

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 7.3.2018

RA-CR-45-CII-2018 in
CR-3732-2012 (O/M)

Rajiv Gosian

..... Petitioner

Versus

M/S Intergest India International Ltd. and another

..... Respondents

RA-CR-47-CII-2018 in
CR-3732-2012 (O/M)

Rajiv Gosian

..... Petitioner

Versus

M/S Intergest India International Ltd. and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Puneet Bali, Senior Advocate, with,
Mr. Vaibhav Jain, Advocate, for applicant
in RA-CR-45-CII-2018 in CR-3732-2012.

Mr. Shailendra Jain, Senior Advocate, with,
Mr. Nitin Jain and Mr. Satyendra Chauhan, Advocates,
for applicant in RA-CR-47-CII-2018 in CR-3732-2012.

Mr. Lokesh Sinhal, Advocate, for non applicant-petitioner
in CR-3732-2012.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J.

By this single order, I will dispose of two review applications i.e. RA-CR-45-CII-2018, filed by Shri Arun Vohra and another RA-CR-47-CII-2018, filed by Shri Ravish Vohra, Director, R.V. Interiors Pvt. Ltd. in CR-3732-2012, decided by this Court on 16.2.2018,

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praying for review/modification of the said order.

It is stated that suit in question was filed by plaintiff in collusion with defendant No. 1 claiming that Apartment No. 420-B, Hamilton Court, DLF, Phase-4, Gurgaon, was allotted to M/s Intergest India International Ltd. by DLF Ltd. which in turn entered into agreement of sale with petitioner on 2.11.2007. It is claimed that said Intergest India International Ltd. entered into a compromise with DLF Limited before the Delhi High Court whereby it relinquished all its rights to Apartment No. 420-B in favour of DLF Ltd. and requested to adjust the amount paid with regard to Apartment No. 420-B towards the consideration of Apartment No. 420-A. In the year 2009, the sale deed was executed in favour of M/s Intergest India International Ltd. with respect to Apartment No. 420-A. After the execution of sale deed in the year 2010, petitioner who is Ex-Director of M/s Intergest India International Ltd. filed a suit for possession by way of specific performance and permanent injunction claiming that M/s Intergest India International Ltd. entered into an agreement of sale regarding Apartment No. 420-B. The petitioner had claimed that application under Order XXXIX Rules 1 and 2 read with Section 151 CPC, 1908, was dismissed by the learned Civil Judge (Junior Division), Gurgaon, as well as by the learned Additional District Judge, Gurgaon. The orders were challenged in revision before this Court by way of CR-3732-2012. Vide order dated 16.2.2018, this Court while setting aside the orders passed the following order :-

' Consequently, impugned order 17.4.2012 (Annexure-P-2), passed by learned Additional District Judge, Gurgaon, and the order dated 15.6.2011 (Annexure-P-1), passed by learned Civil Judge (Junior Division), Gurgaon, are hereby set aside. Defendant No. 2-M/s DLF Ltd. is directed to hand

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over the possession of the apartment No. 420-B, Hamilton Court, Gurgaon, to the plaintiff forthwith and if it is not handed over within two weeks from the date of present order, plaintiff with the help of the local police can break open the locks and enter in the said apartment and take possession of the same, without any further orders from any Court regarding police help. Plaintiff can seek Police help by producing the copy of this order before the concerned SHO and the SHO shall comply with the same. Thereafter, during the pendency of the suit, defendants shall be restrained from interfering in the possession of the plaintiff except in due course of law.'

The applicant claims that M/s R.V. Interiors Pvt. Ltd. entered into agreement for purchase of the said apartments on 10.4.2012. The conveyance deed was executed on 5.8.2013. Now, Mr. Arun Vohra, is residing in the said apartment with his son and daughter in law. He has spent huge amount in furnishing apartment handed over to him by DLF Limited. As a result of the order dated 16.2.2018, passed by this Court, the possession is directed to be taken with the help of police. The applicant Mr. Arun Vohra is 75 years of age and recently suffered a severe stroke. Therefore, it is stated that present applicant was not heard at the time of passing of said order. Therefore, the said order should be reviewed vide which dispossession has been ordered.

At the time of hearing, the learned counsel for petitioner Mr. Lokesh Sinhal, Advocate, in the main case appeared of his own to assist this Court.

Heard.

The learned counsels for the applicants have pressed their contentions as reproduced above.

It comes out that after passing of the said order, DLF Limited had filed an application for extension of time to comply with the order

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dated 16.2.2018, passed by this had filed an application for extension of time to comply with the order dated 16.2.2018, passed by this Court. The said application was dismissed on 27.2.2018. This Court has been informed that against the order dated 16.2.2018, passed by this Court, respondent-DLF Limited has already moved to the Hon'ble Supreme Court. The petitioner in said revision is also stated to have filed a caveat before the Hon'ble Supreme Court and the matter is likely to be listed within few days. It also comes out that it was revision against the order passed in civil suit in which present applicants were not party. The initial order was passed by the learned Civil Judge (Junior Division), Gurgaon, on 15.6.2011 and the appeal was dismissed by lower appellate Court on 17.4.2012. Thereafter, revision was filed before this Court in year 2012 and was taken up for the first time on 15.6.2012. Now, as per averments made in the application itself, present applicant entered into an agreement of sale with DLF Limited on 10.4.2012 and conveyance deed was executed on 5.8.2013. When the conveyance deed was executed, revision before this Court was pending. In this way, agreement of sale and conveyance deed were executed during the pendency of the litigation. In the agreement of sale, it is claimed by DLF Limited that no litigation is pending. If it is so, the applicants can claim legal remedy against DLF Limited. The impugned order shows that DLF Limited had pleaded before this Court that third party rights have been created, which was considered by this Court. The factum of compromise before the Delhi High Court was also considered.

I am of the view that when SLP is pending before the Hon'ble Supreme Court and considering that present applicants are not party to the

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civil suit and that right in their favour was created during the pendency of the litigation, no review of the order is called for at the instance of applicants particularly when Hon'ble Supreme Court is seized of the matter. Otherwise, all the contentions raised by both the parties to the suit was considered by this Court and a view was taken. Therefore, both the applications for review of the order dated 16.2.2018 passed by this Court at the instance of applicants are dismissed.

Faced with these consequences, the learned senior counsels for applicants have stated that applicants have invested more than rupees one crore in furnishing the said apartment and that applicants may be given time to remove the said furnishings.

The learned counsel for petitioner did not oppose the prayer for grant of three days time to remove the furnishings by applicants. However, considering the facts and circumstances, time already consumed after passing of order on 16.2.2018 and the extent of alleged furnishing, both the applicants are given five days time from today to remove the furnishing i.e. till 12.3.2018. Thereafter, the order dated 16.2.2018, passed by this Court in CR-3732-2012 shall be executed in terms of directions contained in said order. In that eventuality, the petitioner himself or through his General Power of Attorney, Mr. Deepak Sharma, who had filed the original revision can receive the possession.

(KULDIP SINGH)
JUDGE

7.3.2018
sjks

Whether speaking / reasoned	:	Yes
Whether Reportable	:	No