

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-20140-2015

Date of decision: August 29, 2016.

Prem Chand

... **Petitioner**

v.

State of Haryana and another

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri Harish Mehla, Advocate for the petitioner.

Ms. Tanushree Gupta, Assistant Advocate General, Haryana.

Shri Akshay Jindal, Advocate for respondent No.2.

A.B. Chaudhari, J. (Oral):

Rule. Heard forthwith.

On the oral motion made by counsel for the petitioner, leave to amend the petition by incorporating the prayer for quashing of the orders declaring the petitioner as proclaimed offender, is granted. Amendment be carried out within two weeks.

It is not in dispute that in a suit for specific performance of the contract filed by respondent No.2 in relation to the subject shop against the petitioner, civil court had made a decree declining the relief of grant of decree for specific performance of the contract but had made a decree dated 31.8.2009 for refund of the earnest money to respondent No.2 without awarding any interest. The decree of the civil court became final between

the parties upto this Court in the year 2009. In other words, the earnest money of Rs.3.00 lacs only was to be refunded with no interest as per the decree. The matter should have ended there.

However, respondent No.2 lodged a complaint in the year 2010 wherein it is asserted that the wife of the petitioner sent a legal notice in the year 2010, that in fact she was the owner of the subject property and not the petitioner, her husband. This constituted fraud on the respondent No.2. Hence, respondent No.2 filed a private complaint. The petitioner having been summoned by the Magistrate to face trial, approached the Court of Sessions for the grant of anticipatory bail which was declined. Therefore, the petitioner has approached this Court by the present petition.

In the present petition, I have perused various orders with the assistance of learned counsel for the rival parties. There is an undertaking vide order dated 28.7.2015 given by counsel for the petitioner to this Court that he would pay the disputed sum with interest @ 12% per annum. Accordingly further orders were passed. As per orders in this case, the petitioner paid an amount of Rs.4.5 lacs to the respondent No.2. Perusal of the orders made from time to time in this petition do not show any reference to the civil court decree dated 31.8.2009 which had attained finality. In that view of the matter, the petitioner could not have given such an undertaking nor the same could have been recorded or accepted as it was in violation of the command of the decree of the civil court. The respondent No.2 could not be allowed to use the present proceedings to recover any amount from the petitioner beyond what was decreed by the civil court.

Be that as it may, in so far as the present petition is concerned, it relates to the petitioner being declared a proclaimed offender also. In this petition, the petitioner challenges the order declaring him a proclaimed offender and also seeks anticipatory bail.

Law is well settled that the relief of anticipatory bail cannot be considered without the challenge to the order declaring the petitioner a proclaimed offender. That is why, I have allowed the petitioner to amend the petition so as to challenge the order declaring him a proclaimed offender. The counsel for respondent No.2 submits that the petitioner will have to make further payment to the respondent as recorded in the orders made by this Court.

Since I have held that those orders would go contrary to the decree of the civil court, the claim of the respondent No.2 in the present petition cannot be entertained to have money more than the decree from the petitioner. The respondent may take up his own remedy elsewhere. In that view of the matter, the petitioner is relieved of making any further payment to the respondent. The order declaring him proclaimed offender is quashed and set aside. The petitioner is granted anticipatory bail to the satisfaction of the trial Judge. He shall appear before the trial Judge and furnish bail bonds and shall attend the proceedings with promptitude.

Disposed of.

[A.B. Chaudhari]
Judge

August 29, 2016.
kadyan

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No