

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.6516 of 2014.
Decided on:-6.5.2015.

Nazir Khan.

.....Petitioner.

Versus

Chanchal Singh and others

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.*

Argued by:- Mr. Surinder Garg, Advocate
for the petitioner.

Mr. Y.S. Turka, Advocate
for respondent No.1.

Respondent No.3 ex-parte.

Dr. Bharat Bhushan Parsoon, J.

Counsel for the petitioner states that respondent No.2 is not necessary for adjudication of this petition and her name may be struck off from the array of respondents. It is so done.

2. Counsel for the defendant, petitioner herein, is aggrieved of order dated 1.5.2014 (Annexure P-15) passed by the lower court, whereby the respondent-plaintiff has been allowed to lead secondary evidence pertaining to agreement to sell dated 28.11.2002 even though the matter is pending adjudication before the Hon'ble Supreme Court of India.

3. The suit pending adjudication before the court below pertains to specific performance of an agreement to sell dated 28.11.2002. The respondent-plaintiff had moved an application for producing secondary evidence to prove the said agreement. The Sub-Divisional Judicial Magistrate, Malerkotla had allowed application of the respondent-plaintiff vide order dated 11.2.2012 (Annexure P-11). This order was challenged before this Court by the defendant. Accepting his plea, the order dated 11.2.2012 of the lower court was set aside and application of the respondent-plaintiff for leading secondary evidence subsequently was dismissed by this Court vide order dated 8.2.2013 (Annexure P-12). Against order dated 8.2.2013 of this Court, the respondent-plaintiff had moved the Hon'ble Supreme Court of India where the matter is still pending. While staying pronouncement of final judgment, proceedings in the suit were ordered to continue by the Hon'ble Apex Court. It was vide order dated 29.4.2013 (Annexure P-13).

4. There is force in argument of counsel for the petitioner that once the application for leading secondary evidence allowed by the lower court on 11.2.2012 stands dismissed consequent upon reversal of order of 11.2.2012 of the lower court vide order dated 8.2.2013 of this Court whereby secondary evidence was rejected by this Court, secondary evidence cannot be led by the respondent-plaintiff till such adjudication in favour of the respondent-plaintiff comes forth from the Hon'ble Apex Court.

5. Observations of the learned lower court in order dated 1.5.2014 that non-stay of proceedings before the lower court would be deemed to have allowed application of the respondent-plaintiff to lead secondary evidence, is misfounded particularly when operation of order dated 8.2.2013 of this Court has not been stayed by the Hon'ble Apex Court. Order dated 29.4.2013 of the Hon'ble Apex Court cannot be construed as staying of order

dated 8.2.2013 of this Court.

6. In such circumstances, impugned order dated 1.5.2014 of the lower court is set aside. The application for leading secondary evidence preferred by the respondent-plaintiff is to be considered by the lower court in terms of order dated 8.2.2013 of this Court till some interference is made by the Hon'ble Supreme Court in favour of the respondent-plaintiff. Order dated 29.4.2013 of the Hon'ble Supreme Court is to be complied with.

7. This petition is allowed to the above extent.

May 06, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

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