

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 14.08.2018

1. RSA No.1690 of 2006 (O&M)

Ram Pal

..... Appellant

Versus

Tej Pal

..... Respondent

2. CR No.4219 of 2006 (O&M)

Tej Pal

..... Petitioner

Versus

Ram Pal

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. V.K. Jindal, Sr. Advocate with
Mr. Gopal Soni, Advocate
for the appellant (in RSA-1690-2006)
for the respondent (in CR-4219-2006).

Mr. Amit Jain, Advocate
for the respondent (in RSA-1690-2006)
for the petitioner (in CR-4219-2006).

ANIL KSHETARPAL, J.

Vide this judgment, I shall be disposing of two cases bearing RSA No.1690 of 2006 and CR No.4219 of 2006 as the dispute in the present case is between the same parties and the counsel for the parties are also common.

The parties are closely related. The petitioner in the revision petition i.e. Tej Pal is brother-in-law of Ram Pal (Tej Pal's sister is married to Ram Pal). A fuel station is running on the land measuring 5 kanals and 14

marlas under the name of M/s Paul Filling Station. There was litigation between the parties as Tej Pal had filed a civil suit on the basis of a family settlement in which Ram Pal had filed the written statement admitting the claim made in the plaint, resulting into a decree of the Court dated 15.06.1988 under Order 12 Rule 6 with respect to the half portion of the land measuring 5 kanals and 14 marlas. This decree was later on challenged by Tej Pal. Still further, there was an agreement to sell executed by Tej Pal in favour of Ram Pal with respect to the remaining share in the land measuring 5 kanals and 14 marlas dated 24.07.1990. Since, the agreement to sell was not honoured, therefore, Ram Pal filed a suit for specific performance of the agreement to sell which was decreed. However, in appeal, the learned First Appellate Court awarded alternative relief of refund and regular second appeal being RSA No.1690 of 2006 is pending in this Court. In the meantime, with the intervention of the respectable, the parties entered into a settlement/compromise which was reduced into writing dated 27.11.2004. Pursuant to the aforesaid settlement/compromise, two appeals pending before the learned First Appellate Court were disposed of modifying the decrees passed by the learned trial Courts in terms of the compromise vide order dated 02.05.2006. It may be noted that while disposing of the appeals, the statement of the parties, duly identified by their counsel, were recorded in the Court. The deed of settlement/compromise was duly exhibited and taken on record. The parties admitted its correctness.

As per the deed of settlement, Ram Pal-appellant in appeal and respondent in the revision petition was to pay certain amount which was not being accepted by Tej Pal. Hence, Ram Pal filed an application for permission to deposit the amount in the Court of Additional District Judge, the Court which had disposed of the two appeals on the basis of the deed of

settlement. The application was contested by Tej Pal submitting that the deed of settlement stands frustrated as he had applied to the Bharat Petroleum Corporation for shifting of the location of the fuel station which has been refused. However, the learned Court rejected the objections against which the present revision petition has been filed. The issue which needs consideration is whether refusal of Bharat Petroleum Corporation can be termed as frustration of contract within the meaning of Section 56 of the Contract Act. It will be significant to note that the amount has been deposited, however, the same has not been accepted by Tej Pal.

Learned counsel for the petitioner while referring to clause 2 and 5 of the deed of settlement has submitted that his client namely Tej Pal had applied for permission to shift the fuel station which has been refused. Hence, he submits that the deed of settlement/compromise stands frustrated. Clause 2 and 5 of the deed of settlement are extracted as under:-

“2. That according to the compromise, Tej Pal will remove the petrol pump and building standing on the site and will install the petrol pump at some different place. Ram Pal will have no connection with the petrol pump, license of the petrol pump and documents of the petrol pump in future and Tej Pal will be at liberty to install the petrol pump at any place of his choice and Ram Pal or his heirs will have no objection. Tej Pal will vacate the land on 27.11.2005 and deliver the possession of the land to Ram Pal and Ram Pal will be owner in possession of the land comprised in Khewat No.444/412, Khatoni No.577, Rect. No.111/13/1 (4-15), 14/1/1(0-19), according to Jamabandi for the year 1994-95 Mauja Pehowa. After 27.11.2005 Tej Pal will be having no concern whatsoever with the land. If any mortgage/encumbrance/loan is found on this land, then Tej Pal will be responsible for paying the same.”

“5. That if Tej Pal does not remove the petrol pump and other goods from the land in question and does not deliver the

possession to Ram Pal up to 27.11.2005, then in that eventuality, Tej Pal will pay back the amount received from Ram Pal alongwith 15% interest and the suit for specific performance in which appeal is pending in the High Court will be treated as decreed and the second appeal which is pending in the Court of Sh. Rajnish Bansal, A.D.J./Fast Track Court, arising out of suit for dissolution of partnership and rendition of accounts will be treated as accepted. Both the suits will be treated as decreed and the suit filed by Tej Pal for setting aside the decree will be treated as dismissed. A copy of this compromise will be placed before the Hon'ble High Court in pending appeal and the appeal can be decided on the basis of the terms and conditions of the compromise. In the event of fulfilling the conditions of compromise, the decision given by Sh. L.N. Mittal in respect to return of amount will be no consequence and under the garb of that decree, Ram Pal will be having no right to receive any amount from Tej Pal.”

On careful reading of the aforesaid clauses, it would be noticed that clause 2 nowhere provides that if petroleum company does not grant permission to shift the fuel station/petrol pump, the settlement between the parties would stand frustrated or cancelled or would not be operative. Rather on careful reading of clause 5, it is apparent that if Tej Pal does not remove the fuel station from the land in question and does not deliver possession to Ram Pal upto 27.11.2005, the eventualities as provided would follow.

Section 56 of the Contract Act as relied upon by learned counsel for the petitioner, is extracted as under:-

“56. Agreement to do impossible act.—An agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful.—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act

becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.—Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.”

On careful reading of Section 56, it deals with different eventualities. The main section provides that agreement to do an act must be impossible in itself before the agreement is declared void. It is not the case of any one that the agreement provides for doing an impossible act. Second part of Section 56 provides that if under the contract some action to be taken which afterwards becomes impossible or unlawful, then the contract would stand frustrated. Even this part would not apply because denial of permission by the Corporation does not render the action of handing over the possession to Ram Pal impossible. There is a mark difference between an action having become impossible and it became onerous to one party to complete the contract. The third part of the Section 56 provides that where action to be taken under a contract has become impossible or unlawful, the Court is well within jurisdiction to compensate the other party.

In the considered opinion of this Court, Section 56 would have no application in the present case.

In the present case, the settlement/compromise/contract was not made dependent upon the permission to be granted by the petroleum company. Once the petitioner had undertaken to shift the fuel station, he cannot be permitted to resile therefrom on the ground that the petroleum company has not granted necessary permission to shift. The deed of

settlement/compromise as already noticed, does not stand frustrated. Tej Pal-petitioner can very well close down the fuel station and honour the settlement. Ram Pal cannot be made to suffer on the ground that if Tej Pal closes down the fuel station, his licence may be cancelled. Tej Pal is clearly trying to resile from the deed of settlement/compromise which has already been acted upon and two appeals have been disposed of in terms of the compromise.

Still further, the learned Additional District Judge has correctly recorded that the settlement deed is neither result of any fraud nor result of any misrepresentation. The deed of settlement/compromise has neither become unexecutable nor un-enforceable.

In view of the discussion made above, there is no ground to interfere with the order passed by the learned Additional District Judge dated 02.05.2006.

In view of the fact that the deed of settlement/compromise dated 27.11.2004 has been accepted as enforceable, RSA No.1690 of 2006 shall stand disposed of in terms of deed of settlement/compromise, copy whereof has been attached as Annexure A-3 whereas its translated copy has been filed as Annexure A-3/T, whereas CR No.4219 of 2006 shall stand dismissed.

The deed of settlement/compromise Annexure A-3/T shall form part of the decree.

14.08.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No