IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.3791 of 2013 (O&M)
Date of Decision: 01.05.2014

Nirmal Singh and others

... Petitioner

Versus

Tarsem Singh and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Gurcharan Dass, Advocate,
for the petitioners.

Mr. Jai Bhagwan, Advocate,
for respondent Nos.1 to 4.

1. To be referred to the Reporters or not? ***Yes.***
2. Whether the judgment should be reported in the Digest? ***Yes.***

RAJIV NARAIN RAINA, J.

After having heard the learned counsel for the parties at some length and in order to remove apparent confusion caused by the improper presentation of a single application under Order 6 Rule 17 read with Section 151 CPC for amending the plaint and Order 1 Rule 10 CPC for impleading proposed defendant Nos.6 to 15 and with a view to stem the ill-effects of such a practice and the difficulty the trial Judge must face in passing a common order mixed-up by both law and facts I feel that it will serve the cause of justice more suitably if the learned trial Judge is asked to decide by separate orders the matters afresh after the applicant is called upon to file two independent applications with proper court fee affixed thereon and presented in the proper form. This would serve the ends of justice in a wholesome manner and make it easier for the trial court and this Court whenever such challenge is laid again.

As a prophylactic, trial courts should disallow acceptance of such clubbed applications at the threshold, and if insisted, they should be returned forthwith to their owners with liberty to file them afresh by removing such patent defects. This pernicious practice has started, as I have found recently in more than one case in my present roster to examine interlocutory orders in civil revisions, to be a growing baggage of unwanted litigation. It should be curbed immediately. The mode adopted by the plaintiff in presenting two requests in one application can create havoc on the *lis* by impairing a Judge to think rationally and purposively when he is already overburdened with judicial work weighed in units. One application-one order should be the norm scrupulously followed in the trial courts without any exception. If insisted, the Trial Courts should feel free to invoke their powers under Section 35B CPC to impose Costs.

When we examine such an issue as the one involving a clubbed application of the kind presented in this case, then by clubbing reliefs by intermingling facts necessary for the reliefs and causes of action and the pleadings, it is manifest that such a party is trying to steal a march by what appears either oblique motive or an engineering feat in delaying tactics thereby giving rise to a judicial dilemma not worth foisting on the already belaboured trial Judge. In the very nature of things the application under Order 1 Rule 10 CPC would have to be decided first to determine who should be added as parties in an ongoing suit. Once that is decided and if such parties are introduced each one of them would have a right to file their defence by presentation of a written statement admitting or denying the facts on which the plaintiff relies upon to obtain a decree. All such newly

added parties would have a right to do many things including filing or presenting set offs and counter claims, applications under Order 7 Rule 10 & 11 CPC, raising issues of limitations, seeking recall of witnesses examined by the plaintiff in their absence to face cross-examination, demanding reframing of issues, relying on burden and onus, and god-knows-what, and other lurking steps in the proceedings not known or imagined even to a trained legal mind. Then, if the proposed amendments are allowed then each of the newly added defendants would have a right to traverse the averments made in the original plaint plus counter and rebut the amendments as may be allowed by the court in the plaint by putting in written statements leading to recasting or adding new issues the necessity of which may arise and cannot be stopped when justice demands. The complications and complexities that may arise in the future of the suit are imponderable. To travel such lengths for a party to allow change of track and the nature and character of suits is a question which begs answers from case to case. The twosome prayers co-existing in a single bed may seem awkward bedfellows to a regimented legally trained mind and as one which would ought not to be seen to swim together, ride the same horse or if they are put in the same boat they cannot set sail in unison or cycle in tandem. More likely to drown together. This will make any Judge sweat and perspire if the winds of change are prayed for in one lot in one go.

To return; in the present case, the reasoning recorded in paragraph 4 of the impugned order, which is its operative part, to my mind, is the result occasioned by such confusion worse confounded by the joint application for no fault of the learned trial Judge. However, in order to make

constructive amends the same deserves to be revisited by separating the twin prayers to give the Judge a single window view to deal with facts of each of the applications separately and then to apply relevant legal principles as may be involved to help him in arriving at just conclusions before any final opinion is expressed on each of them on their merits. If this is done it would make it handy for this Court to see ultimately as to what weighed in the mind of the learned trial Judge in the interlocutory matters with far greater ease than obtaining today.

The High Court should not be stressed-out to deal with such a combined application compressed into one impugned order needlessly to unravel causing sheer wastage of its precious time in trying to separate what was so casually and mindlessly mixed-up in a cocktail by virtue of bad advice given by some trial lawyer to his client clubbing two disparate legal elements in a portmanteau application claiming amendment in pleadings and at the same time, in the same papers, seeking to introduce third parties in the pending litigation. Every minute of the High Court's time squandered involves colossal expenditure which is incapable of calculation and therefore recompense. The reward of justice is none other than justice and time consumed in trying to meet it is alone its justification as an end to the means. The time required today for deciding cases of other litigants waiting desperately in the courtroom for their cause to be taken up and decided stands reduced. Poor legal advice given to a client may result in paralyzing many cases for years together causing incalculable injury to just causes needing prompt attention. But bad legal advice tendered leading to filing of interlocutory applications is a judicially unacceptable legal principle or

ground itself for generosity in interference. This cannot operate as an exemption or a concession grantable to a litigant complaining that he has suffered because of ill advice to rescue an unsuspecting litigant from a predicament he may face. It has become almost a daily feature in court to wriggle out of the jamb to readily blame counsel without batting an eyelid and accept relief. If the Judge is expected to do his job so is the lawyer expected to assist the Court to the best of his ability. There is a presumption in law that a lawyer knows the law but there is no absolute presumption that a judge should know law. A judge is only called upon to balance the two sides of an argument presented before him.

But the bane is that the trial court unfortunately is not empowered to exercise summary jurisdiction of dismissal of misconceived, vexatious, frivolous, and mala fide applications designed only to obstruct the sound rhythm of a suit to achieve its target milestones within a reasonable time and bring it to fruition. Such power should deservedly be conferred on subordinate judges to deliver justice at the doorstep in *limine* without compromising the quality of justice delivered. But this is for Parliament to remedy and devise ways and means to achieve removal of obstructions designed to impede the life of a suit or wilt its many leaves.

Said Judge Learned Hand: *"Thou shall not ration justice"*

But time and energy spent in doing justice can be rationed. It can be rationalized to show better results. The trial courts can contribute in a large measure to this end by finding workable solutions thinking on their feet to do summary justice, a small example of what this case represents. The predecessor trial Judge should have returned the joint application in

2010 itself from the dais to its owner and saved valuable time of the court. He should have killed the weed before it grew. But now that has to be uprooted.

For the variety of reasons recorded above, I find no cogent ground to support the impugned order dated April 4, 2013 or to sustain it and to the contrary I think it is eminently fit to be set aside to avoid a failure of justice. It is accordingly so ordered. The matter is remitted back to the trial Judge for a re-consideration. The respondent/plaintiff is left free to file two separate applications, one under Order 6 Rule 17 and one under Order 1 Rule 10 CPC within a fortnight from the date of receipt of certified copy of this order. The defendants would file replies thereto within the next fortnight. Thereafter, the learned trial Judge would take up both the applications separately and proceed to dispose them of on merits after hearing the parties after following the rule "costs must follow the event" to its true import and meaning to compensate the aggrieved litigant of the precious time lost in what could have been resolved without any prolonged agony.

In the circumstances, and in order not to cause any prejudice to either party the fresh applications to be filed by the plaintiff will relate back by fiction to the date of the original misconceived and ill-thought combined application presented in the year 2010 so that neither party is affected by any legal disability arising during the intervening period if it were not so ordered, but if they are filed within the time frame fixed by this Court, as was agreed upon.

A copy of this order may be circulated amongst the learned

District & Sessions Judges to avoid any recurrence.

(RAJIV NARAIN RAINA)
JUDGE

01.05.2014
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