IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.1862 of 2010
Date of decision:20.01.2015

Avtar Singh & another
....Petitioners

Versus

Santokh Singh & another
......Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: None for the petitioners.

Mr.Naveep Kalair, Advocate, for
Mr.Aditya Jain, Advocate, for the respondents.

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<u>G.S.Sandhawalia J.(Oral)</u>

Challenge in the present revision petition is to the order dated 09.05.2009 (Annexure P2), by the petitioner-plaintiffs, whereby the application under Order 39 Rules 1 & 2 CPC and in the alternative, under Section 38 Rule 5 CPC, for restraining the respondents from alienating, transferring or mortgaging the land measuring 11 kanals 11 marlas, has been rejected by the Addl.Civil Judge (Sr.Divn.), Samrala. The order dated 03.12.2009 (Annexure P1), passed in appeal, whereby the same been dismissed, is also subject matter of challenge.

A perusal of the paperbook would go on to show that the suit for recovery of ₹26,91,762/- was filed on account of the balance outstanding on the basis of the account books. The relief of injunction was, accordingly, claimed on the ground that the respondents had already mortgaged the land to the Ludhiana Central Bank and were negotiating with various persons and it would not be possible for the petitioner to recover the huge amount. The said application was contested.

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It was noticed by the Trial Court that it was nowhere mentioned that the respondents had no other property except the land in dispute and there was no intention as to how the plaintiff had come to the conclusion that the defendants are going to sell the land and merely an affidavit had been produced. Reliance was placed upon the judgment of this Court in ***Iqbal Singh Vs. Punjab Pesticides, Patti 2002 (1) CCC 210*** that material particulars and source of information has to be made to substantiate the allegations and that it is an extraordinary relief. The appeal was also dismissed, as noticed above. The suit was filed wayback on 19.11.2007.

Proxy counsel for the respondents submits that now an application for additional evidence has been filed by the plaintiff-petitioners. A report was also called from the Trial Court and vide the letter dated 30.08.2013, it was reported that the case is fixed for 05.09.2013, for evidence of the plaintiff, subject to special last opportunity.

It is settled principle that the provisions of attachment before decree is not to be granted on the asking. It is yet to be proved whether the defendants are liable to pay the amount claimed. The Court has to satisfy itself that the effort is to remove or dispose of whole or part of the property with the intention of defeating the decree and is a drastic and extraordinary power and not to be exercised mechanically. The defendants cannot be debarred, as such, to deal with their property, merely because a suit has been filed. The plaintiffs in the present case are commission agents and the suit is against the agriculturist, on the strength of some cash loan having been taken, without execution of any loan agreement and as such, the role is of a fiduciary capacity. In such circumstances, the provisions of Order 38 Rule 5 CPC cannot be used as a leverage for coercing the defendants for settling the claim by grant of any such injunction. The principles have been laid down by the Apex Court in ***Raman Tech. & Process***

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Engg. Co. Vs. Solanki Traders (2008) 2 SCC 302. Relevant observations read as under:

> "5. The power under Order 38 Rule 5 CPC is drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It should be used sparingly and strictly in accordance with the Rule. The purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilize the provisions of Order 38 Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realised by unscrupulous plaintiffs by obtaining orders of attachment before judgment and forcing the defendants for out of court settlement, under threat of attachment.
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> 6. A defendant is not debarred from dealing with his property merely because a suit is filed or about to be filed against him. Shifting of business from one premises to another premises or removal of machinery to another premises by itself is not a ground for granting attachment before judgment. A plaintiff should show, prima facie, that his claim is bonafide and valid and also satisfy the court that the defendant is about to remove or dispose of the whole or part of his property, with the intention of obstructing or delaying the execution of any decree that may be passed against him, before power is exercised under Order 38 Rule 5 CPC. Courts should also keep in view the principles relating to grant of attachment before judgment (See - Prem Raj Mundra v. Md. Maneck Gazi, AIR (1951) Cal 156, for a clear summary of the principles.)"

Thus, keeping in view the above factors in mind and the fact that the plaintiffs still have not been able to conclude their statement and the fact that more than 7 years have expired since the filing of the same, this Court is of the opinion that no fault can be found in the well reasoned orders passed by the Courts below, declining the said relief. Accordingly, the present revision petition is disposed of. However, the Trial Court shall make all efforts to dispose of the suit expeditiously.

20.01.2015 (G.S.SANDHAWALIA)
sailesh JUDGE

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