

CR No. 8873 of 2015 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 8873 of 2015 (O&M)

Date of decision : May 24, 2016

Narinder Singh and others

..... Petitioners

Versus

Bhalinder Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. M. L. Sarin, Senior Advocate with
Mr. Vijay Sharma, Advocate and
Mr. Nitin Sarin, Advocate and
Mr. Ritesh Aggarwal, Advocate and
Ms. Ankita Sambyal, Advocate
for the petitioners.

Mr. Avnish Mittal, Advocate
for respondent Nos.1 to 3.

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).

Mr. Avnish Mittal, Advocate has shown his handicap
ness that despite numerous reminders and telephonic calls, the respondents
had not responded and seeks leave of this Court for withdrawing his
vakalatnama.

In view of the explanation given above, vakalatnama of
Mr. Avnish Mittal is ordered to be withdrawn. He is relieved from this case.

Mr. M. L. Sarin, learned Senior counsel assisted by Mr.
Vijay Sharma submits that as per order of this Court dated 17.3.2016 the
respondents were served but yet in the interest of justice, hearing of the

revision petition was deferred to 9.5.2016 and on 9.5.2016, as noticed above Mr. Avnish Mittal had put in appearance on behalf of respondent Nos. 1 to 3 thus the respondents are delaying the adjudication of the suit as this Court in CR No. 2340 of 2009 has already refused to grant extension of time for seeking specific performance of agreement to sell dated 1.3.2006. He further submits that on receipt of notice of the suit the petitioners-defendants had volunteered to execute the sale deed and the plaintiffs sought time to execute the same and in this regard statement was recorded on 19.3.2009 and trial court vide order dated 15.4.2009 directed the respondent-plaintiff to execute and register the sale deed in favour of petitioner-defendant on 30.4.2009. The aforementioned order was challenged in this Court vide CR No. 2340 of 2009 but the same was dismissed.

He further submits that despite dismissal of the revision petition, the trial court vide impugned order granted opportunity to the respondents-plaintiffs to lead evidence qua readiness and willingness but the fact remains that once the defendants have already volunteered for execution and registration of the sale deed aforementioned it reveals that the plaintiffs were/are not equipped with money and thus willingness is lacking and attempt is being made to delay the matter.

He further submits that despite the dismissal of the revision petition, trial court granted extension of time which was assailed by the petitioners-defendants vide CR No. 5997 of 2014 and this Court vide detailed order dated 30.7.2015 (Annexure P-6) held that extension of time granted by the trial court was totally without jurisdiction and as the matter between the parties was pending since the year 2006 and a direction was

issued to the trial court to decide the case within a period of six months.

The operative part of the order reads thus:-

As the plaintiff- respondents No.1 to 3 have failed to perform their part of the contract as per the contents of the application annexure P-4 dated June 1, 2009, the only jurisdiction vested with the trial Court was to decide the application dated June 1, 2009 by either acceding to the request or by rejecting the request for dismissal of the suit. It was open to the Court to leave the parties to lead evidence to determine the rights of the plaintiff- respondents No.1 to 3 taking into consideration their readiness and willingness at the time of decision in the suit or till the final decision of the case. Granting time to the plaintiff- respondents No.1 to 3 to pay the balance sale consideration and issuing directions to the parties to execute the sale deed, is an order passed by the trial Court without jurisdiction in contravention to the basic principles of law governing the suits for specific performance, extension of time and execution of decrees/ orders. The impugned order is thus patently an order without jurisdiction. It is hereby set aside. The revision petition is allowed without prejudice to the rights of the plaintiff- respondents No.1 to 3 to be determined at the time of final adjudication of the suit and without prejudice to the rights of the defendant petitioners to pursue the application dated June 1, 2009 in accordance with law. Since the litigation between the parties is pending since the year 2006, a direction is issued to the trial Court to decide the case within a period of six months by giving fair opportunity to both the parties i.e. plaintiffs and the defendants to produce their evidence to substantiate their case subject to the decision of the application dated June 1, 2009, annexure P-4 which will be decided in accordance with law.”

It is in these circumstances, the petitioners-defendants

have been compelled to come to this Court.

I have heard learned counsel for the parties and appraised the paper book and of the view that the aforementioned facts reveal that respondents-plaintiffs have been adopting all possible attempts for not honouring the orders, much less not coming forth for execution and registration of the sale deed by making balance sale consideration to the petitioners-defendants as per agreement referred above. The trial court ought not to have granted opportunity to the respondents-plaintiffs for leading evidence as it cannot be said or believed that trial court remained oblivious of the orders passed from time to time by this Court. Such an act of the trial court, in my view is not sustainable in the eyes of law. Accordingly, the impugned order is hereby set aside. The trial court is directed to decide the application Annexure P-4 afresh, keeping in mind the orders passed by this Court in CR No. 2340 of 2009 and 5997 of 2014 as expeditiously as possible, preferably within a period of one month from the date of receipt of certified copy of this order.

It is expected that the trial court shall pass the order in a most pragmatic and reasonable manner considering the previous orders and as well as conduct of the respondents-plaintiffs.

The civil revision is allowed.

(AMIT RAWAL)
JUDGE

May 24, 2016
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