

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 1349 of 2015(O&M)
Date of decision :December 3, 2015

Maha Singh

..... Petitioner

Versus

Subhash Chander

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sumit Gupta, Advocate
for the petitioner.

Ms. Seema Pasricha, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).
CM No. 16561-CII of 2015

C.M.is allowed.

Annexure R-1 and R-2 taken on record.

CR No. 1349 of 2015(O&M)

The petitioner-plaintiff has challenged the impugned order dated 28.10.2014 whereby the application moved under Order 38 Rule 5 CPC seeking attachment of the property has been dismissed.

Learned counsel for the petitioner-plaintiff submits that the respondent-defendant had issued a cheque No. 217878 dated 10.12.2012 for an amount of ₹12 lacs and since the cheque

has been dishonoured, in that regard suit for recovery of the aforementioned amount has been filed. However, during the pendency of the suit, it transpired that the defendant has entered into an agreement to sell, therefore there was apprehension to the appellant-plaintiff that he would not be able to recover the said amount, sought indulgence of the court for passing an order of attachment of the property, which erroneously, had been dismissed.

Learned counsel for the respondent-defendant submits that there is no illegality and perversity in the order under challenge, for the reason that the cheque was not issued in discharge of legal obligation but was issued as a security, copy of the same has been annexed vide CM No. 16561-CII of 2015 as Annexure R-1, thus, ex facie the suit for recovery is not maintainable. It is a settled law that where the suit is not maintainable consequential relief, much less interim relief cannot be granted.

I have heard learned counsel for the parties and appraised the paper book.

Without adverting to the merits and demerits of the case as to whether the cheque was issued in discharge of legal obligation or as a security, it would be open to the parties to lead evidence in support of their case but the fact remains that the petitioner-plaintiff cannot at this stage, seek attachment, much less interim relief by invoking the provisions of Order 38 Rule 5 CPC as prima facie, I am of the opinion, that it is yet to be established whether the cheque was issued in discharge of legal obligation or as

a security.

I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

The revision petition is devoid of merits. Accordingly the same is dismissed.

(AMIT RAWAL)
JUDGE

December 3 , 2015
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