from the property which is the subject matter of the partition in the above proceedings referred above and therefore, in the present writ petition, the basic prayer of the petitioner is to direct Ld. respondent No. 1 to adjudicate upon the stay application by preponing the date of hearing while passing specific orders and till then, status quo with respect to possession of the respective property which is subject matter of the proceedings as well as is subject matter of the issue in the concerned case, may kindly be passed.”

(Emphasis supplied)

3.7 The aforesaid writ petition was listed for hearing before this Court on 26.07.2024 when Shri Kulwinder Singh (legal representative of deceased Charanjit Kaur) appeared in person and considering the above extracted prayer made by the petitioner, the writ petition was disposed of,

vide order dated 26.07.2024, the relevant extract of which reads as under:-

“3. Sh. Kulwinder Singh (legal representative of the deceased-Charanjit Kaur) is unable to show as to whether any application for preponement of the date of hearing in the aforesaid revision petition (ROR No. 27 of 2024) and/or the stay application has been filed before the concerned Court.

4. Be that as it may, in case an application for preponement of the date of hearing in the revision petition (ROR No.27 of 2024) is filed on behalf of the petitioner before the learned Financial Commissioner (Appeals), Punjab within a period of four days from today, the same shall be heard and the date of hearing in the revision petition (ROR No.27 of 2024) be preponed from 30.08.2024 to an earlier date; and on the preponed date, the stay application submitted along with the revision petition filed by the petitioner be decided at the earliest.

5. Further, the parties are directed to maintain status quo qua the possession (as existing today) until the aforesaid stay application filed along with the revision petition (ROR No.27 of 2024) is decided by the learned Financial Commissioner (Appeals), Punjab.

6. It is made clear that in case no such application is filed on behalf of the petitioner within a period of four days from today, then this order shall have no effect.

7. It is further made clear that the concerned Financial Commissioner shall decide the stay application/revision petition without being influenced by any of the observations made hereinabove.

8. Present writ petition is disposed of in the aforesaid terms.”

3.8 Infact, on 26.07.2024 no stay application of the petitioner was pending consideration before the learned Financial Commissioner as the main revision petition (ROR-27-2024) already stood dismissed for non prosecution on 24.05.2024 and only an application seeking recalling of order dated 24.05.2024 and restoration of ROR-27-2024, was pending.

3.9 Apparently, while filing the earlier writ petition, no prayer was made by the petitioner as regards consideration on the application for recalling and restoration of revision petition; rather, by way of clever drafting, an illusion of cause of action was created by stating that no decision pertaining to stay application has been passed and on the other hand, private respondents were bent upon dispossessing the petitioner from the property, which is subject matter of partition. Resultantly, the writ petition (CWP-17372-2024) was disposed of by this Court by directing parties to maintain status quo qua possession, as existing on that day till the decision of stay application filed alongwith revision petition filed by the petitioner.

3.10 It is well settled that the word 'right to sue' ordinarily means the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, i.e. the right to prosecute, to obtain relief by legal means. Thus, the right to sue is directly linked with the relief.

3.11 In my considered view, the relief sought by the petitioner in the earlier writ petition (CWP-17372-2024) i.e. seeking decision on the stay application, was not available to the petitioner on 26.07.2024 (the day when the writ petition was disposed of) because on the said date, the revision petition (ROR-27-2024) alongwith the stay application was

having no legal existence, as the same already stood dismissed on 24.05.2024. Therefore, there was no occasion for the petitioner to have sought relief as regards decision on the stay application filed alongwith ROR-27-2024.

4. In the aforementioned facts and circumstances, the impugned order dated 02.08.2024 (Annexure P-8), passed by learned Financial Commissioner cannot be faulted with.

5. At this stage, learned counsel for petitioner would contend that in para-11 of the writ petition (CWP-17372-2024), it was mentioned that revision petition was dismissed in default;, however, I am not impressed with the said submission for more than one reason. Firstly, learned counsel for petitioner, who was also the counsel in earlier writ petition (CWP-17372-2024), had not appeared on the date fixed i.e. 26.07.2024. Secondly, the order dated 24.05.2024 whereby the revision petition was dismissed for non prosecution was not attached with the earlier writ petition nor the same has been attached with present writ petition. Thirdly, in the earlier writ petition, no relief was sought by the petitioner for early consideration of application for recalling and restoration of revision petition, which was dismissed for non prosecution. Fourthly, by clever drafting in making a passing reference regarding dismissal of revision petition for non prosecution and not seeking relief with respect to the application for recalling/restoration of revision petition, rather seeking relief as regards decision on stay application, (which was legally non existent, being already dismissed for non prosecution alongwith revision petition ROR-27-2024), would clearly amount to abuse of process of court and law.

6. At this juncture, I am reminded of the observations made by Hon'ble the Supreme Court in ***S.P. Chengalvaraya Naidu Versus Jagan Nath (1994) 1 SCC 1***; wherein it was observed that the courts of law are meant for imparting justice between the parties and one who comes to the court, must come with clean hands. It was further observed that more often than not, process of the court is being abused. Property grabbers, tax evaders, bank loan dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely. Evidently, the partition proceedings in the case in hand are also pending since 2008.

7. In view of the above discussion, I do not find any merit in the present writ petition and the same is accordingly dismissed. Although, the aforementioned facts and circumstances call for imposition of costs, however, taking a lenient view, I refrain from doing so.

8. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

13.09.2024
sjks

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