

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.2561 OF 2019

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the revision petitioners/plaintiffs aggrieved by the order, dated 17.06.2019, passed in I.A.No.460 of 2018 in O.S.No.750 of 2018 by the XVII Additional Senior Civil Judge, City Civil Court, Hyderabad, wherein the Court below has dismissed the subject Interlocutory Application, filed under Order XXXVIII Rule 5 read with Section 151 C.P.C., to direct the respondent/defendant to furnish bank guarantee to a tune of the entire Suit claim, in default to attach the petition schedule property i.e., Flat No.14, III Floor, admeasuring 1600 Square Feet, B.N. Reddy Complex, bearing Municipal Nos.3-6-67 and 68/A/14, situated at Basheerbagh, Hyderabad, Telangana State.

2. Heard learned counsel for the revision petitioners/plaintiffs and perused the record.

3. In spite of service of notice, there is no appearance on behalf of the respondent/defendant.

4. The subject Suit is filed by the revision petitioners/plaintiffs against the respondent/defendant for recovery of an amount of Rs.6,51,000/- with interest accrued thereon. Along with the suit, the revision petitioners/plaintiffs filed the subject Interlocutory Application seeking to direct the respondent/defendant to furnish bank guarantee to a tune of the

entire Suit claim, in default to attach the petition schedule property i.e., Flat No.14, III Floor, admeasuring 1600 Square Feet, B.N. Reddy Complex, bearing Municipal Nos.3-6-67 and 68/A/14, situated at Basheerbagh, Hyderabad, Telangana State. The Court below, vide the impugned order, dated 17.06.2019, dismissed the subject Interlocutory Application.

5. Learned counsel for the revision petitioners/plaintiffs would submit that the respondent/defendant has made paper publication to alienate the subject property. A copy of publication is filed before the Court below. However, the Court below did not consider the same. There is an admission with regard to the receipt of Suit claim by the respondent/defendant. Furthermore, there is no forfeiture clause in the agreement of sale entered into between the parties to litigation on 22.03.2018. Since the respondent/defendant was trying to alienate the subject property, the Court below ought to have attached the same or directed the respondent/defendant to furnish bank guarantee for the Suit claim. The Court below erroneously dismissed the subject Interlocutory Application holding that the respondent/defendant was ready and willing to perform his part of contract on receiving the balance sale consideration, by registering a regular sale deed in favour of the revision petitioners/plaintiffs in respect of the subject property, which is agreed to be sold in terms of agreement of sale, dated 22.03.2018, and ultimately, prayed to set aside the impugned

order and allow the subject Interlocutory Application, as prayed for.

6. In the course of submissions, it is brought to the notice of this Court that the subject property was alienated. A regular registered sale deed has also been executed in favour of the vendee. There is specific admission in the counter filed in the subject application with regard to receipt of Suit claim of Rs.6,51,000/- vide agreement of sale, dated 22.03.2018. For some reason or the other, the agreement of sale was not materialized between the parties to the litigation. Furthermore, in the said agreement of sale, dated 22.03.2018, there is no clause with regard to forfeiture of Rs.6,51,000/- paid by the revision petitioners/plaintiffs towards earnest money. The object of Order XXXVIII Rule 5 C.P.C. is to substantially protect the interest of the plaintiff by preventing the defendant from defeating the realization of the decree that may be ultimately passed in favour of the plaintiff by alienating the property. As per the averments in the subject application, an attempt was made by the respondent/defendant to alienate the subject property to the third parties during pendency of the subject Suit. That was demonstrated by the revision petitioners/plaintiffs by filing the publication of notice of sale in a newspaper. If the respondent/defendant is allowed to sell the subject property to the third parties and go away with the sale proceeds, the decree, if any, that may be passed in favour of the revision petitioners/plaintiffs would be of no use. It would only be a

decree on paper and it would become very difficult to execute the same. Furthermore, in the instant case the respondent/defendant had sold the schedule house bearing Flat No.14, III Floor, admeasuring 1600 Square Feet, B.N. Reddy Complex, bearing Municipal Nos.3-6-67 and 68/A/14, situated at Basheerbagh, Hyderabad, Telangana State, and registered regular conveyance in favour of the vendee. Under these circumstances, a *prima facie* case is made out in favour of the revision petitioners/plaintiffs to pass the following order:

“The respondent/defendant is directed to furnish bank guarantee for the subject Suit claim of Rs.6,51,000/- within thirty (30) days from today.”

7. This Civil Revision Petition is ordered accordingly. If the respondent/defendant fails to comply with this order, the revision petitioners/plaintiffs are entitled to seek the remedies available under law. No order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

The Registry is directed to communicate a copy of this order to the respondent/defendant forthwith, for compliance.

Dr. SHAMEEM AKTHER, J

December 12, 2019.
MD