
(1985) 05 P&H CK 0109

High Court Of Punjab And Haryana At Chandigarh

Case No: Second Appeal From Order No. 13 of 1985

Parbhu Ram alias Phul Singh

APPELLANT

Vs

Molu Ram and others

RESPONDENT

Date of Decision: May 29, 1985

Hon'ble Judges: J.V. Gupta, J

Bench: Single Bench

Advocate: H.L. Sarin and Mr. M.L. Sarin, for the Appellant; N.D. Achhint, for the Respondent

Final Decision: Allowed

Judgement

J.V. Gupta, J.

This is Plaintiff's second appeal whose suit for the grant of the mandatory injunction was decreed by the trial Court, but the laid decree was set aside in appeal and the case was remanded to the trial Court for fresh decision on merits.

2. The Appellant filed the suit for the grant of the mandatory injunction directing the Defendants to remove the obstruction in the free flow of salvage and rain water of his house. During the pendency of the suit, on June 4, 1983, the parties and their counsel made the statement that Shri I.S. Bhatia, Advocate, Jagadhari, be appointed as a referee in the case. He was so appointed by the trial Court with the direction that he shall visit the spot and shall provide the proper way for the discharge of the water from the house of the Plaintiff. He was directed to submit his report on or before July 18, 1983. However, the report was not submitted by then and the case was adjourned to July 23, 1983, for awaiting the said report. On that day, an application was filed by the Defendants to the effect that they did not want to get the matter decided through the said referee as it had transpired then that the Plaintiff was the real uncle of the referee. Reply to the said application was filed on July 26, 1983, wherein it was submitted that the apprehension of the Defendants was unfounded and that it was very well known to them even at the time when the statement was made on June 4, 1983, for his appointment as a referee. Ultimately,

the trial Court dismissed the said application. The referee filed his report on September 16, 1983. Objection to the said report were filed on behalf of the Defendants. Consequently, the issue was framed as to whether the report of the referee was liable to be set aside. The trial Court came to the conclusion that the decision given by the referee was binding upon the parties. Consequently, the award given by the referee was made the rule of the Court vide order dated July 19, 1984. Dissatisfied with the same, the Defendants filed appeal. The learned Additional District Judge relying upon the judgment of this Court in *Gian Chand Sharma v. Bansilal* A.I.R. 191 P&H 31, wherein it was held that a party making an offer for the appointment of a referee can resile from the same before the statement is actually made by the referee, allowed the appeal, set aside the decree of the trial Court and remanded the case to it for fresh decision, as noticed in the earlier part of this judgment. Dissatisfied with the same, the Appellant has come up in this second appeal to this Court.

3. The Learned Counsel for the Appellant contended that the judgment of this Court in *Gian Chand Sharma's* case (supra), relied upon by the lower Appellate Court was overruled by the Full Bench of this Court in *Florabel Skinner v. J.B.K.M. Ram Lila Mandal*, Hissar AIR 1980 P&H. 284. Thus, argued the Learned Counsel, the report of the referee was binding upon the parties and the decree of the trial Court could not be set aside on that ground by the lower appellate Court. On the other hand, the Learned Counsel for the Defendants-Respondents submitted that in the said Full Bench decision of this Court an exception was recognised to the effect that if, in a given case, sufficient cause is shown to the satisfaction of the Court and the Court is satisfied, It may permit a party to resile from the admission. Thus, according to the Learned Counsel, the present case fell within the said exception and therefore, the Full Bench judgment of this Court in *Florabel Skinner's* case (supra), was not applicable to the present case.

4. After hearing the Learned Counsel for the parties. I am of the considered opinion that in view of the above said Full Bench judgment of this Court whereby the Single Bench decision of this Court in *Gian Chand Sharma's* case (supra), was overruled, the impugned order is liable to be set aside. Even the exception carved out in the above-said Full Bench judgment of this Court is of no help to the case of the Defendants because their application dated July 23, 1983, for the removal of the referee for the reasons stated therein, already stood dismissed by the trial Court on July 27, 1983.

5. Faced(sic) with this situation, it was urged on behalf of the Defendants that in the appeal, the Defendants were entitled to challenge the order of the trial Court on merits. Since the lower Appellate Court had not decided the appeal on merits, the case be remanded to it for fresh decision against the order of the trial Court dated July, 19, 1984, in accordance with law.

6. Consequently, this appeal succeeds and it allowed. The impugned order of remind is set aside and the case is sent back to the Additional District Judge, Ambala, for decision on merits in accordance with law The parties have been directed to appear in his Court on July 29, 1985.