

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

CR No.8411 of 2014(O&M)

Date of decision:18.10.2016

M/s Yash Nidhi Estates Pvt. ltd. and othersPetitioners

VERSUS

Rajender Singh and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Keshav Partap Singh, Advocate for the petitioners.

Mr. Ashish Chopra, Advocate for respondent No.1.

REKHA MITTAL, J.

The present petition lays challenge to order dated 29.11.2014 (Annexure P-2) passed by the Civil Judge (Junior Division), Hathin, District Palwal whereby application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (in short ‘CPC’) filed by the petitioners/defendants No.2 to 13 for rejection of plaint for want of cause of action has been dismissed.

Counsel for the petitioners would submit that the petitioners entered into an agreement to sell with defendant No.1 (respondent No.2 herein). Thereafter, respondent No.2 entered into an agreement to sell with the plaintiff (respondent No.1). Rajender Singh (respondent No.1) filed a suit for specific performance against the petitioners and respondent No.2 by converting suit for permanent injunction to that of specific performance of contract by way of amendment. It is argued that as there is no privity of contract between the petitioners and respondent No.1/plaintiff, respondent

No.1 has got no cause of action to file the suit for specific performance against the petitioners, therefore, the plaint is liable to be rejected qua the petitioners.

Counsel for the contesting respondent, on the contrary, has urged that earlier a similar application for rejection of plaint was filed by the petitioners and the same was dismissed by the trial Court vide order dated 30.08.2014 (Annexure R1/2). It is further submitted that even in the earlier application that was decided in August, 2014, a similar plea was raised by the petitioners that as the plaintiff has sought relief on the basis of an agreement entered between him and defendant No.1, hence no cause of action is made out against defendant No.2 to 13. It is argued that the order dated 30.08.2014 would constitute res-judicata at the subsequent stage of the proceedings in the same suit.

Another submission made by counsel is that in the petition filed before this Court, the petitioners have concealed the order dated 30.08.2014, sufficient to disentitle them to be heard on merits of the petition. In addition, it is argued that the trial Court while dismissing the application for rejection of plaint and after taking into consideration the order dated 30.08.2014 passed in the previous application has framed two preliminary issues qua locus standi and cause of action, therefore, no prejudice would be caused to the petitioners if the trial Court decides the preliminary issues, in accordance with law. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court of India **M.C. Chacko Vs. The State Bank of Travancore**, AIR 1970 SC 504; Division Bench judgment of this Court **Shiv Dayal Kapoor and others Vs. Union**

of India and another, AIR 1963 (Punjab) 538 and judgment of the Madras High Court **Thirumulu Subbu Chetti Vs. Arunachalam Chettiar**, AIR 1930 (Madras) 382.

I have heard counsel for the parties and perused the paper-book.

There is no dispute that previously an application was filed by the petitioners for rejection of plaint by invoking Order 7 Rule 11 CPC that came to be dismissed by the trial Court vide order dated 30.08.2014 (Annexure R1/2). It has also not been disputed that the petition before this Court does not make reference to the said order. Counsel for the petitioners has tried to explain his position by contending that his party did not make him aware of the said order. It hardly matters if counsel was aware or otherwise but it is an obligation of a party to disclose material facts to the Court. As the petitioners are guilty of concealing a material fact with regard to dismissal of earlier application for rejection of plaint on the same ground i.e. the plaint does not disclose any cause of action for want of privity of contract between the petitioner and the plaintiff, the petitioners have rendered themselves ineligible to be heard on merits of the petition much less to seek indulgence of the Court. The petition, in the given circumstances, is liable to be dismissed on this score alone.

Indisputably, the respondent/plaintiff initially filed a suit for permanent injunction, based on the agreement executed by respondent No.2 in favour of respondent No.1/plaintiff and in the said suit, the present petitioners were arrayed as defendants No.2 to 13. The petitioners filed the application for rejection of plaint on three grounds namely the plaintiff has

sought relief on the basis of an agreement entered by him with defendant No.1 and hence no cause of action is made out against defendants No.2 to 3, the suit is barred by law since the agreement on the basis of which the plaintiff has sought relief is dated 01.09.2007 and thus, the suit is barred by limitation and further the suit is not maintainable being only a suit for permanent injunction.

The trial Court after having heard counsel for the parties at length, negated plea of the petitioners that no cause of action is made out against them with the observations that perusal of the agreement to sell entered by defendants No.2 to 13 with defendant No.1 shows that both the parties agreed that the expression first party and the second party shall mean and include their legal heirs, successors, legal representatives, nominees and assignees. Further perusal of the agreement to sell entered into between defendant No.1 and the plaintiff, defendant No.1 has transferred his rights to the plaintiff, therefore, contention of the plaintiff that he is entitled to claim the rights vested in defendant No.1, on the face of it, appears to be legitimate or at least the one which needs consideration. As the trial Court had already rejected plea of the petitioners with regard to there being no cause of action against them, the order dated 30.08.2014, in the circumstances would constitute res-judicata at the subsequent stage of the proceedings irrespective of the fact that suit for permanent injunction was later converted to the one for specific performance of the agreement. Analyzed from any angle, I do not find any reason to interfere in the order impugned. In this view of the matter, the petitioners cannot derive any advantage to their contention from the referred authorities at this stage.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. No order as to costs. However, nothing stated in this order shall be construed as an expression of opinion on merits of the case.

OCTOBER 18, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned

:

yes/no

Whether reportable

:

yes/no