

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-1442-2013 (O&M)

Date of decision : 20.07.2015

IDEB Grand Reality Pvt. Ltd.

.....Petitioner

Vs

M/s CINERAMAS & Anr.

.....Respondents

Coram : Hon'ble Mr. Justice K. Kannan

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

Present : Mr. Atul Gaur, Advocate
for the petitioner.

Mr. M.L. Sarin, Sr. Advocate with
Mr. Nitin Sarin, Advocate
for respondent No.1.

K. KANNAN, J. (oral)

Revision is against concurrent orders declining the relief of injunction in a suit brought by plaintiff-petitioner that the defendant shall not create any third party interest. The plaintiff would contend that there was an agreement between the parties on 27.10.2006 for grant of a lease of a Cinema Theatre premises to the petitioner. The agreement recited an amount of ₹ 1.5 crores as having been paid by the plaintiff to the defendant. It contained other clauses as well requiring further payments to be made by the plaintiff on the defendants securing no objection for certain modifications and for conversion to a 'multi use Mall Complex'. The agreement recited that one crore was to be paid upon the receipt of the plan for sanction and ₹1.5 crores would be paid on handing over possession of the scheduled property. The suit is filed on a copy of the agreement on a plea that the original was lost on a day prior to the date of institution of the

The respondent-defendant objected to the plea for injunction to point out that the relief of injunction was not competent, for, the agreement was executed as early as on 27.10.2006 but the suit was filed nearly six years after even without seeking for specific enforcement. If according to the plaintiff there had been any breach of the obligations specific performance would have been the appropriate relief. It was also contended that the plaintiff himself had given up his rights and original document had been returned to the defendant. It would appear that after dismissal of the petition by the trial Court the respondent also produced proof before the appellate Court that sanction had also been obtained but the plaintiff had not performed his part of contract. The appellate Court also dismissed the appeal confirming the decision of the trial Court declining the prayer for injunction.

The learned counsel appearing on behalf of the petitioner argues that admittedly an amount of ₹ 1.5 crores had been paid by the plaintiff to the defendant. The plaintiff had not given up his right under the agreement and the original said to be in the hands of the defendant, does not bear any endorsement of forfeiture of rights under the agreement. The counsel would say that the suit is only for injunction against the creation of third party interest and the courts below were in error in rejecting the relief.

The injunction is in the genre of equitable relief spelt out through the provisions of the Specific Relief Act. The Court's discretion will be guided to ensure that a person who comes to court seeking for the relief has done his part of the contract and there is prima facie case that the plaintiff would succeed on the plea for enforcement of the document on

which he derives his right to seek for any interim order. Where there is an agreement and there results no transfer of right for the immovable property, a suit for specific performance will alone be a competent relief in which a relief of injunction could be an interim prayer. If there is an occasion where the time for performance of the contract has not matured and a person apprehends a change in character of the property or any other act of the defendant that could imperil his right, such a person cannot be compelled to institute a suit for specific performance prematurely only to secure an appropriate prayer that can alter that status quo. If the time for performance has matured or when the defendant takes up some plea which would compel the plaintiff to sue for the appropriate relief of specific performance, he cannot simply ignore what he is required to do and asked for an injunction in relation to the property of which he is not the owner. The suit is not for recovery of money for the amount already parted with. The plaintiff must show some right in the property for which he can seek for injunction. A right to alienation is a necessary incident of ownership. The Transfer of Property Act under Section 10 enacts a rule of public policy that there shall be no contract which can create an absolute restraint of transfer of immovable property. Even a Court that passes restraint order against alienation must be satisfied that the plaintiff has a strong stake involved on the property and he is competent to approach the Court to seek for such a fetter against alienation. With no further relief to advance by an appropriate frame of suit, a bare relief of injunction in the present situation is not competent.

The dismissal of the relief of injunction by the two Courts below are, therefore, fully justified and I find no cause for making an intervention in the revision. The revision petition is dismissed.

(K. KANNAN)
JUDGE

20.07.2015
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