

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.42 of 2019 (O&M)
Date of decision:30.05.2019

Loveleen Tuteja and another ... Petitioners

Vs.

Sonika Mann and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.K.Garg Narwana, Senior Advocate with
Mr. Sanjiv Kumar Aggarwal, Advocate
for the petitioners.

Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Shrma, Advocate
for the respondents.

AMIT RAWAL J.

The petitioners-defendants no.2 and 3 are in revision petition against the order dated 10.12.2018 whereby civil misc. appeal filed by respondents no.1 and 2/plaintiffs against the order dated 04.04.2018 dismissing the application under Order 39 Rules 1 and 2 of the Code of Civil Procedure (hereinafter referred to as “CPC”) has been allowed by restraining the petitioners from alienation and changing the nature of the suit property during pendency of suit claiming specific performance of agreement to sell dated 12.04.2017.

Succinctly, the facts in dispute are that respondents no.1 and 2 on 30.01.2018 filed suit claiming specific performance of the agreement, *ibid* against proforma respondent no.3/defendant no.1 on the premise that he did

not come forward for execution and registration of the sale deed on the stipulated dated i.e.10.09.2017. Petitioners/defendants no.2 and 3 claimed to have purchased the property by virtue of sale deed dated 12.01.2018 for a valuable consideration and had been put into possession. Alongwith suit, an application under Order 39 Rules 1 and 2 CPC was filed seeking restraint qua alienation and change of nature of the suit property. The trial Court on the basis of pleadings and documents brought on record *prima facie* found that it was not a case of injunction. However, the Appellate Court, vide order dated 10.12.2018, Annexure P1, granted injunction.

Mr. S.K.Garg Narwana, learned senior counsel assisted by Mr. Sanjiv Kumar Aggarwal, Advocate appearing on behalf of the petitioners submitted that respondents no.1 and 2/plaintiffs after the stipulated date, vide legal notice dated 04.01.2018, Annexure P-8 called upon vendor/defendant no.3 to pay double amount of earnest money i.e. Rs.25 lakhs +Rs.25 lakhs = Rs.50 lakhs. Since the agreement to sell had fallen apart, it is in these circumstances, suit property was purchased.

In fact, pith and substance of the suit was only for damages and right to claim specific performance deemed to have been forfeited. The finding of Lower Appellate Court with regard to right for specific performance qua double the amount of earnest money is totally erroneous. The petitioners submitted the site plan for raising the construction which was sanctioned by Municipal Corporation, Rohtak vide letter dated 23.02.2018, Annexure P-10.

Plaintiffs have made absolutely noval story about the defect. In fact, the ingredients of Order 39 Rules 1 and 2 CPC i.e. prima facie, balance of inconvenience, irreparable loss, are conspicuously wanting and thus, urged this Court for setting aside impugned order. In support of his contention, relied upon following judgments:-

1. Sarabjeet Singh Vs. Anup Sharma and others 2016(4) CivCC 524
2. Guru Nanak Education Trust Vs. Balbir Singh 1995(2) PLR 625
3. Adarsh Co-operative House Construction Society Ltd. Vs. Malti Devi and others 2019 AIR (Jharkhand) 44.

but laid emphasis on the un-reported judgment of this Court rendered in **CR No.7742 of 2017 titled as Jagdish and others Vs. Manjeet and another, decided on 06.12.2017.**

Per contra, Mr. Akshay Bhan, learned senior counsel assisted by Mr. Santosh Sharma, Advocate appearing on behalf of the respondents in support of case, referred to the provisions of Section 23 of Specific Relief Act i.e. even if a person has claimed only liquidated damages, valuable right for seeking specific performance cannot be taken away.

Trial Court in the proceedings under Order 39 Rules 1 and 2 CPC could not have observed with regard to forfeiture of right qua specific performance. In the absence of any observation qua expression of opinion on the merits, there was no question of relinquish the right. Application of petitioners submitted for obtaining sanction plan was only of 09.02.2018 i.e. during the pendency of the suit and urged this Court for upholding

order under challenge.

I have heard learned counsel for the parties, appraised paper book and of view that there is no force and merit in submissions of Mr. Narwana.

In the judgment rendered by the Hon'ble Supreme Court in **P D Souza vs. Shondrilo Naidu 2004 (6) SCC 649**, decision rendered in **Dadarao and another vs. Ramrao and others 1999 (8) SCC 416** was held to be *per incuriam*. It is settled law that where agreement contains clause for damages without any relief of specific performance, vendee cannot be prevented to claim specific performance, in other words, relief, *ibid*, is inherent.

It is too early to comment regarding the contents of the legal notice dated 04.01.2018. Concededly, sale deed in favour of petitioners was during the subsistence of the agreement to sell as there was no cancellation of the same at the behest of defendant no.3/proforma respondent no.3/vendor.

At this stage, Mr. S.K.Garg, learned senior counsel pointed out the order dated 29.04.2019 wherein statement was made not to change the nature of the suit property and to raise the construction at their own risk and responsibility and the affidavit dated 07.05.2019 filed in this regard.

I am of the view that even if the petitioners had undertaken not to alienate the suit property, granting permission to raise construction would unnecessarily complicate the matter, despite given the undertaking by way

of affidavit.

There is no dispute to the judgment cited (supra) but facts and circumstances of each and every case, as noticed above, have to be examined in view of the prevalent law and as well as the material on record.

In the fitness of things, while upholding the impugned order, I deem it appropriate to issue directions to the trial Court to expedite the disposal of the suit as expeditiously as possible after affording 4-4 (four-four) effective opportunities to each of the parties preferably within a period of one year from the date of receipt of certified copy of this order.

The revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

May 30, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No