

114            IN THE HIGH COURT OF PUNJAB AND HARYANA  
                 AT CHANDIGARH

CR No. 1318 of 2017 (O&M)  
DECIDED ON: MARCH 21, 2017

SANJAY

....PETITIONER

VERSUS

JAI SINGH & ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Sumit Gupta, Advocate  
             for the petitioner.

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JASPAL SINGH, J

CM No. 3941-CII of 2017

Application is allowed, as prayed for.

CR No. 1318 of 2017

Challenge in this revision petition, preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of impugned order dated July 08, 2016 (Annexure P-7), passed by learned Civil Judge (Sr. Division), Jhajjar, whereby, an application moved by the petitioner/defendant under Order VII Rule 11 of the Code of Civil Procedure (for short 'Code'); has been dismissed.

While assailing the impugned order, it has been argued with vehemence by learned counsel for the petitioner that the same is absolutely against the settled canons of law and mis-appreciation of legal proposition. In

fact, the suit filed by respondent No.1-plaintiff is barred under Order II Rule 2 of the Code in view of the filing of previous Civil Suit No. 4382 of 2013 titled as Jai Shingh vs. Vishal etc and the said suit was filed merely for permanent injunction whereas, the plaintiff-respondent No.1 should have filed the suit for specific performance alongwith relief of permanent injunction, as cause of action had already accrued to him for filing the suit for specific performance on March 29, 2013. All these facts have been ignored by learned trial while passing the impugned order. While relying upon the pronouncement of Hon'ble Apex Court in the case of *M/s Virgo Industries (Eng.) P. Ltd vs. M/s Venturetech Solutions P. Ltd; 2012 (4) RCR (Civil) 372*, it has been urged by learned counsel for the petitioner that there is no provision in the Specific Relief Act, 1963 requiring a plaintiff claiming the relief of specific performance to wait for expiry of the due date for performance of the agreement in a situation where the defendant may have made his intentions clear by his over acts. In the instance case, since the respondent No.1-plaintiff was aware about the intentions of the petitioner that he is not going to execute the sale deed in pursuance of agreement to sale dated March 29, 2013 the respondent No.1-plaintiff was required to institute a suit claiming the relief of specific performance and not merely for permanent injunction. Since the second suit on the same cause of action is not maintainable and the first suit should include the whole relief, the second suit if preferred on the basis of same cause of action is clearly barred under Order II Rule 2 of the Code. In the instant case, the learned trial Court has failed to appreciate the scope and object of Order II Rule 2 of the Code, while passing the impugned order. Thus, the impugned order is not sustainable in the eyes of law and is liable to be set aside by way of acceptance

of instant revision petition. Consequently, an application moved under Order VII Rule 11 of the Code moved by petitioner/defendant deserves to be allowed.

After bestowing due consideration to the afore-said submissions made by learned counsel for the petitioner and scrutinizing the impugned order, this Court comes to the conclusion that the same is without any legal or factual weight and the impugned order being absolutely in consonance with the proposition of law and facts does not call for any interference by this Court.

Undisputably, respondent No.1-plaintiff filed a suit for permanent injunction which was dismissed as withdrawn by him vide order dated May 20, 2014 and thereafter, respondent No.1-plaintiff filed a suit for specific performance with consequential relief of declaration and possession on the basis of agreement to sale dated March 29, 2013. A glance at the various documents available on record transpires that cause of action for filing the suit for specific performance on the basis of agreement to sale dated March 29, 2013 accrued to the respondent No.1-plaintiff on September 25, 2013 when the petitioner-defendant failed to execute the agreement on the date fixed for its registration. The suit for specific performance was filed by respondent No.1-plaintiff in the Month of 2014.

It is also a well settled proposition of law that at the time of disposal of an application under Order VII Rule 11 of the Code the averments made in the plaint are to be considered. Undisputably, in the instant case the respondent No.1/plaintiff filed the previous suit for permanent injunction and a perusal of plaint reveals that the date for the execution and registration of sale deed on the basis of agreement to sale dated March 29, 2013 was stipulated to be September 27, 2013. Since the sale deed was not executed by the

respondent No.1/plaintiff on or before the stipulated date, an execution can be said to have been accrued for filing the suit for specific performance on the said date i.e. September 27, 2013.

By now it is pretty settled that when an earlier suit based upon an agreement to sale has been dismissed in default or dismissed as withdrawn and till that date cause of action has not accrued for the filing of suit for specific performance. The filing of suit for specific performance in such circumstances is not barred by the provisions of Order II Rule 2 of the Code. In this regard we can have the reference of pronouncements of this Court made in the cases of **Balwant Singh vs. Buta Ram & others; 2009 (4) CCC 397 and Parsani Devi & another vs. Angrej Singh & another; 2010 (Suppl.) CCC 834/835.**

Adverting to the facts of the case in hand, cause of action if any accrued to the respondent/plaintiff for filing the suit for specific performance on September 25, 2013 and the filing the suit for permanent injunction as well as withdrawal of the suit prior to the filing of suit for specific performance is not barred under Order II Rule 2 of the Code. Thus, the learned trial Court has rightly dismissed the application moved under Order VII Rule 11 of the Code.

In the light of what has been discussed above, this Court does not find any merit in the instant revision. As such, it stands dismissed.

No order as to costs.

**MARCH 21, 2017**  
**sham**

**(JASPAL SINGH)**  
**JUDGE**

*Whether speaking/reasoned*      *Yes/No*

*Whether reportable*                      *Yes/No*