

...

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-374-2015[O&M]

Date of Decision : May 3rd, 2016

Sanjogata Rani

.... Petitioner

Versus

Sanjeev Kumar

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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?

Present Mr. Alok Jain, Advocate,
for the petitioner.

Mr. Vikram Punia, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside order dated 12.11.2014 passed by Additional Civil Judge [Senior Division], Karnal whereby application under Order VII Rule 11 CPC for rejection of the plaint filed by the present petitioner was dismissed.

2. Learned counsel for the petitioner submitted that the present suit is barred under Order II Rule 2 CPC because the plaintiff had earlier filed a suit for permanent injunction on the same cause of action and subsequently that suit has been made the basis for filing the present suit for Specific performance.

3. Learned counsel for the petitioner further submitted that the plaintiff could file a suit for Specific Performance when the suit for

...

permanent injunction was filed by him. More so, the petitioner had denied execution of agreement of sale, but the Court below has totally ignored this fact while passing the order under challenge. Reliance was placed upon the judgments of Hon`ble Supreme Court in **Virgo Industries [Eng.] Private Limited Vs. Venturetech Solutions Private Limited; (2013) 1 SCC 625** and **Church of Christ Charitable Trust and Educational Charitable Society represented by its Chairman Vs. Ponnamman Educational Trust represented by its Chairperson/Managing Trustee, (2012) 8 SCC 706** wherein 'cause of action' has been defined as meaning simply a factual situation existence of which entitles one person to obtain from the Court a remedy against another person. Hon`ble Apex Court also observed that such a litigation is barred under Order II Rule 2 CPC to avoid multiplicity of litigation on the same cause of action. On the same point, reliance was also placed upon the decision of Hon`ble Delhi High Court in **Sucha Singh Sodhi [Deceased] through Lrs Vs. Baldev Raj Walia and another, 2014(17) R.C.R. [Civil] 425** and two decisions of this Court in **HDFC Bank Limited Vs. M/s Gee Kay International and others 2012(3) PLR 546; and Vipin Kumar Tyagi Vs. Sukhdev Singh and another 2014(4) R.C.R. [Civil] 524.**

4. Learned counsel for the respondent submitted that the application was filed before the Court below only to delay the proceedings of the case. Earlier also, an application under Order VII Rule 11 read with Order VII Rule 14 CPC was filed with the intention to delay the proceedings and that was dismissed and the subsequent application on the same cause of action is legally not permissible and the Court below has rightly dismissed the application and the present petition is liable to be dismissed.

...

5. Having considered the submissions made by learned counsel for the parties and the authorities relied upon by learned counsel for the petitioner, this Court is of the considered view that in the present case, undisputedly, the agreement of sale is dated 15.12.2008. The target date for execution of the sale deed was fixed as 30.04.2009. Civil Suit No.150 of 2009 for permanent injunction was filed on 24.12.2008/21.03.2009 as the plaintiff was having threat of alienation of suit property and since such threat discontinued, the earlier suit was dismissed as withdrawn on 09.09.2009. Undisputedly, the cause of action for filing suit for specific performance was not available to the plaintiff as on 24.12.2008 as the target date for execution of the sale deed had not come. Thereafter the second suit for Specific Performance was filed well within the period of limitation and as such, the Court has rightly taken the view that the present suit is not barred under Order II Rule 2 CPC. As such, the authorities cited by learned counsel for the petitioner is of no help to the petitioner as the facts of the present case are distinguishable from the facts of the cited cases. The application under Order VII Rule 11 CPC for rejection of plaint was rightly dismissed.

6. In view of the above, there are no grounds for setting aside the impugned order and the present revision petition stands dismissed being devoid of any merit.

(SHEKHER DHAWAN)
JUDGE

May 3rd, 2016
som