

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

CR no.7242 of 2018

Date of Decision: 21.12.2018

Arshdeep Singh

...Petitioner

Vs.

Mukhtiar Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. K.B. Raheja, Advocate, for the petitioner.
Mr. Amaninder Singh Sekhon, Advocate
for the respondents.

Amol Rattan Singh, J (Oral)

Notice of motion having been issued in this petition on 25.10.2018, Mr. Amaninder Singh Sekhon, Advocate, appears for respondent no.2, with none appearing for respondent no.1 despite service.

Mr. Raheja, learned counsel for the petitioner, first points to the order of the learned Lok Adalat, dated 29.08.2015 (Annexure P-2), recording to the effect that respondent no.1, Mukhtiar Kaur (prospective vendor) had undertaken to pay Rs.10 lacs to respondent no.2, Sikander Singh, upon receiving consideration of the suit land from the petitioner, with Sikander Singh also having made a statement that upon receiving Rs.10 lacs earlier paid by him as earnest money to Mukhtiar Kaur for the same suit land, he would cancel the agreement of sale (and therefore not insist upon its execution).

Thus a compromise having been effected between the parties, the suit of the present petitioner-plaintiff, seeking a decree of specific

performance against Mukhtiar Kaur, was decreed in his favour.

Thereafter however, a notice was received by the petitioner on behalf of Mukhtiar Kaur from her counsel (seen to be undated) (Annexure P-3), stating that since the petitioner had not paid the amount settled by way of consideration for transfer of the plot from Mukhtiar Kaur to the petitioner (plaintiff in the suit), the agreement of sale stood cancelled and Mukhtiar Kaur would be free to sell the land to any other person.

Thereafter, respondent no.2 herein, i.e. Sikander Singh, filed an application for execution of the decree issued, to the extent that Rs.10 lacs were to be paid to him by Mukhtiar Kaur upon the petitioner paying the consideration to Mukhtiar Kaur. Thus, it is in those execution proceedings that the impugned order, Annexure P-5, has been passed, ordering issuance of conditional warrants of arrest against the petitioner, on his failure to comply with the Award passed by the Lok Adalat, based on the compromise reached between the parties.

Mr. Raheja has submitted before this Court that the suit land not being in the possession of Mukhtiar Kaur, the petitioner was not bound to comply with the terms of the compromise recorded before the Lok Adalat and as such, the conditional warrants of arrest are wholly without foundation.

Mr. Sekhon, learned counsel for respondent no.2, on the other hand points to that part of the impugned order wherein the reply filed by Mukhtiar Kaur (before the executing court) has been referred to, stating that

she had never refused/denied to honour the Award of the Lok Adalat and was still ready and willing to honour it; with the order also referring to the registered notice stated to have been served upon the petitioner on 01.10.2015, as also on his attorney, Davinder Pal.

Though a perusal of the notice (copy Annexure P-3 if it is the same notice as was served upon the petitioner on 01.10.2015), shows that no option was given to the petitioner to honour the Award and it had been only stated that since he had not honoured it within the time period provided, Mukhtiar Kaur would be free to sell the land, however, her reply has been filed before the executing court stating that she was actually willing to execute the sale-deed even today in favour of the petitioner, (as per the impugned order).

Mr. Raheja however points to Order 21 Rule 32 of the CPC, to submit that the said provision actually operates only in favour of a decree-holder and not in favour of a judgment debtor; and consequently, since the petitioner does not wish to get the decree executed, with his earnest money in any case forfeited, respondent no.2 has no right to get it executed against him.

It has to be observed by this Court that respondent no.2 does have an Award partially in his favour to the extent that Rs.10 lacs was agreed to be paid to him by judgment debtor Mukhtiar Kaur upon the total sale consideration of the suit property being paid by the petitioner to Mukhtiar Kaur, i.e. it was specifically to be paid out of that consideration as recorded in the order of the learned Lok Adalat, dated 29.08.2015, though

of course the Award is not in any suit filed by respondent no. 2 (Sikander Singh) but in a suit filed by the petitioner herein.

Consequently, this petition is disposed of with a direction that the petitioner would appear before the executing court on the next date of hearing fixed there, and present his case to that Court, upon which that Court shall pass a final order, after taking into consideration the fact that even the decree that is partially in favour of respondent no.2 essentially is against judgment debtor Mukhtiar Kaur, though of course upon the petitioner, i.e. the decree-holder qua his suit for specific performance seeking execution of a sale deed upon him paying the consideration money to Mukhtiar Kaur.

Upon the petitioner appearing and submitting his case before the executing court, the impugned warrants shall be discharged, with of course all parties free to plead their respective stands before the executing court, which would thereafter proceed as per law.

(It is for the petitioner to determine the next date fixed before the executing court).

21.12.2018
vcgarg/nitin

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes