

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

C.R. No.1115 of 2018

Date of Decision.19.02.2018

DD Auto Pvt. Ltd.

.....Petitioner

Vs

M/s Pivotal Infrastructure Pvt. Ltd. and others

....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. Animesh Sharma, Advocate
Mr. Rohan Jain, Advocate and
Ms. Manzra Dutta, Advocate
for the petitioner.

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AMIT RAWAL J.(ORAL)

The present revision petition is directed against the order passed by the trial Court in the application moved under Order 39 Rule 1 and 2 CPC whereby the injunction sought restraining the defendants from alienation of the land and handing over possession to the third parties, was dismissed. The appeal laid before the lower Appellate Court was also met with the same fate, therefore, the present revision petition.

The facts as carved out from the pleadings of the parties are that the petitioner-plaintiff was the absolute owner in possession of an agricultural land situated within the revenue estate of Village Mujheri, Tehsil Ballabgarh, Distt. Faridabad as per the sale deed dated 03.04.2006 Ex.P3. The petitioner-Company and its associate companies namely Forgings Pvt. Limited, DD Auto Private Limited, Chandra Auto Engineers Pvt. Ltd. purchased the land in revenue estate of village Mujheri through various sale deeds, the description of which had been given in sub para (ii) of para 5 of the revision petition. A Collaboration Agreement dated

04.06.2007 (Annexure P-4) was executed between the petitioner and M/s DD Township Limited-respondent No.4. As per the Collaboration Agreement, respondent No.4 was given the development and construction rights in the built up area to be constructed at the said land i.e. to the extent of 90%. The respondent No.4 submitted an application to the authorities for issuance of the licence which was granted in its favour on 3.12.2009 (Annexure P-5). Respondent No.1-M/s Pivotal Infrastructure Pvt. Ltd. was also interested in development of project at Faridabad. The petitioner acceded to such request submitted by respondent No.1. Resultantly, Deed of Assignment dated 27.02.2008 (Annexure P-6) was executed between the petitioner and the respondent No.1. The petitioner-plaintiff laid emphasis to Clause (g) and (h) of the aforementioned Deed of Assignment acknowledging the factum of the Collaboration Agreement and various other aspects. The aforementioned Deed of Assignment was registered with the office of Sub-Registrar on 28.02.2008.

It was further stated that respondent No.1 requested the petitioner to give GPA in its favour for operational purpose of project. Believing the representation to be bona fide and genuine, the petitioner executed a General Power of Attorney on 05.11.2009 (Annexure P-7) in favour of respondent No.1. The GPA was only given to respondent No.1 through its authorized signatory but no independent GPA or right was given in favour of respondent No.2-Kapil Minocha. In pursuance of the Deed of Assignment and other documents executed by the petitioner, other group companies, respondent No.4 in favour of respondent No.1, the respondent No.1 started development work over the site in the form of a group housing project. The respondent No.1 was given only right to carry out the

development activities according to the licence issued by the District Town and Country Planning and to raise construction according to the site plan. However, the petitioner-plaintiff was flabbergasted to notice that the aforementioned GPA was misused by respondent No.1 as sale deed dated 11.10.2010 (Annexure P-8) bearing registration No.7571 was executed by respondent No.2 in favour of respondent No.1. The GPA pertained to only 6 kanals 0 marlas of land situated in Khewat No.49, Khata No.51, Rect No.30, Killa No.12/2(6-0), village Mujheri, Tehsil Ballabgarh, Faridabd but this sale deed reveals that it was much more than the land which was approximately 10 kanals 10 marlas. In order to cover up fraud, respondent No.1 and 2 got executed the rectification deed bearing No.5452 dated 27.07.2012 i.e. after two years of the aforementioned sale deed stating therein that respondent No.1 at the time of execution of the sale deed in its favour was a GPA holder and not respondent No.2. There was a collusion between respondent No.1 to 3 with each other in order to cause loss and damage to the petitioner. The petitioner acquired the knowledge of the aforementioned fraudulent acts only in the month of September, 2013 and when confronted the respondent with the aforementioned fact, the respondent did not buzz to its request, necessitated the petitioner to raise the dispute as the documents aforementioned contained the resolution of dispute through arbitration. The notice dated 24.10.2013 was issued for appointment of the Arbitrator and resultantly, a sole arbitrator was appointed and the claim statement was filed. During the pendency of the aforementioned arbitration proceedings, the respondent raised the objection with regard to challenge to the sale deed on the premise that the Arbitrator did not have jurisdiction to grant declaration to the sale deed. It is in this

backdrop of the matter, the civil suit was filed on 22.09.016 along with ad interim application under Order 39 Rule 1 and 2 CPC.

Mr. Vikas Bahl, learned Senior Counsel assisted by Mr. Animesh Sharma, Mr. Rohan Jain, Ms. Manzra Dutta, Advocates appearing for the petitioner submitted that the trial Court on receipt of the notice entertained the request of the petitioner and granted interim order with regard to status quo qua possession and alienation. On 06.10.2016, the matter was posted for 09.11.2016. He had drawn attention of the Court to the order dated 09.11.2016, which reads as under:-

“Present: Sh. Ram Kumar Gupta, counsel for plaintiff.

Sh. A.K. Mittal, counsel for defendant No.1.

Sh. Nitesh Chhabra, counsel for defendant No.2.

Defendant No.4 in person.

Defendant No.3 ex parte.

WS not filed. Adjournment sought. Case is adjourned to 30.11.16 for filing WS on behalf of defendant No.1, 2 and 4.

Till then, parties are directed to maintain status quo with request to the alienation and possession of the suit property.

Sd/-

(Saurabh Gusain)

CJ(SD)/Fbd/9.11.16”

The respondents contested the suit by raising preliminary objections vis-à-vis the locus standi, maintainability, limitation, deficiency of court fee etc. It was categorically averred that as per Section 5 and 8 of the Arbitration and Conciliation Act, the suit aforementioned was not maintainable in view of the fact that the matter was *sub judice* before the Arbitrator. It was further pleaded that the application under Order 7 Rule 11 CPC was also moved but the same was dismissed vide order dated

trial Court did not confirm the ad interim stay and dismissed the application for stay vide order dated 02.08.2017. The aforementioned order was challenged before the lower Appellate Court but the same was upheld by it, thus, both the Courts below have abdicated, much less, committed illegality and perversity in not referring to the documents particularly the terms and conditions/clauses of GPA (Annexure P-7).

Mr. Vikas Bahl, learned senior counsel drew attention of this Court to clauses 9, 14 & 11 of the GPA to contend that no right to execute the sale deed or transfer the sale deed as has been done was given to the Agent. In fact, there was a breach of trust between the Principal and the Agent. Even the rectification was also done at the back of the petitioner. Since the respondents-defendants had raised the construction more than 90% as envisaged in the Collaboration Agreement i.e. almost 100% and is contemplating to create third party rights by selling the dwelling units, it is in this backdrop of the matter emphasis was laid before the trial Court to restrain the defendants from creating third party rights. Specific averment has also been made before the Arbitrator for withdrawal of one of the claim where the sale deed and rectification was challenged before the Arbitrator, though no specific order has been passed thereon. The petitioner-plaintiff has been able to make prima facie a case within the ingredients of Order 39 Rule 1 and 2 CPC i.e. balance of convenience, committing breach, causing injury and irreparable loss. Both the Courts below have misread and misinterpreted the terms and conditions of the Collaboration Agreement and as well as the GPA and laid emphasis on Clause 11, which according to him, would not be applicable as it cannot be read in isolation but in conjunction with other paragraphs. The respondents have even violated clauses 16 and

25 of the Collaboration Agreement whereby they were given permission to raise construction with regard to 90% of the built up area after completion of the project but denied the same with impunity.

I have heard learned senior counsel of the petitioner, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Bahl. Clause 9, 14 and 11 of the GPA reads as under:-

“9. To retain, book for sale/lease, flats/unit spaces in the said project falling to the share of Pivotal Infrastructure Pvt. Ltd. in terms of the deed of Assignment dated 27.2.2008 as amended and supplemented from time to time in its own name and for such price and on such terms and conditions as the said Attorney may think fit and expedient and to execute the relevant documents pertaining thereto.

14. On completion of the project, to transfer and convey, rights, title and interest in the area of the project allocated to Pivotal Infrastructure Private Limited, as agreed to be sold/lease to different prospective purchaser(s)/Lesser(s) and to execute the relevant documents including the sale deed(s) thereof,

11. To execute any deed, rectification deed and execute any other document with any authority and to get the same registered with the registration authority.”

On cumulative reading of the aforementioned Clauses, it is yet to be established whether there was a deviation or not because the plaintiff through evidence is required to prove on record the demarcation report with regard to the extent of construction vis-à-vis 90% or 100%. No doubt the

trial Court at some point of time granted interim injunction as is evident from order dated 09.11.2016 but later on dismissed the application vide order dated 2.08.2017. Interim order was assailed before the lower Appellate Court on 16.10.2017 and the impugned order has been rendered on 8.1.2018.

Clause 11 of the GPA in my view has given power by the Principal to the Agent to execute all the deeds. It is yet to be determined whether the sale deed would be considered as deed or not, therefore, I do not consider it necessary to delve upon the merits and demerits of the same. The Courts below while dismissing the application have also expressed that anything observed in the order shall not be construed as an expression in merits and demerits of the pendency of the suit, much less, applicability of the provisions of Section 52 of the Transfer of Property Act.

Therefore, without commenting upon merits and demerits as it may seriously prejudice the rights of the parties, particularly the petitioner-plaintiff regarding maintainability or complying with the ingredients Order 39 Rule 1 and 2 CPC, while upholding the orders under challenge, I deem it appropriate to dispose of the revision petition with a direction to the trial Court to complete the trial of the suit within a period of six months from the date of receipt of certified copy of this order by affording three-three effective opportunity to the parties to the *lis*. The trial Court shall also ensure that none of the parties to the *lis* cause any delay in adjudication of the suit.

It has also been brought to the notice of this Court that issues have already been framed and the matter is listed for plaintiff's evidence for 05.03.2018. The plaintiff shall take all steps to summons the witnesses, if

required, in accordance with law by submitting the application for witnesses.

Anything observed in this order shall not construed as an expression on merits and demerits of the pending suit.

(AMIT RAWAL)
JUDGE

February 19, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No