

CR No. 6747 of 2015
Date of Decision: 25.09.2018

.....Petitioner

.....Respondents

Mr. Birender Singh Rana, Senior Advocate with
Ms. Pooja Bansal, Advocate
for respondent No.2.

Briefly stated, the facts, leading to the filing of the present petition, are that the petitioner filed a suit seeking therein possession by way of specific performance of agreement to sell dated 26.02.2005 allegedly entered into between the petitioner and respondent No.1. On being put to notice, only respondent No.2, who was defendant No.2 in the suit, appeared before the Trial Court and filed his written statement. Since respondent No.1, who was defendant No.1 in the suit, inspite of being served failed to appear before the Trial Court, he was ordered to be proceeded ex-parte.

After framing the issues, the Trial Court granted several opportunities to the petitioner to lead his entire evidence but to no avail. On the last such opportunity so granted the petitioner filed an application through which he sought permission from the Trial Court to prove the agreement to sell dated 26.02.2005 by way of leading of secondary evidence as according to the petitioner, the original agreement to sell had been lost. The Trial Court was of the opinion that adequate number of opportunities had already been granted to the petitioner to lead his evidence and therefore, the petitioner's evidence was ordered to be closed and due to such order the Trial Court did not feel it necessary to decide the petitioner's application to lead secondary evidence. It is the aforesaid order of the Trial Court which is under challenge in the present proceedings.

Learned counsel for the parties have been heard.

There can hardly be any dispute that the sole basis of the petitioner's suit for specific performance is the agreement to sell dated 26.02.2005 which according to him has been lost. Therefore, an application had been filed by the petitioner seeking permission of the Trial Court to prove the aforesaid agreement by way of leading of secondary evidence. Since the Trial Court ordered closure of the petitioner's evidence it did not give any opinion on such application.

In view of the above and also for the reason that at the trial stage the petitioner may not be precluded from leading his entire evidence, subject to payment of ₹25,000/- as costs to be paid by the petitioner to respondent No.2, the impugned order is ordered to be set aside with a direction to the Trial Court to consider and decide the petitioner's application filed by him to prove agreement to sell dated 26.02.2005 by way

of leading of secondary evidence.

It is clarified that this Court has not opined on the merits of the aforesaid application.

In case, the Trial Court decides the aforesaid application filed by the petitioner in his favour, he shall be granted one and only one opportunity to lead his entire evidence. However, in case the Trial Court rejects the application, there would be no occasion to grant any further opportunity to the petitioner to lead his evidence.

The present petition is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

25.09.2018
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Whether speaking/reasoned : Yes/No
Whether reportable : *Yes/No*