

CR-4243-2018

Date of Decision: 06.07.2018

M/s Phulchand Exports Pvt. Ltd

.....Petitioner

versus

Nahar Industrial Enterprises Ltd. and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL**Present:** Ms. Savita Bhandari, Advocate
for the petitioner.**DEEPAK SIBAL, J. (ORAL)**

The facts in brief which are required to be noticed to adjudicate upon the present petition are that respondent No.1 filed a suit seeking therein a declaration to the effect that agreement dated 17.02.2016 entered into between the parties was the final agreement between them and all other preceding agreements between them be deemed to be superseded. Notice in the suit was issued. On 27.07.2017, on an application filed by respondent No.1-plaintiff under Order 39 Rule 1 and 2 CPC, vide the impugned order dated 27.07.2017, the defendants (including the petitioner) were restrained from taking any recourse to law on the basis of any agreement between the parties which was of a date prior to 17.02.2016. In the aforesaid suit, the petitioner who was defendant No.1, on 18.09.2017 had put in appearance through his counsel and on the third opportunity so granted by the Trial Court, on 10.01.2018, had filed its written statement. Thereafter, on 18.05.2018, the petitioner filed an application seeking vacation of the stay order dated 27.07.2017. In such application, the Trial Court has issued notice to respondent No.1-plaintiff for 20.07.2018.

Without waiting for the final outcome of the application filed by the petitioner seeking vacation of the stay order dated 27.07.2017, the present petition has been filed before this Court in which prayers are made primarily to hold that the proceedings pending before the Trial Court are illegal and without jurisdiction and that the *ex-parte* stay order dated 27.07.2017 be vacated and quashed.

Learned counsel for the petitioner has been heard at length and with her assistance, the record has also been perused.

So far as the prayer made by the petitioner seeking vacation of the stay order dated 27.07.2017 is concerned, it is not disputed that the petitioner who is defendant No.1 in the suit filed an application on 18.05.2018 seeking vacation of the stay order. In this application, the Trial Court has issued notice to respondent No.1-plaintiff for 20.07.2018. Without waiting for the outcome of such application, the petitioner has rushed to this Court. Thus, on this count the petition is clearly premature.

It also does not lie in the mouth of the petitioner that the Trial Court has delayed the proceedings with regard to vacation of the stay as the petitioner had put in appearance before the Trial Court on 18.09.2017 and filed an application seeking vacation of the stay order only after six months thereof. As soon as the application was filed, the Trial Court rightfully issued notice to the other side and that too without any delay. Therefore, at this stage, no directions are required to be passed in this regard.

The prayer of the petitioner that the entire proceedings before the Trial Court are liable to be quashed as the same are without jurisdiction also has no merit.

Respondent No.1 has filed the present suit seeking therein a declaration that agreement dated 17.02.2016 arrived at between the parties be treated as the final agreement and in supersession of all other preceding agreements between them. The Court has taken cognizance of such suit and rightly issued notice to the petitioner-defendant No.1 and defendant No.2. The petitioner has filed a written statement and nothing is found irregular or illegal in the manner the Trial Court is proceeding with the matter. A perusal of the written statement filed by the petitioner before the Trial Court shows that an objection has been taken by the petitioner regarding the maintainability of the suit. Relying on Order 7 Rule 11 CPC, a prayer has been made by the petitioner for rejection of the suit with costs. The written statement was filed by the petitioner in January, 2018 and without waiting for the final adjudication upon such objection, the petitioner has rushed to this Court. Thus, on this issue too, the petition is clearly premature.

In view of the above observations, the present petition is found to be premature and is, therefore, dismissed. However, the petitioner would be at liberty to raise all issues raised in the present petition before the Trial Court which is expected to consider the same in accordance in law.

06.07.2018*Neha***(DEEPAK SIBAL)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No