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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No.6486 of 2013 (O&M)
Date of Decision: 16.10.2018**

AVTAR SINGH

.....Petitioner

Vs

PRITAM SINGH

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Sumeet Mahajan, Sr. Advocate with
Ms. Ramneeq Mahajan, Advocate
for the petitioner.

Mr. P.N. Aggarwal, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 03.10.2013 passed by the Addl. Civil Judge (Sr. Divn.) Rupnagar vide which application dated 25.08.2012 filed by the petitioner for release of amount of Rs.80 lakhs in pursuance of the compromise dated 21.05.2012 was dismissed, whereas the application filed by the defendant for not releasing the amount to the petitioner was accepted along with an order referring the agreement to sell dated 15.10.2008 to the Central Forensic Science Laboratory, Sector 36, Chandigarh (for short 'the CFSL') for its comparison with the agreements dated 18.11.2011 and 21.05.2012.

[2]. As per the facts pleaded by the petitioner, the agreement to sell was executed between the plaintiff and defendant on 15.10.2008 in respect of 21 *Bighas* 8 *Biswas* of land. The details of which have been given in the headnote of the plaint. An amount of Rs.65 lakhs was paid as earnest money to the defendant. Sale deed was not executed on the target date. It was also alleged by the petitioner that on 18.11.2011, there was a compromise effected between the parties outside the Court, wherein it was agreed that the defendant will return amount of Rs.1 crore along with interest on or before 25.06.2013. The said compromise was not adhered to, rather the defendant intended to sell the land in question to the prospective vendees. That prompted the petitioner to file a suit for permanent injunction on 28.03.2012 along with an application under Order 39 Rules 1 and 2 CPC.

[3]. The trial Court vide order dated 29.03.2012 passed an order restraining the defendant from alienating the suit land. During pendency of the suit, a fresh compromise was executed between the parties on 21.05.2012. As per aforesaid compromise, the total amount of Rs.1,07,00,000/- along with interest upto date was to be paid by the defendant. An amount of Rs.22 lakhs was paid on 04.06.2012 and the remaining amount of Rs.85 lakhs was to be paid on or before 20.08.2012.

An amount of Rs.5 lakhs was paid to the petitioner on 06.06.2012, thereby total amount paid to the petitioner was to the tune of Rs.27 lakhs. Instead of making payment of the remaining amount of Rs.80 lakhs to the petitioner, the defendant deposited the amount of Rs.80 lakhs in the trial Court on 13.08.2012. Both the parties appeared before the trial Court and got their statement recorded in the context of compromise. Thereafter application was filed by the petitioner for release of the amount. Another application was also filed by the defendant for not releasing the amount in favour of the petitioner. The impugned order came to be passed on the aforesaid applications filed by both the parties.

[4]. During pendency of the present revision petition, On 11.03.2014, the Co-ordinate Bench of this Court passed the following order:-

“Perusal of the record would reveal that nemo had appeared on behalf of respondent despite service on 10.01.2014. Today again nobody is appearing to refute the prayer of the petitioner.

However, in the interest of justice, petition is adjourned to 19.05.2014 for arguments.

After hearing the learned counsel for the petitioner, going through the record with his valuable assistance, the trial Court is directed to release the impugned amount to the petitioner against a valid security. However, the payment of the impugned amount would be

subject to the final decision of the main suit.”

[5]. Perusal of the aforesaid order would show that a direction was issued to the trial Court to release the amount to the petitioner against a valid security. However the payment was subject to final decision of the suit pending before the trial Court.

[6]. In compliance of the aforesaid order, the petitioner has already executed security to the satisfaction of the trial Court and the amount of Rs.80 lakhs has already been released in favour of the petitioner.

[7]. In my considered opinion, the subsequent part of observations made in the impugned order of referring the agreement to sell dated 15.10.2018 to the CFSL for comparison with the agreements dated 18.11.2011 and 21.05.2012 was beyond the scope of litigation at that stage. At the relevant stage, even written statement was not filed by the defendant, nor any issues were framed by the trial Court. The suit was at initial stage and even till date issues have not been framed.

[8]. At this stage, keeping in view the totality of facts and circumstances of this case, I deem it appropriate to set aside the part of observation made in the impugned order to the extent of sending the agreement to sell dated 15.10.2018 to the CFSL for its comparison with the agreements dated 18.11.2011

and 21.05.2012. Since the suit is pending, after framing of issues the defendant would be at liberty to seek reference of agreement to sell dated 15.10.2008 for comparison in accordance with law. The trial Court would be at liberty to decide all the necessary questions of validity, legality and propriety of the compromise executed between the parties in accordance with law.

[9]. Both the parties are directed to appear before the trial Court on 02.11.2018.

[10]. With the aforesaid observation, this revision petition is disposed of.

October 16, 2018

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No