

CR No.4828 of 2023 (O&M)

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2023:PHHC:110117

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(129)

CR No.4828 of 2023 (O&M)

Date of Decision: 23.08.2023

Raj Bala and another

....Petitioners

Versus**Rishabh Birla and others**

..... Respondents

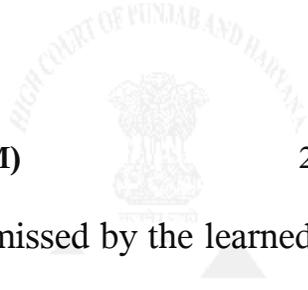
CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Vaibhav Narang, Advocate
for the petitioners.

VIKRAM AGGARWAL, J. (ORAL)

1. The present revision petition assails the order dated 11.08.2023, passed by the District Judge, Gurugram, vide which the transfer application filed by the present petitioners seeking transfer of Civil Suit No. CS/1615/2023, titled as Rishabh Birla and others Vs. Mrs. Raj Bala and another, from the Court of Sh. Harsh Kumar Singh, Civil Judge (Junior Division), Gurugram, to some other Court of competent jurisdiction was dismissed.

2. The facts, as emanating from the revision petition are that a civil suit for possession by way of specific performance along with declaration and permanent injunction was filed by respondents no.1 and 2-plaintiffs against the present petitioners and proforma respondents no.3 and 4. An application under Order VII Rule 11 CPC was filed by proforma respondent no.3. At the time of arguments, the present petitioners also sought an opportunity to address arguments on the said application, which according to the petitioners was denied by the Court. This raised an apprehension in the minds of the present petitioners that they would not get justice from the Court. Some heated exchange of words is also said to have taken place. Under the circumstances, the petitioners preferred a transfer



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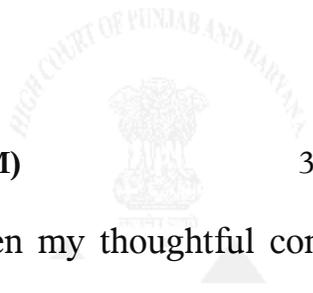
petition, which was dismissed by the learned District Judge, Gurugram, leading to the filing of the present revision petition.

3. Though, notice of motion has not been issued, Mr. Chandan Deep Singh Advocate, has put in appearance on behalf of respondents no.1 and 2 and has filed his power of attorney. Mr. Shiva Handa, Advocate, has put in appearance on behalf of respondent no.3 and has filed his memorandum of appearance.

4. Learned counsel for the petitioners has strenuously urged that because of the fact that the petitioners were denied an opportunity of hearing by the trial Court and the matter was straightway fixed for orders on the application filed under Order VII Rule 11 CPC, the petitioners are having an apprehension that they will not get justice from the Court concerned. Under the circumstances, they moved an application for transfer, which was also rejected by the District Judge, Gurugram. It has been submitted that the matter was not examined from the correct perspective and that the transfer application, should, in-fact, have been allowed.

5. Learned counsel representing respondents no.1 and 2 has opposed the prayer made by learned counsel for the petitioners submitting that the trial Court has been adjourning the matter after 21.07.2023 only on the ground of pendency of the transfer application and subsequently on the request made by the present petitioners that a revision petition was being filed against the order passed by the District Judge, Gurugram. Learned counsel submits that the apprehension expressed by the petitioners is unfounded and that the trial Court did not display any haste.

6. Learned counsel for proforma respondent no.3 has, however, supported the case of the petitioners.

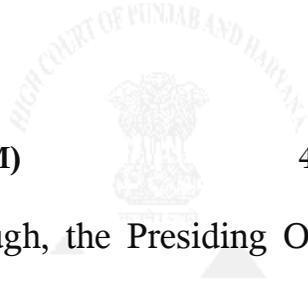


7. I have given my thoughtful consideration to the issue in hand. The issue seems to have arisen on 21.07.2023 when arguments on the application under Order VII Rule 11 CPC were being addressed. The order dated 21.07.2023 is on record as Annexure P-3. It reads as under:-

“The case was fixed for arguments on application under Order VII Rule 11 of CPC. The same has been addressed by the learned counsel for applicant/defendant no. 3 and respondents/plaintiffs before lunch break as well as after lunch break. Arguments of learned counsel for applicant/defendant no. 3 and the learned counsel for respondents/plaintiffs lasted for more than two hours. At this juncture, Sh. Sandeep Phogat learned counsel for defendants no. 1 & 2 already present before the Court has submitted that he wants to submit brief arguments regarding the application under Order VII Rule 11 of CPC of applicant/defendant no. 3. Sh. Sandeep Phogat learned counsel for defendants no. 1 & 2 was allowed to argue that too without having any say on the application under Order VII Rule 11 of CPC of applicant/defendant no. 3. When the undersigned asked Sh. Sandeep Phogat learned counsel for defendants no. 1 & 2 to conclude/sum up his arguments, suddenly he became furious and raised his voice in improper manner and stated in the presence of other Bar Members and Bench Clerks that in 17 years of his career he has not been asked by any Presiding Officer to cut-short or sum up his arguments.

On this, the undersigned has apprised Sh. Sandeep Phogat the learned counsel for defendants no. 1 & 2 that it is not the only case which is required to be heard today as other cases for hearing are still on Board and pending. However, without losing the calm, still keeping in view the interest of the parties to the suit Sh. Sandeep Phogat learned counsel for defendants no. 1 & 2 has been heard at length that too when he has not moved any application under Order VII Rule 11 of CPC. This Court is conscious of the fact that moving an application is not a condition precedent to address arguments or assist the Court in which the party concerned is having interest but at the same time an equal duty casts upon the counsels to argue the cases relevantly, rather than carrying the burden of unnecessary arguments. The behaviour of Sh. Sandeep Phogat learned counsel for defendants no. 1 & 2 was uncalled for which has in fact disturbed the congenial atmosphere of the Court. However, this Court is taking a lenient view and is not proceeding further. Now to come up on 27.07.2023 for pronouncing the order on application under Order VII Rule 11 of CPC.”

8. A perusal of the aforesaid order shows that some heated words were exchanged between learned counsel representing the present petitioners and the



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Presiding Officer. Though, the Presiding Officer mentions in the order that the Presiding Officer did not loose his cool, it is maintained by the petitioners that this is factually wrong. Be that as it may, in the transfer petition filed before the District Judge, Gurugram, the District Judge, Gurugram examined the matter after having sought the version of the Presiding Officer also and thereafter came to the conclusion that no case for transfer of the case was made out.

9. I do not find any illegality in the order passed by the District Judge, Gurugram. In-fact, the order is a detailed and a very well reasoned order. It has to be kept in mind that during the course of arguments, at times, though not called for, temperatures do run high. However, this alone would not be reason enough for an apprehension to crop up in the minds of any of the parties that they would not get justice from the Court concerned. At the same time, it is for the Presiding Officers also to ensure that no acts of theirs gives rise to such an apprehension. The Bar Members, on the outerhand, also expected to maintain decorum in the Court.

10. Since this Court finds no reason to set aside the order passed by the District Judge, Gurugram, vide which the transfer application filed by the petitioners was dismissed, the present revision petition is dismissed. However, the Court concerned is expected to give a fair hearing to all sides (as per law) before taking a final decision on the application filed under Order VII Rule 11 CPC for rejection of the plaint. This should set at rest any apprehension expressed by the parties to the *lis*.

August 23rd, 2023
Rekha

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.

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