
(2018) 07 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 430 of 2017

Sunil Kumar

APPELLANT

Vs

Dina Nath And Others.

RESPONDENT

Date of Decision : 12-07-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 151, Order 1 Rule 10

Citation : (2018) 07 SHI CK 0012

Hon'ble Judges : AJAY MOHAN GOEL, J

Bench : Single Bench

Advocate : Dheeraj K. Vashisht, Vive Singh Attri, Ajay Sharma

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J .

1. By way of this petition, the petitioner herein has laid challenge to order dated 16.8.2017 passed by the learned trial court on an application filed

before it by the present petitioner under Order Order 1 Rule 10 read with Section 151 of CPC, whereby the request of the present petitioner to

implead one Ajay Kumar, who earlier was plaintiff in the suit along with petitioner as defendant in the suit stands rejected.

2. Undisputed facts are that a suit stands filed against the present respondents/ defendants in the Court of learned Senior Civil Judge Court No1, Una

by the present petitioner, in which Ajay Kumar also was a plaintiff. Subsequently, on an application so filed by Ajay Kumar, he was permitted to

withdraw as plaintiff from the suit.

Following this order, present petitioner filed an application under Order 1 Rule 10 of CPC, praying therein that in view of the subsequent developments

as Ajay Kumar had colluded with the defendants, therefore, he was a necessary party and he be impleaded as a proforma defendant. This prayer of

the present petitioner has been rejected by the learned trial court, vide impugned order dated 16.8.2017.

3. I have heard learned counsel for the petitioner as also learned counsel for the respondents.

4. In my considered view, there is no infirmity with the order passed by the learned trial court, whereby it has not found merit that the application so

filed by the present petitioner for impleading Ajay Kumar as defendant. This is for the reason that the suit originally filed though was on behalf of two

plaintiffs, but yet relief sought therein was against the persons who were impleaded as defendants therein and in my considered view even if Ajay

Kumar has chosen not to pursue the present suit, yet petitioner Sunil Kumar who now is the sole plaintiff in the suit has the right to continue with his

suit which so stands filed against the defendants and learned trial court is bound to decide the same on merit.

The apprehension of the petitioner that non impleadment of Ajay Kumar as a party defendant would render the plaint as defective, in my considered

view is misconceived for the simple reason that he did choose to array Ajay Kumar as a party proforma defendant and since his application in this

regard stands rejected by the learned trial court and rightly so, therefore, the factum of Ajay Kumar not being there as a proforma defendant by no

stretch of imagination can be said to be fatal for the sole plaintiff. In view of above observation, as there is no merit in the petition, as the petition of

the petitioner is misconceived, the petition is dismissed in above terms, so also pending miscellaneous applications, if any.