IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-427-2018

Date of decision: 21.04.2018

Ravi Bhalla

..... Petitioner

Versus

M/s Samrathal Estate Pvt. Ltd. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Tanmoy Gupta, Advocate for the petitioner.

RAMENDRA JAIN, J. (ORAL)

1. Through this revision under Article 227 of the Constitution of India, challenge has been laid to the order dated 02.012.2017 of the trial Court, whereby application of the petitioner-plaintiff under Order XVI Rule 1 CPC was rejected.

2. Briefly stated, the petitioner-plaintiff filed a suit for declaration, permanent and mandatory injunctions against the respondent-defendants pleading that on the request of respondent-defendants, he had lent ₹ 3 crores to them on 01.02.2008, vide four cheques. Memorandum Of Understanding (for short-'MOU') was signed in between the parties to return double of the said amount by 01.08.2008 i.e. in six months or in the grace period of two months. The respondents failed to pay the settled amount and invested the same in purchasing some agricultural land. Therefore, the petitioner-plaintiff was entitled to 26% share in the suit land as mentioned in the share clause in land bearing Khasra Nos. 204(1-10), 205(0-12), 134/2 (2-7), 135/1(2-1) measuring 06 Bigha, 10 Biswa situated in village Haiderpur Viran, Tehsil and District Gurgaon, on basis of jamabandi

and mutation No. 3471.

3. Upon notice, the respondent-defendants in their written statement admitting their liability, *inter alia* pleaded that they were always ready and willing to repay the agreed amount as per MOU. The same could not be paid on account of absence of the petitioner-plaintiff, due to his confinement in jail at Prague, Czech Republic w.e.f. March, 2008 up to May, 2009. They regularly tried to contact the petitioner-plaintiff to repay the loan amount along with interest, but he showed his inability to come to India due to confiscation of his passport by Prague, Czech Republic Authorities. However, the respondent-defendants managed to repay the amount of ₹ 2 crores to the petitioner-plaintiff by various modes i.e. cheque, RTGS and in cash through his duly authorized representative in the year 2010 and 2011.

4. After framing issues, the trial Court allowed the petitioner-plaintiff to lead his evidence. The petitioner-plaintiff after availing 10 effective opportunities including last one to conclude his evidence did not conclude the same rather, on the 10^{th} opportunity moved an application under Order XVI Rule 1 CPC for summoning some witnesses. After obtaining reply and hearing both the sides, the learned trial Court dismissed the said application vide order impugned herein on following three grounds:-

(i) That the petitioner-plaintiff despite availing sufficient opportunities failed to conclude his evidence, therefore, filing of application for summoning of witness which was not filed immediately after filing of the suit was not maintainable.

(ii) Proviso to Order VII Rule 1(1) CPC provides maximum three adjournments whereas in the instant case the petitioner-plaintiff has already been afforded much more opportunities.

(iii) Director of the respondent-defendant No. 1 was not a necessary witness or could not have been summoned on request of the petitioner-plaintiff when the MOU dated 01.02.2008 was admitted and exhibited by the petitioner-plaintiff.

5. Learned counsel for the petitioner-plaintiff *inter alia* contends that the witnesses mentioned in the application though filed belatedly are very much necessary and relevant to prove the alleged transaction in between the parties. The Director of respondent-defendant No. 1 is a signatory to a receipt vide which he had agreed to give 26% share to the petitioner-plaintiff in the land purchased by it. Therefore, to prove the said receipt, his summoning as a petitioner's witness is required. The other two witnesses are bank officials from whom the bank transactions in between the parties have to be proved. The trial Court illegally dismissed the application of the petitioner-plaintiff, without appreciating the fact that summoning of aforesaid witnesses for effective adjudication of the suit is very much necessary.

6. Having given considerable thought to the submissions made by learned counsel for the petitioner, this Court finds the instant revision being completely devoid of any merit for the reasons to follow:

7. The alleged receipt which the petitioner-plaintiff wants to prove has not seen light of the day. Therefore, when the very existence of

any receipt allegedly executed by the Director of respondent-defendant No. 1 is doubtful, he cannot be summoned to prove a non-existing document, more particularly, when MOU dated 01.02.2018 executed between the parties is specifically admitted by the respondent-defendants in their written statement. More so, in view of the admission of the respondent-defendants about borrowing of ₹ 3 crores from the petitioner-plaintiff, there is no necessity to summon the bank officials to prove the same.

8. I have gone through the impugned order and find no illegality or perversity in the same. The same is well reasoned.

9. Dismissed.

April 21, 2018 **(RAMENDRA JAIN)**
rishu **JUDGE**

Whether speaking/reasoned	**Yes/No**
Whether Reportable	**Yes/No**