

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.2868 of 2013

Date of Decision: 25.09.2018

Ram Kalan

.....Petitioner

Vs.

M/s H.K. S. Developers Private Limited

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sanjay Vij, Advocate,
for the petitioner.

Mr. Umesh Aggarwal, Advocate,
for the respondent.

AMOL RATTAN SINGH, J.

By this petition, the petitioner, who is the defendant in the suit filed by the respondent herein, challenges the order of the learned Civil Judge (Junior Division), Gurugram, dated 18.03.2013, by which the petitioners' application filed 'under' Order 7 Rule 11 of the Code of Civil Procedure has been dismissed.

Through its suit, the respondent-plaintiff (company) seeks decrees of prohibitory and mandatory injunction against the petitioner-defendant, as also a declaration that the plaintiff be indemnified by the petitioner-defendant to the extent of all losses actually caused by the acts and conduct of the petitioner, in respect of the 'deal' relating to the suit properties, the said properties having been described in the plaint.

2. It was the case of the petitioner in his application under Order 7 Rule 11, that since the plaintiff had instituted the suit actually on the basis of

an alleged agreement of sale dated 27.07.2006, therefore with the last date fixed for registration of the sale deed being 22.09.2006, and the suit having filed on 01.05.2010, with the plaintiff also claiming that possession of the suit land had been delivered to it vide the said agreement itself, court fee, *ad valorem*, as per the value of the suit land, was required to be affixed on the plaint; and that not being so, the suit could not be entertained and was to be rejected on that ground itself.

It was further contended that even though delivery of possession in part performance of the agreement of sale was not admitted by the present petitioner (defendant), however, since that was the intention of the respondent-plaintiff, that the agreement itself also was required to be compulsorily registered, with adequate stamp duty paid, in fact the plaintiffs' only remedy qua the agreement of sale was to seek a suit for specific performance, which should have been filed within three years of 27.07.2006.

3. As per the petitioner in his application, in fact, even the earnest money paid by the respondent-plaintiff (prospective vendee) stood forfeited on account of the sale deed not having been registered by it upto the date stipulated in the agreement and the suit was also therefore time barred and needed to be dismissed on that ground also.

4. In reply to the aforesaid contentions made by the petitioner in his application, the respondent-plaintiff had stated before the trial Court that in fact it was the petitioner-defendant who had failed to obtain necessary permission/'no objection certificate' from various authorities, including the Haryana Urban Development Authority and the Gas Authority of India Limited, after which only "a proper and effective transfer of title" could be made.

Therefore, as per the respondent herein, the date for registration of the sale deed stood extended till the petitioner performed his part of the contract, which the respondent-plaintiff had been always ready and willing to execute.

In its reply to the application, it was further denied by the respondent that the only remedy available to it was a suit seeking specific performance of the agreement, because the agreement was valid till the petitioner performed his part of the contract.

Lastly, it was contended (as recorded in the impugned order), that the application had been filed only with the ulterior motive of prolonging the litigation.

5. The learned trial Court vide the impugned order dated 18.03.2013, after considering the pleadings in the application thereto, as also the arguments of learned counsel before it, eventually held that the suit of the plaintiff cannot be rejected merely because the agreement of sale had not been registered, with the agreement itself not in dispute and it also having been admitted that “delivery of possession also goes in favour of the plaintiff”.

6. While coming to the short conclusion, some judgments cited by the counsel on both sides were referred to but with no detailed reasoning given by that Court, other than simply holding that in terms of the judgment of the Supreme Court in Mahadeva and others v. Tanabai 2004 (3) RCR (Civil) 215 and other judgments of this Court cited before it, the application under Order 7 Rule 11 could not be allowed.

7. Before this Court, Mr. Sanjay Vij, learned counsel for the petitioner, firstly submitted that other than the fact that the issues of *ad valorem* court fee not having been paid and the suit being barred by time have

not been addressed in the impugned order, even as per the ratio of the judgment of the Supreme Court in **Virgo Industries (Eng.) Private Limited v. Venturetech Solutions Private Limited** (2013) 1 SCC 625, even the protection of Section 53-A of the Transfer of Property Act is not available to the respondent-plaintiff, it not having taken any action in terms of the aforesaid provision, after the possession (as contended by the respondent-plaintiff but denied by the petitioner-defendant), was handed over to it, of the suit property.

Learned counsel also relied upon a judgment of a co-ordinate Bench of this Court in a case pertaining to the respondent itself, **M/s HKS Developers Private Limited v. Mahendra**, Civil Revision no.3973 of 2014, decided on 30.11.2015.

8. *Per contra*, Mr. Umesh Aggarwal, learned counsel for the respondent-plaintiff, submitted that as regards the court fee, the suit being one simply seeking permanent injunction, court fee, *ad valorem*, was not required to be paid; and as regards limitation, again it being a suit seeking permanent injunction qua the plaintiffs' possession thereof (as contended), the question of limitation would not arise, the petitioners' specific contention being that it is in possession of the suit property.

He further submitted that the plaintiff is not claiming protection under Section 53-A of the Transfer of Property Act and is simply seeking a decree simpliciter for permanent injunction, on the basis of its possession. To support his contention, he relied upon a judgment of the Supreme Court in **Rame Gowda (D) by Lrs v. Mr. Varadappa Naidu (D) by Lrs and Anr.** **2004 (1) RCR (Civil) 519**.

He further submitted that for the purpose of deciding an

application under Order 7 Rule 11 of the CPC, the only thing required to be looked at by the trial Court is the plaint, and not the merits of the contentions that would be raised by the parties to the *lis* on the basis of evidence to be led by them.

9. Having considered the impugned order as also the arguments of learned counsel on both sides, what is first to be observed by this Court is that whether or not protection in terms of Section 53-A of the Transfer of Property Act is available to the respondent-plaintiff or not and whether it is entitled to the injunctions it seeks, are issues not to be gone into by this Court at this stage but by the trial Court, as per evidence led before it.

The limited question before this Court, in this revision petition, is whether the application of the petitioner, under Order 7 Rule 11 CPC, seeking rejection of the plaint on the grounds raised therein, has been correctly decided by the trial Court or not.

A copy of the plaint in the suit instituted by the respondent-plaintiff has been annexed as Annexure P-2 with the petition, wherein the prayer made by the respondent is as follows:-

“(A) That a decree of prohibitory injunction may kindly be passed in favour of plaintiff and against the defendant, his heirs, attorneys, agents, representatives and assigns thereby directing them not to disturb or abridges (*sic*) with the exclusive rights of the plaintiff to enjoy the property the site in accordance with law and should also remain desist to disturb actual physical possession of the plaintiff in immovable properties situated of village Dharampur, District Gurgaon (Haryana) [detailed and described in para no.4 of the plaint to any other person except to the plaintiff or any other person authorized by the plaintiff.

(B) That a decree of mandatory injunction may kindly be

passed in favour of plaintiff Company and against the defendant, his heirs thereby directing him to furnish the NOC duly issued from HUDA and GAIL for his respective lands coupled with documents of his title in respective properties to enable the plaintiff to get the sale deeds in his favour.

- (C) That besides the plaintiff shall be declared entitled to be indemnified by the defendant to the extent of all losses actually caused by the acts & conducts of the defendant on account of deal relating to properties first shown above situated in village Dharampur, Tehsil & District Gurgaon.
- (D) That the costs of the suit may be awarded.
- (E) That any other relief which the Court deem fit in favour of plaintiff may also be granted.”

10. Thus, the respondent herein, in its suit, seeks, firstly, a decree of prohibitory injunction, restraining the petitioner-defendant from interfering in its possession over the suit property in any manner; further, a decree of mandatory injunction directing the petitioner to furnish 'No Objection Certificates' issued by the Haryana Urban Development Authority (HUDA) and the Gas Authority of India Limited (GAIL), as also the documents of the title of the petitioner-defendant in the properties in question, so that the plaintiff can get the sale deed executed in its favour.

Thirdly, the plaintiff seeks vide its suit that it be declared entitled to be indemnified by the defendant to the extent of all losses actually caused by the acts & conducts of the defendant on account of the deal relating to the suit properties.

Hence, no possession of the suit property is sought in any manner by the plaintiff, it having contended in any case that it is in possession thereof and therefore such possession be protected by way of a decree of prohibitory

injunction to be issued against the petitioner-defendant.

Therefore, neither by way of a decree of prohibitory injunction, nor by way of a decree of mandatory injunction sought, would court fee be payable, *ad valorem*, in terms of the value of the suit property.

As regards the 3rd prayer, that the plaintiff be declared to be indemnified by the petitioner-defendant, though no arguments whatsoever have been addressed before this Court on that count at all, and in fact, even from the petition itself (before this Court), nothing has been pointed out that court fee *ad valorem* was required to be paid by the respondent herein in terms of the said part of the prayer clause in the suit, however, in my opinion, such losses not having been quantified in any manner, and even the respondent-plaintiff not having spelt out in its plaint what the losses are, with only a prayer simplicitor made to the aforesaid effect, whether such prayer eventually is accepted or not, with there being no specific losses depicted anywhere in the plaint, and no quantified recovery sought in any part of the plaint, I seen no cause for fee *ad valorem* to be paid by the respondent-plaintiff at this stage, subject of course to any quantified amount eventually found to be recoverable, in terms of the indemnity sought by the respondent-plaintiff from the petitioner.

11. Coming to the argument of Mr. Vij that the protection of Section 53-A not being available to the respondent and that in fact a suit for specific performance instead of a suit for prohibitory and mandatory injunction should have been filed in respect of the suit property, as already stated earlier in this judgment, that question is something which is to be determined by the trial Court on the basis of evidence led before it, including naturally, the question of whether the respondent is entitled to the decree of prohibitory injunction

sought, on the basis of any possession of the suit property, such possession naturally having to be proved before that Court.

12. On the issue of limitation raised by Mr. Vij, learned counsel for the petitioner, again it has to be held by this Court that there being no prayer whatsoever seeking a substantive or consequential relief of possession of the suit property, with the suit of the plaintiff strictly being one seeking a prohibitory injunction, with even the mandatory injunction sought not being one seeking possession of the property but for deliverance of the title papers and 'no objection certificates' by the petitioner to the plaintiff, Section 7 (iv) (c) of the Court Fees Act, 1870, would have no application, by which, if a consequential relief is sought pursuant to a declaration sought in the suit by the plaintiff, court fee *ad valorem* would be payable.

As regards the judgments cited by Mr. Vij, in *Virgo Industries* (supra), the main question was with regard to whether, after a suit for permanent injunction had been filed, a second suit seeking specific performance of an agreement would be maintainable or not. While holding that the cause of action for filing a suit for specific performance of an agreement was available to the plaintiff even at the time when it had filed the suit for permanent injunction, the second suit was held to be not maintainable.

In this *lis*, no such question of another suit having been filed by the respondent-plaintiff having even arisen, the said judgment is wholly inapplicable.

13. Another judgment cited by Mr. Vij (though not specifically referred to when this judgment was reserved in this petition), was in **Vasanthi v. Venugopal (dead) through legal representatives** (2017) 4 SCC 723. The said judgment has been referred to by Mr. Vij essentially on the issue of one

of the questions that arose therein, on whether the protection of Section 53-A would be available to a transferee of a property, even if a suit for specific performance of an agreement in favour of such transferee was time barred.

As already noticed hereinabove what the respondent-plaintiff is seeking in the present *lis*, is simply its protection of possession over the suit property (as contended by it), with no relief sought, of handing over any part of the suit property. Hence, the question of limitation would not come in even as regards the filing of a suit for prohibitory injunction and consequently, dismissal of the petitioners' application under Order 7 Rule 11, would also be not assailable on that ground, in my opinion.

14. As regards the judgment of the co-ordinate Bench in the respondent-plaintiffs' own case against some other person, i.e. in Civil Revision no.3973 of 2014 (*supra*), as has been referred to by Mr. Vij, learned counsel for the petitioner, the said judgment is wholly inapplicable to the present case in view of the fact that, firstly, the principle issue in that case was not whether or not court fee was payable *ad valorem* but on whether, after rejection of the plaint of the respondent herein (in that *lis*) on account of non-payment of such court fee, an application under Order 9 Rule 4 CPC would lie for restoration of the suit, or whether a fresh suit would need to be filed by the plaintiff. It was held in that case that a fresh suit would need to be filed, an application under Order 9 rule 4 CPC not being maintainable.

Other than that, it is seen from a perusal of the said judgment, that in fact, the suit of the plaintiff, in that *lis*, had been rejected on account of the fact that despite the plaintiff seeking possession of the suit land, court fee, *ad valorem*, had not been paid. Obviously, in the present case, possession not having been sought by the respondent-plaintiff, with the claim being it was in

such possession, with not even an alternative prayer made for any decree of mandatory injunction seeking possession of the suit land, court fee, *ad valorem*, would not be payable in the present *lis*, in the suit filed by the respondent-plaintiff.

15. Therefore, without making any comment whatsoever on whether or not respondent-plaintiff is in possession of the suit property, or not, simply by again observing that the relief sought in the suit being one of prohibitory injunction, with the decree of mandatory injunction sought also not being qua any possession of the suit property and further, even as regards the 3rd prayer in the suit (on which no arguments were actually addressed by either party), that being a relief of indemnity to the respondent-plaintiff by the petitioner-defendant, that being a wholly vague prayer at this stage, with no substantive indemnity actually sought in the entire plaint, till such time that any amount of recovery is even found to be made from the defendant by the plaintiff, (on account of such indemnity), court fee *ad valorem*, beyond what has been paid by the respondent-plaintiff, would not be payable, except to the extent as observed by this Court in the last part of paragraph 10 hereinabove, (if such a finding is eventually recorded by the trial court).

16. Consequently, finding no merit in this petition, it is dismissed, with the interim order dated May 06, 2013, naturally, vacated. The trial Court would proceed with the suit from the stage where it was, at the time when proceedings were stayed before it.

No order as to costs.

September 25, 2018

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(AMOL RATTAN SINGH)

JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes