

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.2694 of 2018
Date of Decision: January 17, 2019

M/s. J.D.Universal Infra Ltd.

...Petitioner

Versus

Sandeep Singh alias Sandeep Kumar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Akshay Jindal, Advocate,
for the petitioner.

AMIT RAWAL, J. (Oral)

The present revision petition is directed against the impugned order dated 24.01.2018, whereby by accepting the execution application preferred by respondent No.1-plaintiff in pursuance to the order dated 17.09.2016 passed on the basis of the compromise dated 31.08.2016, property of the petitioner-judgment debtor had been ordered to be attached.

Mr. Akshay Jindal, learned counsel for the petitioner submitted that respondent No.1-plaintiff had entered into an agreement to sell with the petitioner in respect of land measuring 65 kanals 1 marla. In terms of the amicable settlement, 56 kanals of land was sold by respondent No.1 to the petitioner and the price of the same was ₹ 19,95,00,000/- and the share of the plaintiff came to be ₹ 10,15,00,000/-. Respondent No.1-plaintiff alleged that the sale deed was to be executed on the basis of the post dated cheque, which was not honoured by the petitioner and the same was without consideration.

Petitioner-defendant No.1 resisted the suit by filing comprehensive written statement. When the matter was listed on 17.09.2016, a compromise (Annexure P-1) in the form of Memorandum of Understanding (MOU) was placed on record before the Commercial Court and the statements of the parties were recorded and the trial Court passed the order, relevant portion of which reads as under:-

“5. Today, the matter came up for hearing. A compromise/ MOU Ex.C1 has been placed on record. Joint statement of plaintiff-Sandeep Singh; of Raj Kumar son of Gian Chand, Inderjit Dhamija son of Shanti Lal and Karan Juneja son of Raj Kumar being Directors of defendant No.1-M/s J.D.Universal Infra Ltd.and Divey Sindhu son of Inderjit Dhamija-Ex.Director and share holder of defendant No.1-M/s JD Universal Infra Ltd.has been recorded. A resolution Ex.C2 has been placed on record thereby Raj Kumar Juneja and Inderjit Dhamija have been authorized to enter into settlement with Sandeep Kumar in this case. The plaintiff, as well as, all these persons has jointly stated on oath in the following manner:-

“Stated that the matter has been compromise between us. In this regard, we place on record the compromise/ M.O.U.ExC1 dated 31.08.2016, duly executed & signed by all of us i.e.the parties of Ex.C1, today in court. The Directors of defendant no.1 namely Raj Kumar Juneja and Inderjit Dhamija are authorized to enter into compromise Ex.C1 with the plaintiff vide Board Resolution dated 30.08.2016. The same is Ex.C2. We i.e. parties to compromise/MOU Ex.C1 named mentioned above, shall remain bound and would comply, in letter & spirits, all the terms & conditions mentioned in Ex.C1. Consequently, the present suit may kindly be disposed of, in accordance with terms and conditions as mentioned in compromise/MOU Ex.C1. We identify our signatures on

this compromise/MOU Ex.C1.The court fees affixed by the plaintiff may also be refunded as per amended Court Fee Act as well as legal provision contained in Legal Services Authorities Act. ”

They have been duly identified by S/Shri Hukam Singh Kadyan and Ashok Kumar, Advocates.

6. *Keeping in view the tone and tenor of the joint statement of the parties to this lis, as referred above, this suit is disposed of in a manner as reflected in MOU/compromise Ex.C1 dated 31.08.2016. This compromise Ex.C1 dated 31.08.2016 is hereby made part of the decree of this court. The parties would be bound by their joint statement recorded today in the court in relation to the compromise, wherein they have been duly identified by their respective counsel. They would honour the compromise/MOU Ex.C1 dated 31.08.2016 in letter and spirits, which is binding on them as per their joint statement. ”*

Respondent-plaintiff alleged disobedience of the MOU and the remedy, if any, was to seek revival of the suit in view of clause of the MOU.

The relevant clause reads as under:-

“If the third party would fail to execute the sale deed by 30.10.2016, then the first party/plaintiff in terms of the present compromise/MOU, shall be entitled to get revived the civil suit No.6/2016 and also to get revived the aforesaid three criminal complaint No.Nact 5937/2013, 5938/2013 and 588/2014 filed by him under Section 138 Negotiable Instrument Act, which would have been withdrawn on the basis of the present compromise/MOU and the aforesaid civil suit and complaints would stand revived at the stage from where these were pending they were pending at the time of their withdrawal as per the terms of the present compromise/M.O.U.”

The trial Court committed illegality in entertaining the execution application.

In pursuance to the notice sent, respondents have been served,

which fact is recorded in the order dated 01.11.2018, but there is no representation on their behalf.

I have heard the learned counsel for the petitioner and appraised the paper book.

In view of the relevant clause, the impugned order, whereby the property of the petitioner-judgment debtor has been ordered to be attached, could not have been passed while entertaining the execution application and the remedy for the respondent-plaintiff was to seek revival of the suit, though the trial court has not interpreted the provisions of Order 23 CPC and as well as the terms and conditions of the settlement.

For the reasons stated above, the impugned order is set-aside. Revision petition stands allowed.

However, it is made clear that this order will not entail the respondent-plaintiff to seek implementation of the MOU, except in accordance with law.

January 17, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No