
(2019) 10 SHI CK 0099
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 264 of 2019

Sunka Ram & Another

APPELLANT

Vs

Sukh Dev & Another

RESPONDENT

Date of Decision : 22-10-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 13 Rule 10, Order 8 Rule 1A(3)

Citation : (2019) 10 SHI CK 0099

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Lalit Kumar Sehgal, Naresh K. Sharma

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J

1. By way of this petition, petitioners/defendants have challenged two orders passed by learned Civil Courts i.e. (a) Order dated 04.05.2019, passed by learned Civil Judge (Junior-Division), Court No.3, Ghumarwin, District Bilaspur, H.P., in case C.M.A. No.203-6/2019, in Civil Suit No.414-I/17/10, titled as Sukh Dev & Another Versus Sunka Ram & Another, vide which an application filed by the petitioners under Order 13, Rule 10 of the Code of Civil Procedure, has been dismissed; and (b) Order dated 08.04.2019, passed by the Court of learned Civil Judge (Junior Division), Court No.3, Ghumarwin, District Bilaspur, H.P., in case C.M.A. No.163-6/2019, in Civil Suit No.414-I/17/10, titled as Sukh Dev & another Versus Sunka Ram & another, vide which an application filed by the petitioners under Order 8, Rule 1-A (3) of the Code of Civil Procedure has been dismissed.

2. I have heard learned counsel for the parties and have also gone through the impugned orders as well as other documents appended with the petition.

3. It is not in dispute that the suit has been filed by the present respondents against the petitioners as far back as in the year 2010. These applications

admittedly have been filed in the year 2018. The applications have been dismissed by learned Court below inter alia by holding that the same were cryptic.

4. While dismissing the applications filed by the petitioners under Order 13, Rule 10 of the Code of Civil Procedure, the learned Court below held that in the application, it was not mentioned as to in what manner the record pertaining to Civil Suit No.723/1 of 2011, was vital for the adjudication of the suit, especially in view of the fact that vide order dated 08.04.2019, an application under Order 8, Rule 1-A (3) of the Code of Civil Procedure filed by the petitioners, with a prayer to bring on record the copy of Tatima, stood dismissed on the ground that the petitioners had failed to establish relevancy of the Tatima in the case in hand. Learned Court below also held that petitioners had failed to establish that they were not in a position to procure authenticated copy of the record. Thus as the application filed by the petitioners was without any merit, the same deserved dismissal.

5. Similarly, while dismissing the application under Order 8, Rule 1-A (3) of the Code of Civil Procedure, learned Court below returned the findings that the statutory provisions contemplated that opportunity for producing documents to a party can be granted, however, the same is subject to the party satisfying the Court that the documents were germane for the purposes of adjudication of the lis as also allowing the application would not cause any prejudice to the other party.

6. Learned Court held that in the application, petitioners had not even mentioned that the documents were essential for the complete and just adjudication of the matter and earlier documents could not be placed on record despite due diligence on their part. Learned Court also took note of the fact that an earlier application filed under Order 8, Rule 1-A (3) of the Code of Civil Procedure, praying for leave to produce on record some documents, stood dismissed as withdrawn.

7. A perusal of the applications which were filed by the petitioners before the learned trial Court, in which the impugned orders have been passed, demonstrates that the same indeed were cryptic and vague. It appears that filing of the applications was taken as a mere formality by the party concerned. In the application which stood filed under Order 8, Rule 1-A (3) of the Code of Civil Procedure, there is no specific pleading as to why despite due diligence, the documents which were being sought to be produced on record by way of said application, could not have been so placed by the petitioners on record earlier. Not only this, as it is a matter of record that earlier also an application filed under Order 8, Rule 1-A (3) of the Code of Civil Procedure, wherein the same relief was prayed for, stood dismissed by the learned trial Court as withdrawn without liberty to file another application, therefore also new application praying for the same relief was not maintainable.

8. Similarly, as I have already mentioned above also, the application which was filed by petitioners, under Order XIII, Rule 10 of the Code of Civil Procedure, also did not fulfill the statutory requirements. Order XIII, Rule 10 (2) of the Code of Civil Procedure envisages that whenever an application is filed under the said rule, the same is to be supported by an affidavit wherein the applicant has to demonstrate as to how the record is material to the suit in which the application is being made and that the applicant could not without any reasonable delay or expenses obtain a duly authenticated copy of the record or of such portion thereof as the applicant required or that the production of original was necessary for the purpose of justice. In fact in the case in hand, the application which was filed by the petitioners was not even supported by any affidavit whatsoever.

9. Therefore, in the absence of there being cogent and clear cut pleadings made in the applications, the orders passed by the learned trial Court, vide which the applications stand dismissed, cannot be faulted with.

10. Learned Counsel for the petitioners has submitted that a party cannot be made to suffer for negligence on the part of learned counsel. In my considered view, this is a routine mundane argument which this Court finds is made in each and every case wherever the Court finds that pleadings are defective.

11. The fact of the matter remains that the Court is not to see the interest of one party only because there is other litigant also which is the other party involved in the lis and the Court has to view all aspects of the matter in an equitable manner and not with myopic vision, keeping in view interest of one party only. Whenever, a party approaches a Court of Law either as a plaintiff or defendant, due diligence has to be exercised by it and as far as role of counsel is concerned, the counsel only submits and states before the Court what is instructed by the party. Therefore, the contention of the learned counsel that a party should not suffer for the fault of the counsel is without any merit as far as the present lis is concerned.

12. In view of the observations made hereinabove, as this Court does not find any infirmity with the impugned orders, the same are dismissed. No order as to cost. Interim order, if any, stands vacated. Pending application, if any, is dismissed as withdrawn, but without liberty.