IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 2485 of 2015
Date of decision : February 29, 2016

Rajiv Kumar and another

.... Petitioners

Versus

M/s Kisan Rice Mills, Nilokheri through its partners

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashish Aggarwal, Senior Advocate with
Ms. Niti Gupta, Advocate
for the petitioners.

Mr. C. S. Bakshi, Advocate
for the respondents.

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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).

The petitioners-plaintiffs are aggrieved of the impugned order dated 4.3.2015 whereby in an application filed by the respondents-defendants, the trial court directed the petitioners-plaintiffs to deposit the balance sale consideration of ₹2 crores in the shape of FDRs and further made it clear that the interest amount shall be paid to the defendant subject to the decision of civil suit and connected civil suit No. 20/15 and adjourned the matter.

Learned counsel for the petitioners submits that the agreement to sell was entered on 7.5.2012 for a total sale consideration of ₹2,50,00,000/- of land measuring 16 biswas 1 biswani against earnest money of ₹50,00,000/-. The stipulated date for execution and registration of the sale deed was 15.10.2012 and the date was extended. The respondent-defendant did not disclose about the pendency of the suit by the erstwhile owners viz-a-viz challenge to the sale deed dated 30.8.1987. The defendants acquired the ownership and there was an interim stay viz-a-viz alienation. Since the respondents contested the suit by filing a written statement the trial court framed the issues and case was posted for plaintiffs' evidence. However, during the pendency of the same, application was filed and impugned order came to be passed. Both the suits have been clubbed, which is evident from the perusal of the order dated 29.4.2014 (Annexure P-8), and thus submits that the said order is not permissible and sustainable in the eyes of law. It is still to be adjudicated whether respondent-defendant have valid and effective title or not and prays for setting aside of the impugned order.

Learned counsel for the respondent-defendant submits that there is no illegality in the impugned order. Prior to filing of the suit, defendants called upon the plaintiff to execute and register the sale deed in their favour but the petitioners-plaintiffs did not turn up as they were not ready and willing to perform their part of the agreement, and the suit was filed.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no substance in the aforementioned contentions. For the sake of brevity the impugned order reads thus:-

"*Arguments heard on application dated 13.3.2014. Plaintiff is directed to deposit the balance sale consideration of Rs.2 Crore in the shape of FDR in the court. It is made clear that the interest amount shall be paid to the defendant subject to the decision of this suit and the connected civil suit No. 20/15. Now case is adjourned to 16.4.2015.*"

The suit bearing No. 20/15 filed at the instance of the miller is also filed and in that suit the sale deed dated 30.8.1987 in favour the defendant is not challenged and there is an interim order viz-a-viz alienation. The written statement shows that the suit for specific performance is contested. Had the defendants settled the claim of the plaintiffs, the court would have passed decree than calling upon the plaintiffs to deposit the entire money, in that eventuality, it should have shown readiness and willingness.

In view of the above, the impugned order is not sustainable and it appears that the trial court has invoked the provisions of Order 38 Rule 5 CPC in suit of specific performance.

The impugned order is set aside. The revision petition stands allowed.

(AMIT RAWAL)
JUDGE

February 29, 2016
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