

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

(228)

**CR No.4383 of 2014 (O&M)
Decided on: July 28, 2015.**

PNB and others

.... Petitioners

Versus

Raj Bala and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Arvind Rajotia, Advocate,
for the petitioners.

Mr. Parvesh K. Saini, Advocate,
for respondent No.1.

M.M.S. BEDI, J (ORAL)

The plaintiff-respondent No.1 had filed a suit against the defendants-petitioners (Punjab National Bank) for mandatory injunction seeking a direction to take possession of the premises as per the terms and conditions of an agreement entered into between the parties.

The claim of the defendants-petitioners in the written statement is that the plaintiff-respondent No.1 is owner of 7 marlas being 7/116 share of the total land measuring 5 kanals 16 marlas and after entering into the agreement, the valuer of the Bank came to learn that plaintiff-respondent No.1 is not the owner of the space which forms part of the proposal in the agreement letter dated 04.09.2012. The Courts below have restrained the defendants-petitioners Bank from taking possession of the premises of defendant No.3 or any other person till the decision of the suit.

I have heard learned counsel for the petitioners as well as learned counsel for the respondent No.1.

Grievance of the plaintiff-respondent No.1 is that she has spent a sum of more than Rs. 7 lacs pursuant to the assurance given by the Bank to take the premises of the plaintiff-respondent No.1 on lease. Whether she has got an enforceable right to seek injunction or in the alternative deserves to be compensated, has to be adjudicated upon by the trial Court. The grant of interim mandatory injunction in the present case is a debatable issue. The agreement Annexure P-1 which is sought to be enforced by plaintiff-respondent No.1 contains stipulation to the effect that in case of violation of the terms and conditions, the Bank would be liable to compensate the plaintiff-respondent No.1 by paying three months rent which had been agreed to between the parties. So far as any compensation for the steps taken by the plaintiff for improving the property in dispute is concerned, it is always open to the plaintiff to claim compensation and damages for the same. Provisions of Section 14 of the Specific Relief Act provide that contracts which cannot be specifically enforced would include a contract, for the non-performance of which compensation in money is an adequate relief. Section 41 (e) of the aforesaid Act provides that an injunction cannot be granted to prevent the breach of the contract, the performance of which would not be specifically enforced.

Learned counsel for the petitioners has argued that the petitioners would fall within the exceptions under Section 41 (c) of the Specific Relief Act.

I have considered the fact and circumstances of the case and I am of the opinion that prima facie maintainability of suit for mandatory injunction of legal rights on the basis of Annexure P-1 will be a debatable issue. The plaintiff-respondent No.1 prima facie is entitled to the

compensation and damages under the law as well as under the provisions of Specific Relief Act. The interim orders restraining the defendant-petitioners Bank from taking on lease any other premises especially the premises of defendant No.3 during pendency of the case are not based upon the parameters and principles of law for grant of interim injunction. The balance of convenience does not lie in favour of the plaintiff-respondent No.1

So far as the controversy whether any irreparable loss would be caused to the plaintiff-respondent No.1 in case of refusal to grant interim injunction is concerned, payment of compensation to the plaintiff-respondent No.1 is prima facie the adequate relief.

Striking a balance between the rights of both the parties, I deem it appropriate to set aside the order passed by the Courts below allowing the application for interim injunction of the plaintiff-respondent No.1 subject to the condition that the defendant-petitioners will pay compensation to the plaintiff-respondent No.1 equivalent to the rent of three months within a period of one week from today in the shape of bank draft without prejudice to the right of the plaintiff-respondent No.1 to claim enforcement of the agreement of lease and compensation in accordance with law on the basis of evidence produced by the parties.

This petition is disposed of in the above terms. It is made clear that in case the amount mentioned hereinabove is not paid to the plaintiff-respondent No.1, this petition will be deemed to have been dismissed. The trial Court is, however, directed to expeditiously dispose of the suit and adjudicate the rights of the parties finally.

Nothing said in this order will prejudice the rights of the plaintiff-respondent No.1 during the trial which would be decided irrespective of any observation by this Court in this order which are only meant for adjudication of the application for interim injunction.

(M.M.S. BEDI)
JUDGE

July 28, 2015
harsha