

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

CR No. 4452 of 2016 (O&M)
Date of Decision: September 13, 2017

Sohan Lal

..Petitioner

Versus

Pawan Kumar

..Respondent

with

CR No. 4520 of 2016 (O&M)

Sohan Lal

..Petitioner

Versus

Smt. Amita Mittal

..Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Gaurav Tyagi, Advocate
for the petitioner.

Mr. Aakash Singla, Advocate
for the respondent.

REKHA MITTAL, J. (oral)

This order will dispose of Civil Revision No. 4452 and
4520 of 2016 as these have emerged out of the proceedings initiated
by the petitioner for execution of decree dated 01.02.2014 passed in
suit for specific performance of agreement to sell dated 25.10.2004.

Counsel for the respondent would state that as notice of motion was issued to the limited extent, recorded in order dated 15.07.2016 and the respondent is not prepared for any kind of settlement, the petition is liable to be dismissed.

Counsel for the petitioner possibly cannot dispute that in CR No.4452 of 2016 notice of motion was issued to the limited extent. However, it is submitted that in Civil Revision No. 4520 of 2016 notice of motion was not limited one, therefore, the petition needs to be decided on merits.

Counsel for the respondent, in reply, would contend that the manner and tenor of order of notice of motion in CR No.4520 of 2016 would not confer any better right in favour of the petitioner.

I have heard counsel for the parties and perused the paper books.

In Civil Revision No. 4452 of 2016, challenge was laid to order dated 04.07.2016 (Annexure P-2) passed by the Additional Civil Judge (Sr. Division), Patiala (hereinafter to be referred as 'the Executing Court') whereby execution application dated 11.04.2016 (Annexure P-1) was dismissed.

The order of notice of motion dated 15.07.2016, reads as follows:-

“Without adverting to the merits of the matter, learned counsel for the petitioner submits that he is ready to compensate the defendant vis-a-vis commercial interest or some compensation regarding the deposit of balance sale consideration.

Notice of motion to the aforesaid limited extent only, for 05.08.2016.

Dasti as well.

Liberty is granted to the petitioner to serve the respondent through the counsel representing him before the trial Court.”

The respondent caused appearance through a counsel. On 26.05.2017, following order was passed by this Court:-

“Power of attorney on behalf of respondent has been filed, which is taken on record.

Learned counsel for the respondent submits that as per instruction from the respondent, he is not prepared for any kind of settlement.

Posted to 13.09.2017 for arguments.”

Since notice of motion was issued to the limited extent for examining if the respondent agrees for compensation *vis-a-vis* commercial interest or some compensation regarding deposit of balance sale consideration and the respondent has expressed that he is not prepared for any kind of settlement, therefore, no option is left with the Court except to dispose of the petition without examining merits of the order impugned.

Disposed of accordingly.

In the other petition (Civil Revision No.4520 of 2016) challenge was laid to order dated 04.07.2016 (Annexure P-2) passed by the Court in Execution Application dated 11.04.2016 (Annexure P-1) filed by the petitioner against Smt. Amita Mittal wife of Pawan

Kumar. In the said petition, order of notice of motion reads as follows:-

*“Learned counsel for the petitioner states
that connected matter i.e. Civil Revision No.
4452 of 2010 is fixed for 05.08.2016.
Notice of motion for 05.08.2016.
To be heard along with CR No.4452 of
2010 on 05.08.2016.”*

Counsel for the parties would inform that two agreements, one executed by Pawan Kumar and the other by Smt. Amita Mittal wife of Pawan Kumar were subject matter of two civil suits that culminated in separate decrees in favour of the petitioner which were sought to be executed through separate execution applications against the respondent(s).

A conjoint reading of notice of motion orders passed in the aforesaid petitions, reproduced hereinbefore, leaves no manner of doubt that notice of motion order in CR No. 4520 of 2016 is not something more than what was allowed in CR No. 4452 of 2016. The matter would have been different had the Court issued notice of motion in CR No. 4520 of 2016 on independent appraisal of its merits but had ordered it to be heard with CR No. 4452 of 2016. In the given scenario, order of notice of motion in CR No. 4520 of 2016 would only be to the extent limited in the other revision. As the respondent is not willing to accept balance sale consideration under any terms, there is no option except to dispose of the petition without examining it on merits.

Disposed of accordingly.

September 13, 2017
sunil

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No