228 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.2437 of 2015 (O&M)
Date of decision : January 24, 2018

Tara Singh .... **Petitioner**

Versus

Nirmal Singh and others .... **Respondents**

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. S.S. Rangi, Advocate for the petitioner.

Mr. Amit Kumar Saini, Advocate for respondent No.1.

Mr. Prabhjot, Advocate for
Mr. Nakul Sharma, Advocate for respondent No.4.

Mr. S.C. Pathela, Advocate for respondent Nos.6.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Heard.

Defendant No.1-petitioner impugned the order dated 19.02.2015 (Annexure P-4) passed by learned Addl. Civil Judge (Sr. Divn.), Samrala, vide which defendant No.1-petitioner has been directed to return and deposit the loan amount of ₹10,00,000/-, which he availed from Federal Bank Limited, Branch Samrala within 15 days.

The short background of the case is that the plaintiff-respondent No.1 Nirmal Singh filed a suit for possession by way of specific performance of the agreement regarding land measuring 29 kanals, 13 marlas, claiming that the land was agreed to be sold by defendant No.1-petitioner @ ₹3,00,000/- per killa, ₹2,50,000/- were paid as earnest money. Defendant Nos.2 and 3 are subsequent vendees.

It comes out that during the proceedings, a compromise was effected before the Lok Adalat between plaintiff and defendant No.1, in which defendant No.1 agreed to return ₹14,00,000/- to the plaintiff. To enable, defendant No.1 to raise money, ad interim injunction regarding alienation of the suit property was vacated by the trial court. Defendant No.1 obtained the loan from Federal Bank, who was not party to the said suit. Later on, before the trial court, he denied the compromise, stating that it was not of his free will. An application filed by the plaintiff under Order 23, Rule 3 CPC was dismissed on the ground that defendant No.1-petitioner is denying the compromise and defendant Nos.2 and 3, subsequent vendees are not party to the compromise. Another application filed by the plaintiff for directing defendant No.1-petitioner to return of loan of ₹10,00,000/-, which apparently was taken as agriculture loan by mortgaging of the suit property. It is on this application, that the impugned order was passed.

I am of the view that apparently, defendant No.1-petitioner has taken the court for ride. There was a stay against alienation of the suit property. Before the Lok Adalat, he entered into a compromise to return ₹14,00,000/- to the plaintiff and on his request, stay against the suit property was vacated to enable him to obtain agriculture loan, apparently by mortgaging the property. Defendant No.1-petitioner created incumbrance to the tune of ₹10,00,000/- and obtained loan.

Now, defendant No.1-petitioner has utilized the said loan amount for the agricultural purposes and same is not in his account.

Needless to say that the amount of the loan with the addition of interest will increase. In such cases, the court is required to take tough view.

In this case, admittedly Federal Bank, from which the loan was obtained, was not party to the suit. Defendant No.1-petitioner claimed that he had got no money to return the said loan.

In these circumstances, the impugned order is modified to the extent that the amount due to the Federal Bank shall be adjusted in the sale consideration, if the suit of the plaintiff is decreed and for the balance amount or the amount whatever is due from defendant No.1-petitioner, a money decree will be passed against him, in case, the suit of the plaintiff succeeds.

As such, the present revision petition is disposed of.

(KULDIP SINGH)
JUDGE

January 24, 2018
sarita

Whether speaking / reasoned Yes
Whether Reportable: No