

---

A perusal of clause 2(a) (iv) shows that when a juvenile who is convicted for a murder with an offence under the TADA Act is not entitled to premature release by extending the benefit of clause 2(c) of the instructions. The petitioner has made an attempt to take advantage of the fact that two separate FIRs have been registered against him to create an impression that both the FIRs are based on two separate occurrences. In fact it is not so. Both the FIRs have been registered with a gap of 3 days and it is evident that the recovery of knife, which is covered by TADA Act, was made during investigation after the registration of first FIR. The knife was the weapon of offence for committing the murder of one Ram Bhaj. Had the occurrence mentioned in the later FIR No. 249 dated 28th December, 1985 was distinct and different than the earlier FIR then the case of the petitioner would have been covered by clause 2(c) of the instructions dated 12th April, 2002 and the benefit of that clause could have been given. I do not find any ground to extend the benefit of the aforesaid clause to the petitioner. Therefore, the impugned order dated 20th November, 2002 passed by the Principal Secretary (Annexure P. 7) does not suffer from any legal infirmity and the same is upheld. The petition stands dismissed.

---

**R.N.R.**

*Before V.M. Jain, J*

M/S WIMCO LTD.,—*Petitioner*

*versus*

HORAM & OTHERS,—*Respondents*

*C.R. No. 261 of 2003*

4th November, 2003

*Code of Civil Procedure, 1908—O.1 R1.10, O.22 R1.10—Petitioner purchasing property during pendency of a suit — Whether he can be impleaded as defendant under O.1 R1.10—Held, no—However, under O.22 R1.10 he is entitled to defend the suit on behalf of defendants/vendors.*

*Held*, that in view of the provisions of Order 22 Rule 10 CPC even if the petitioner could not be impleaded as a defendant under Order 1 Rule 10 CPC still the applicant-petitioner could be allowed

---

to defend the suit on behalf of its vendors (defendants) as the applicant had purchased the suit property during the pendency of the suit. After having sold the suit property, the defendants (vendors of the applicant) would be left with no interest in the suit property and in such circumstances, it would be appropriate to allow the applicant to safeguard its interest by defending the suit (on behalf of its vendors). Since the applicant-petitioner had purchased the suit property during the pendency of the suit and is being allowed to defend the suit on behalf of its vendors, needless to say that the applicant-petitioner would not be entitled to file a fresh written statement and/or to take a new stand, other than the stand already taken by the defendants, who had sold the suit property to it during the pendency of the suit.

(Para 5)

R.K. Jain, Advocate, for the petitioner.

Rajiv Sharma, Advocate, for the respondents.

### JUDGMENT

**V.M. JAIN, J.**

(1) This revision petition has been filed by the applicant-petitioner M/s Wimco Limited against the order dated 18th September, 2002, passed by the trial Court, dismissing the application filed by the applicant under Order 1 Rule 10, CPC, for being impleaded as a defendant in the suit.

(2) Horam and Mahipal had filed a suit for declaration and permanent injunction against Lal Singh, etc. During the pendency of the said suit, an application under Order 1 Rule 10, CPC, was filed by the applicant-petitioner M/s Wimco Limited, for being impleaded as one of the defendants on the ground that the applicant-Company had purchased land measuring 168 kanals 10 marlas and that the land involved in the present suit formed part of the said land which was purchased by it and the applicant-Company was also in possession thereof. It was alleged that even though the plaintiffs knew about this fact but knowingly and intentionally they had not impleaded the applicant-Company as necessary party in the suit. It was alleged that impleading the applicant-Company as a defendant in the suit, was necessary and essential in the interest of justice and for proper

---

adjudication of the matter involved in the suit. The said application was contested by the plaintiffs by filing reply and alleging therein that the applicant-Company was not a necessary party inasmuch the applicant-Company had purchased the suit land during the pendency of the suit and as such, could not be impleaded as a party in the suit. After hearing both the sides and perusing the record, the trial Court dismissed the application of the applicant-Company under Order 1 Rule 10, CPC,—*vide* order dated 18th September, 2002. Aggrieved against the same, the applicant-Company filed the present revision petition in this Court. Notice of motion was issued.

(3) I have heard learned counsel for the parties and have gone through the record carefully.

(4) Learned counsel for the plaintiff-respondents submitted before me that the trial Court had rightly dismissed the application of the applicant-petitioner under Order 1 Rule 10, CPC, inasmuch as the petitioner having purchased the suit property during the pendency of the suit, was not a necessary or proper party and could not be impleaded as a defendant under Order 1 Rule 10, CPC. Reliance was placed on **Sarvinder Singh versus Dalip Singh and others (1)**. On the other hand, learned counsel for the petitioner-Company submitted before me that even if the petitioner could not be impleaded as a defendant under Order 1 Rule 10, CPC, still the petitioner was entitled to be allowed to defend the suit on behalf of its vendors as provided under Order 22 Rule 10, CPC. In Sarvinder Singh's case (*supra*), it was held by the Hon'ble Supreme Court that the person who had purchased the suit property during the pendency of the suit, could not be held to be a necessary or proper party and could not be impleaded as a party under Order 1 Rule 10, CPC, especially when the alienation was hit by the doctrine of *lis pendens* by operation of Section 52 of the Transfer of Property Act. In view of the law laid down by the Hon'ble Supreme Court in this authority, in my opinion, the learned trial Court was perfectly justified in dismissing the application of the applicant-petitioner under Order 1 Rule 10, CPC. However, the applicant could certainly be allowed to defend the suit on behalf of its vendors, especially when the

---

(1) 1996 (5) S.C.C. 539

---

applicant-petitioner Company had purchased the suit property during the pendency of the suit, as provided under Order 22 Rule 10, CPC, which reads as under :—

“10. **Procedure in case of assignment before final order in suit.**—(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) xxx                      xxx                      xxx”

(5) In view of the provisions of Order 22 Rule 10, CPC, referred to above, in my opinion, even if the petitioner could not be impleaded as a defendant under Order 1 Rule 10, CPC, still the applicant-petitioner could be allowed to defend the suit on behalf of its vendors (defendants) as the applicant had purchased the suit property during the pendency of the suit. After having sold the suit property, the defendants (vendors of the applicant) would be left with no interest in the suit property and in such circumstances, in my opinion, it would be appropriate to allow the applicant to safeguard its interest by defending the suit (on behalf of its vendors). Reliance in this regard may be placed on the law laid down by the Hon'ble Supreme Court, in the case reported as **Khemchand Shankar Choudhary and another versus Vishnu Hari Patil and others** (2) Since the applicant-petitioner had purchased the suit property during the pendency of the suit and is being allowed to defend the suit on behalf of its vendors, needless to say that the applicant-petitioner would not be, entitled to file a fresh written statement and/or to take a new stand, other than the stand already taken by the defendants, who had sold the suit property to it during the pendency of the suit.

(6) For the reasons recorded above, the present revision petition is allowed, the order dated 18th September, 2002, passed by the trial Court, is set aside and the applicant-petitioner is allowed to defend the suit on behalf of its vendors, as provided under Order 22 Rule 10, CPC.

---

(7) Since the proceedings before the trial Court were stayed by this Court, the parties, through their counsel, are directed to appear before the trial Court on 16th December, 2003 for further proceedings in accordance with law.

---

**R.N.R.**

*Before V.M. Jain, J*

KISHAN SINGH & ANOTHER,—Petitioners

*versus*

M/S EAST INDIA COTTEN MANUFACTURING CO. LTD.  
& OTHERS,—Respondents

C.R. No. 4088 OF 2003

7th November, 2003

*Code of Civil Procedure, 1908—S. 96—Civil Court dismissing a suit while holding the suit being not maintainable and that the Court had no jurisdiction to try the same—Appeal against Judgment and decree of trial Court filed—1st Appellate Court also rejecting the appeal as not maintainable—Neither the trial Court ordering return of the plaint nor rejecting the plaint—Trial Court even ordering to prepare a decree sheet—Such a judgment & decree of the trial Court held to be appealable—Petition allowed.—Case remanded.*

*Held*, that the trial Court dismissed the suit, holding that the suit was not maintainable in its present form and even otherwise the Civil Court had no jurisdiction to entertain and decide the present suit. Resultantly, the suit was dismissed and a decree sheet was prepared. It was not a case where the trial Court had ordered the return of the plaint to be filed before the appropriate authority not it was a case where the trial Court had rejected the plaint. On the other hand, the trial Court had dismissed the suit of the plaintiffs and had also prepared a decree sheet in this regard. Such judgment and decree passed by the trial Court were certainly appealable before the District Judge and it could not be said that no appeal lay before the District Judge. Such an appeal would be maintainable under Section 96 of the CPC, which provides that an appeal shall lie from every decree, passed by any Court exercising the original jurisdiction.

(Para 5)

A.P. Bhandari, Advocate, *for the petitioners.*

P.K. Mutneja, Advocate, *for the respondents.*