

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-843-2015 (O&M)

Date of decision: 6.2.2015

VK Jain

..... Petitioner

Versus

Mohan Lal Malhotra and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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?*

PRESENT: Mr. Piyush Kant Jain, Advocate for the petitioner.

R.P. NAGRATH, J. (ORAL)

The petitioner has invoked revisional jurisdiction of this Court under Article 227 of the Constitution of India for setting aside the order dated 9.9.2014 (Annexure P-8) passed by the learned Civil Judge (Junior Division), Ludhiana whereby *ex parte ad interim* injunction was granted in favour of respondent No. 1-plaintiff.

Learned counsel for the petitioner submits that a fraud has been committed by respondent No. 1 in not disclosing the previous litigation, and that the execution of decree passed in favour of respondent No. 1-plaintiff which attained finality up to this Court in RSA-3940-2010 decided on 25.4.2014 (Annexure P-4) filed by defendant/judgment-debtors (JD). It is further submitted that sale deed on the basis of said decree has been executed by the defendant-JDs. It is also submitted that rest of the respondents in the instant petition are proforma parties. The

other contention of learned counsel for the petitioner is that a similar case was filed by Mohinder Pal in respect of the same property and when the directions were issued by this Court to the trial Court for disposing of the application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure (CPC) within time bound frame, Mohinder Pal absented and the said suit was got dismissed in default.

After arguing for sometime, learned counsel for the petitioner submits that the instant petition may be disposed of, with liberty to the petitioner to file written statement before the trial Court and reply to application under Order 39 Rules 1 and 2 CPC. It is, however, submitted that an application under Order 39 Rule 4 CPC praying for vacation of stay has already been filed.

In view of the above limited prayer made, the instant petition is disposed of, with the liberty aforesaid, and the trial Court is directed to dispose of the said application in accordance with law within two weeks of filing of pleadings by the petitioner.

Liberty is also granted to the petitioner to raise the issue of fraud and make prayer for imposition of exemplary costs.

An application under Order 22 Rule 4 read with Section 151 CPC (CM-2746-CII-2015) for impleading the legal representatives of Bimla Sehgal, who is defendant No. 2/JD in the suit has been filed along with the instant petition.

CM-2746-CII-2015, is disposed of as having been rendered infructuous.

February 6, 2015
rishu

(R.P. NAGRATH)
JUDGE