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

C.R. No.5944 of 2010

Jatinder Kaur and Anr.

...Petitioners

Versus

Smt Arvinder Kaur and Ors.

....Respondents

Date of Order: 11.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Naresh Kaushal, Advocate for the petitioners.

Mr. M.S. Sachdev, Advocate for respondent Nos.1 & 2.

AMIT RAWAL, J (ORAL)

Present revision petition is directed against the impugned order dated 03.8.2010 passed by Addl. Civil Judge (Sr. Division), Jalandhar whereby the application of the petitioners/defendants for adjourning the present suit *sine die,* has been dismissed.

It is averred that the plaintiff instituted the suit seeking specific performance of agreement to sell dated 6.6.1991 allegedly executed in favour of the plaintiff qua the area measuring 17 marlas of land and declaration on the premise that during the pendency of the suit, an arbitration agreement was executed between the parties and resultantly, an award was passed on 07.5.1999 wherein it was held that the suit property was the ownership and in possession of defendant No.2 and husband of defendant No.1.

Learned counsel for the petitioners submitted that the said application has been rejected on the premise that the suit had been old enough and therefore the same could not be adjourned *sine die*, for, the respondent-plaintiff also filed a suit challenging the arbitral award on the basis of fraud and misrepresentations.

On the other hand, learned counsel for the respondents submitted that the controversy with regard to the appointment of the Arbitrator is still under challenge. It was on that count that the plaintiff filed the suit challenging the award wherein the defendants had moved application for treating the issue of jurisdiction and maintainability as preliminary issue, therefore, there was no occasion for the court below to entertain such application as has been rightly done in this case.

After hearing learned counsel for the parties and appraising the paper book, I am of the view that there is merit in the submissions of learned counsel for the petitioner, for, the suit for specific performance of the agreement to sell can not proceed, which is subject matter of arbitration and arbitral award is under challenge. This has to be decided where the Civil Court would have jurisdiction to set aside the same.

In my opinion, the trial Court could frame issue of maintainability and jurisdiction as preliminary issue and decide the same in time bound manner and in such circumstances, the suit could not proceed.

Even while issuing notice of motion on 17.9.2010, this Court had stayed further proceedings.

In these circumstances, present revision petition is allowed. Suit is adjourned sine die till the preliminary issue is framed by the trial Court in connected matter/suit. However, liberty is granted to the respondents to revive the proceedings in the suit whereby the respondent-plaintiffs have challenged award on the ground of fraud and misrepresentation.

May 11, 2018 **`(AMIT RAWAL)**
manoj **JUDGE**

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