

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

**Civil Revision No.6840 of 2016 (O&M)
Date of Decision:30.05.2018**

M/s N.H. Estate Pvt. Ltd.

.....Petitioner

Vs

Balwinder Singh and others

....Respondents

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

Present:Mr. Gursirmran Singh, Advocate
for the petitioner.

Ms. Promila Nain, Advocate
for respondents No.1 to 4.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 02.05.2016 passed by the Civil Judge (Sr. Divn.) Ludhiana whereby application under Order 1 Rule 10 CPC filed by the petitioner was dismissed.

[2]. Brief facts are that respondent No.5 filed a suit for possession by way of specific performance of agreement to sell dated 24.05.2012 against respondents No.1 to 4. In the said suit, an application under Order 1 Rule 10 read with Section 151 CPC was filed for impleading M/s N.H. Estate Private Limited

through its Director Chander Kant Jain as a party-defendant on the ground that defendants/respondents No.1 to 4 had already entered into an agreement to sell dated 30.07.2007 in favour of the applicant/petitioner and had received an amount of Rs.50 Lakhs as earnest money from the the applicant/petitioner. In order to defeat the rights of the petitioner, defendants No.1 to 4 had entered into an agreement with the plaintiff Harjinder Singh. The agreement in favour of the petitioner is still subsisting as the same was never cancelled or rescinded at any point of time. Applicant/petitioner always remained ready and willing to perform his part of contract, but defendants No.1 to 4 did not turn up to perform their part of contract. Even the petitioner had issued legal notice to defendants No.1 to 4 to perform their part of contract. The plaintiff-Harjinder Singh intentionally did not implead the petitioner. Petitioner claimed himself to be a necessary and proper party.

[3]. The application was contested by respondents No.1 to 4. Plaintiff did not file any reply to the application. Factum of execution of earlier agreement was admitted by defendants/respondents No.1 to 4 in favour of the petitioner, but the same was never acted upon as no suit for specific performance was filed and the time for enforcing of that agreement had already lapsed. There was no subsisting right

existed in favour of the petitioner. It was also asserted that the application was filed at the instance of plaintiff, who was interested in delaying the execution of sale deed. The defendants had already suffered a statement to show their willingness to execute the sale deed in favour of the plaintiff.

[4]. I have considered the submission made by learned counsel for the parties.

[5]. Perusal of the agreement to sell dated 30.07.2007 would show that the target date for execution of sale deed was fixed as 15.02.2008. The said agreement was never enforced. No suit for specific performance was filed and no other legal proceedings were initiated to seek any relief on the basis of said agreement to sell dated 30.07.2007.

[6]. In the present suit, the defendants/respondents No.1 to 4 had already made statement with regard to readiness and willingness to execute the sale deed in favour of plaintiff. In view of above, the plea raised by the petitioner cannot be termed as collateral proceeding in the context of enforcement of agreement to sell dated 24.05.2012 for which a suit has been filed by the plaintiff and the contesting defendants have no objection for execution of the sale deed in pursuance thereof. No such adjudication in respect of agreement to sell dated

30.07.2007 can be made in the present suit, particularly when the agreement to sell dated 30.07.2007 was never enforced within limitation. The target date i.e. 15.02.2008 was never acted upon by the parties. The contesting respondents No.1 to 4 besides pleading in the written statement also suffered statement that they are ready and willing to execute the sale deed as per agreement to sell asserted by the plaintiff. The filing of application under Order 1 Rule 10 CPC in view of aforesaid facts can be said to have been filed in connivance with the plaintiff in order to delay the disposal of the suit on the basis of written statement and statements suffered by the defendants.

[7]. The trial Court has rightly observed that the petitioner is not a necessary party in the present suit, nor the petitioner can be termed to be a proper party for adjudication of the present civil suit in any manner. The revision petition is found to be totally bereft of merits and the same is accordingly dismissed.

May 30, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No