

(2002) 03 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 3950-CII of 2002 in Civil Miscellaneous No. 11965-CII of 2001 in C.R. No. 5945 of 1999

Jaipal Singh Sibia

APPELLANT

Vs

Ashwani Kumar Bansal and Others

RESPONDENT

Date of Decision : 18-03-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 2003 P&H 280 : (2002) 3 RCR(Civil) 18

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : Parveen C. Goyal, for the Appellant; Chetan Mittal, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—This is an application under Sections 152, 153 read with Section 151 C.P.C. It is stated in the application that the petitioner had filed Civil Revision No. 5945 of 1999, seeking therein setting aside of the order dated 12.11.1999, wherein the evidence of the revision-petitioner had been closed by the Rent Controller. In support of the aforesaid revision, an affidavit was also filed. According to the applicant, due to the mistake of the stenographer the title of the revision petition was styled as follows:-

"i. Jagjit Singh Sibia s/o Late Sh. Kulwant Singh Sibia.

ii. Jaipal Singh Sibia s/o Sh. Jagjit Singh Sibia. Petitioner

Versus

i. Ashwani Kumar Bansal s/o B.K. Bansal.

ii. Anil Kumar Bansal s/o Sh.B.K. Bansal. Respondent.

2. The affidavit in support of this petition is ostensibly filed by Jagjit Singh Sibia.

This affidavit is dated 29.11.1999, The power of attorney in support of the revision petition is in the name of Jaipal Singh Sibia and is also signed by Jaipal Singh Sibia. It is stated that the Stenographer mechanically typed the names of both the parties i.e. Jagjit Singh Sibia and Jaipal Singh Sibia in the title of the Revision Petition. The confusion arose, submits the learned counsel, because both Jagjit Singh Sibia and Jaipal Singh Sibia were respondents before the Rent Controller. In routine the stenographers printed the names of both the respondents as Revision petitioners. Otherwise according to the applicants, Jagjit Singh Sibia had no occasion to file the revision petition as had not even been served the revision petition was decided by this Court on 9.12.1999. The order closing the evidence was set aside. The present application has been necessitated as one of the respondents in the present applications i.e. the landlords-Ashwani Bansal has lodged a complaint u/s 156 of the Code of Criminal Procedure on the basis of which an FIR has been registered against the applicant-petitioner in the police Station North. The applicants have associated with the police investigation. Report was filed by the police that no offence has been made out. However, the respondents have subsequently made the request for re-investigation of the case.

3. Reply has been filed to this application. It has been stated that petitioner No. 1 Jagjit Singh Sibia is the father of petitioner No. 2 Jaipal Singh Sibia. Both are living in the same house and are having one common Kitchen. Premises were taken on rent jointly. The landlord had filed an eviction petition on the ground of non-payment of rent and change of user. Order of eviction was passed on 29.4.2000. Thereafter, Jagjit Singh Sibia filed an application under Order 9 Rule 13 C.P.C. on 17.7.2000 on the ground that he was not aware of the petition and he was not served. He took a stand that he only came to know on 6.6.2000 when the police came to arrest him in FIR No. 233 of 17.5.2000. This FIR, however related to a lease deed which was stated to have been forged. The application for setting aside the ex parte order has been dismissed by the Rent Controller on 28.1.2002. Now in order to get out from the aforesaid order, the present application has been filed for correcting the title of the Civil Revision No. 5945 of 1999 and the affidavit dated 29.11.1999.

4. I have heard the counsel for the parties at length.

5. Mr. Goel has submitted that the present applicant had nothing to gain by mis-describing the petitioners in the title of the revision petition. Furthermore, it was not necessary to give the name of Jagjit Singh Sibia on the top of the affidavit when the same has been signed by Jaipal Singh Sibia. On the other hand Mr. Mittal had vehemently argued that this Court has no jurisdiction to order any such correction under Sections 152 and 153 of the Code of Civil Procedure. Learned counsel has farther submitted that if a criminal offence has been committed, the same would be investigated, in accordance with law.

6. I have given my anxious thought to the submissions made by the learned counsel for the parties. A bare perusal of the application filed by the applicant-

petitioner shows that it has been filed invoking the inherent powers of this Court u/s 151 C.P.C. Therefore, the application cannot be read as an application for correction of a clerical error under Sections 152 and 153 C.P.C. only. This Court has ample power u/s 151 of C.P.C. to make such orders as may be necessary for the ends of justice. But the power must be exercised with caution and due diligence with the object to prevent miscarriage of justice or to prevent the abuse of the process of Court. The limits within which this power is to be exercised has been very vividly summed up by the Hon'ble Supreme Court in the case of *The Newabganj Sugar Mills Co. Ltd. and Others Vs. The Union of India (UOI) and Others*, . In paragraph 6 of the judgment, Krishna Iyer, J. approvingly quoted a passage from Benjamin Cardozo's "The Nature of the Judicial Process, Yale University Press (1921) which is as under:-

"The Judge, even when he is free, is still not wholly free. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in social life." Wide enough in all conscience is the field of discretion that remains."

7. Keeping the aforesaid limitation at the forefront, this Court has examined the facts and circumstances of the present application. From the facts, which have been narrated above, it has become obvious that there was hardly any necessity for Jaipal Singh Sibia to sign on the vakalatnama for Jagjit Singh Sibia with regard to the civil revision No. 5945 of 1999, which was being pursued by Jaipal Singh Sibia. Furthermore, it is not unknown that the Stenographers while typing out the names of the parties in appeal or Revision in High Court refer to the array of parties in the court below. Since before the Rent Controller, the proceedings were going on against Jagjit Singh Sibia and Jaipal Singh Sibia, the revision petition has also been typed in the name of Jagjit Singh Sibia and Jaipal Singh Sibia. No sinister motive can be read into the such a causal mistake. I am of the considered opinion that no prejudice whatsoever would be caused to the case of the landlord if the mis-description in the title of the revision petition or in the affidavit, are corrected. As noticed earlier, Civil Revision No. 5945 of 1999 was decided on 9.12.1999. The objections pointed out now were never raised by the landlord on that occasion. The very same affidavit dated 29.11.1999 was relied upon by the applicants in support of the Revision Petition. The present application has been filed on 4.4.2001. Therefore, it cannot be said by any stretch of imagination that it has been filed because the application filed by Jagjit Singh Sibia under Order 9 Rule 13 of the CPC has been dismissed. This application has been necessitated to avoid unnecessary harassment in criminal proceedings which had been initiated at the instance of the landlords. I am, therefore, unable to accept the submission of Mr. Mittal that the application is either mis-conceived or not moved bona fide. It is a fit case to invoke the inherent jurisdiction of this Court to prevent unnecessary harassment to the

applicant and to prevent miscarriage of justice on account of a careless mistake committed by the stenographer of the applicants.

8. In view of the above, the application is allowed, as prayed by deleting the name of Jagjit Singh Sibia from the array of parties in Civil Revision No. 5945 of 1999, and by substituting the name of Jaipal Singh Sibia in the place of Jagjit Singh Sibia in the affidavit dated 29.11.1999. No costs.