

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

CR No.6285 of 2016(O&M)

Date of decision:21.10.2016

Kulwant Rai

....Petitioner

VERSUS

Kunal Gupta and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Pritam Saini, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition lays challenge to order dated 05.08.2016 (Annexure P-5) passed by the Civil Judge (Senior Division) Kurukshetra whereby application filed by Deepak Tomar and Sweta Tomar (respondents No.3 and 4) under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (in short 'CPC') has been allowed and they have been impleaded as defendants No.3 and 4 respectively in the suit for symbolic possession by way of specific performance of agreement to sell dated 08.01.2004 filed by the petitioner against Kunal Gupta and Haryana Urban Development Authority, Kurukshetra through its Estate Officer.

Counsel for the petitioner has submitted that prior to the present application filed by respondents No.3 and 4, Punjab National Bank, Ghaziabad (U.P.) (in short 'the Bank') filed an application for impleadment on the premise that property in question is mortgaged with the Bank and the applicant is a proper and necessary party to defend the proceedings. The application was dismissed by the trial Court vide order dated 27.04.2015 (Annexure P-2). It is further argued that as respondents

No.3 and 4 claim to have purchased the suit property in e-auction conducted under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act') by the Bank, the trial Court despite noticing the order dated 27.04.2015 has wrongly and illegally accepted plea of the respondents/applicants. It is further argued that as the applicants are purchasers of the property *pendente lite*, they are bound by the result of the litigation initiated by the petitioner, therefore, no such plea of bona fide purchaser for consideration is otherwise available to the respondents/applicants. It is further argued that as the respondents/applicants are a third party or stranger to the contract sought to be specifically enforced, they cannot be added so as to enlarge the scope of the suit or to convert a suit of one character into a suit of different character. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court of India **Bharat Karsondas Thakkar Vs. M/s Kiran Construction Co. and others**, 2008 (3) RCR (Civil) 57, **Anil Kumar Singh Vs. Shivnath Mishra alias Gadasa Guru**, 1995 (3) SCC 147. Further reference has been made to Division Bench judgment of this Court **Krishan Lal Vs. Tek Chand**, 1986(2) PLR 616 and judgments of Single Bench of this Court **Smt. Bhagwani and another Vs. Mehar Singh and others**, 2014(3) PLR 23, **M/s Sapphire Infratech Pvt. Ltd. Vs. Tavadarshi Bandhu Pvt. Ltd. and others**, 2016(2) RCR (Civil) 862.

I have heard counsel for the petitioner, perused the paper-book, particularly the order impugned.

Counsel for the petitioner has pressed into service order dated 27.04.2015 passed against the Bank for impleadment as a party, therefore, the applicants/respondents being purchaser of the property from the bank

also not entitled to be impleaded as such. Firstly, the Bank did not claim to be owner of the property in question and only claimed to be a mortgagee thereof. The trial Court in para 7 of the order dated 27.04.2015 has noticed that no such mortgage deed has been annexed by the applicant nor the same has been produced at the time of arguments. It has further been noticed that only one document i.e. an agreement of guarantee purported to be executed on 07.03.2011 was placed on record and as per the said agreement, the mortgage deed was still to be executed but no such deed has been produced by the applicant. Taking into consideration certain terms and conditions of the agreement of guarantee and failure of the applicant-Bank to produce the mortgage deed on record, the Court arrived at a conclusion that the Bank is neither a necessary nor a proper party to be impleaded as such in the suit for specific performance. This apart, the Bank was left at liberty to avail its rights as per agreement of guarantee executed by defendant No.1 or otherwise. Under these circumstances, the petitioner cannot derive any advantage to his contention from the order dated 27.04.2015 to find fault in the impugned order or contest plea of the applicants to be impleaded as a party in the suit.

This brings the Court to the judgments of Hon'ble the Supreme Court in **Bharat Karsondas Thakkar's** case (supra) and **Anil Kumar Singh's case** (supra). In none of the cases, the person sought to be impleaded as a party was a transferee *pendente lite*. In both these cases, the applicant sought to be impleaded as a party on the ground that he had acquired subsequent interest as a co-owner. Though, the respondents/applicants may not be termed as transferee *pendente lite* in stricto sensu but their case would squarely be covered by judgment of Hon'ble the Supreme Court **Thomson Press (India) Ltd. Vs. Nanak**

Builders & Investors P. Ltd. and others, 2013(2) RCR (Civil) 875,

wherein the Court has held that in a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board and who file application for being joined as a party within reasonable time of his knowledge about the pending litigation.

In the case at hand, the respondents/applicants purchased suit property in e-auction conducted under the SARFAESI Act for realisation of outstanding liability against Kunal Gupta – defendant No.1 and the same was purchased by the applicants for a huge amount of approximately Rs.2 crores. Keeping in view that the applicants acquired a substantial interest in the suit property during pendency of the proceedings and in absence of any mala fide being attributed to them, no fault much less illegality can be noticed in the impugned order when examined in the light of ratio laid down in **Thomson Press (India) Ltd. case** (supra). The respondents/applicants being transferee pendente lite have right to protect their interest by contesting the proceedings. However, observations made by the trial Court with regard to applicants being bona fide purchasers of the suit property would not cause prejudice to either of the parties at the time of final disposal of the suit. Similarly, any other observation made in the proceedings for impleadment touching merits of the suit would not cause prejudice to either of the parties at the subsequent stage of the suit.

For the foregoing reasons, the petition fails and is accordingly dismissed in *limine*.

OCTOBER 21, 2016

‘D. Gulati’

(REKHA MITTAL)**JUDGE**

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no