

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Revision No.5079 of 2016
Date of Decision: 25.04.2019**

Renu Lamba

.....Petitioner

Vs

M/s Sangunity Exim (India) Ltd.

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Manjit Singh Ahluwalia, Advocate
for the petitioner.

Mr. Manoj Khanna, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the orders dated 18.11.2015 and 05.07.2016 passed by the Civil Judge (Jr. Divn.) Gurgaon (now Gurugram) vide which the application under Order 11 Rules 1 and 2 CPC filed by the plaintiff for directing the defendant/petitioner to answer the interrogatories filed by the petitioner was allowed and the application filed by the petitioner for review of order dated 18.11.2015 was dismissed on the ground that the application is not maintainable as the pleas were available to the petitioner at the time of filing reply to the application under Order 11 Rules 1

and 2 CPC.

[2]. Brief facts of the case are that plaintiff/respondent filed a suit for declaration, permanent injunction and mandatory injunction against the defendant/petitioner in respect of agreement dated 30.11.2009 executed between the petitioner and the respondent wherein the respondent was to construct the property/plot No.1377 measuring 220 sq. mtrs. situated in Sector 52, Gurgaon (now Gurugram). Plaintiff pleaded that it was a limited Company and was dealing in construction business. Defendant/petitioner was owner of plot No.1377 measuring 220 sq. mtrs. in Sector 52, Gurugram having defined boundaries as shown in the plaint. Defendant/petitioner approached the plaintiff/respondent for construction of building i.e. basement, ground floor, first floor and second floor. Plaintiff assured the defendant/petitioner in respect of quality of work and further agreed to construct the plot as per terms and conditions as mentioned in the collaboration agreement dated 30.11.2009. As per the terms and conditions as set out in collaboration agreement, the parties would have share as follows:-

Defendant's Share

Basement, constructed area: 1420 ft. (approx.)

Ground floor, constructed area: P1420 ft.(approx.)

Second floor, constructed area: 828.50 sq.ft. (approx.)

Plaintiff's share:

First floor, constructed area: 1302 ft. (approx.).

[3]. Plaintiff was to get the building plan sanctioned in the name of the defendant at its own costs from Haryana Urban Development Authority (for short 'the HUDA'). It was further pleaded that on 04.12.2009, the plaintiff submitted a letter in the office of Estate Officer, HUDA for the amount outstanding towards HUDA for the said plot on behalf of the defendant as in the absence of the same, HUDA would not have sanctioned the building plan. On coming to know the outstanding amount i.e. Rs.7,47,605/-, the plaintiff deposited the same on 06.01.2010 and thereafter plaintiff submitted building plan for sanction in the office of Estate Officer, HUDA on 08.03.2010. On 06.04.2010, a demand notice for additional amount of Rs.3,90,815/- was received by the plaintiff from HUDA Department. Intimation was given to the defendant that till clearance of the said amount by the defendant, the HUDA would not sanction the building plan. Defendant in continuation of collaboration agreement between them further executed agreement on 01.05.2010 agreeing that the dues paid over and above Rs.3,50,000/- by the plaintiff would be reimbursed by the defendant and further agreed that

the amount of Rs.4,00,000/- (approx.) as demanded by the HUDA would be paid by the plaintiff and the plaintiff would be reimbursed in that regard along with balance amount at the time of transfer of first floor in favour of the plaintiff at the time when plaintiff would apply for completion certificate.

[4]. Plaintiff further pleaded that at the time of signing of collaboration agreement dated 30.11.2009, the defendant did not disclose to the plaintiff that as per condition No.9 of the allotment letter, the price of the plot would be subject to variation on the basis of enhancement of compensation under the Land Acquisition Act, rather the plaintiff was made to understand that all the dues in that regard have already been paid by the defendant. Plaintiff further pleaded that the additional amount was paid from its own sources in order to expedite the matter. The construction plan was sanctioned on 11.05.2010 by the HUDA Department, but for want of demarcation by the defendant from the HUDA Department, the construction could not be started by the plaintiff. Defendant wrote many letters to the Estate Office, Gurugram in order to enable the plaintiff to start construction and to grant physical possession of the plot.

[5]. Plaintiff further alleged that the construction could not be started due to negligence of the defendant as she did not get

her plot demarcated before entering into collaboration agreement and thus misled the plaintiff in that regard. Plaintiff also alleged that it had incurred huge expenses towards payments to HUDA and have also made huge investments. Plaintiff has been actively pursuing the case with the HUDA for demarcation of the plot in order to start construction and this fact was very much in the knowledge of the defendant. In para No.17 of the plaint, the plaintiff pleaded that despite supplementary collaboration agreement executed by the parties on 01.05.2010, the defendant got issued legal notice dated 15.06.2012 through her Advocate Sh. M.S. Ahluwalia terminating and cancelling the collaboration agreement dated 30.11.2009. Para No.17 of the plaint reads as under:-

“17. That inspite of the above facts within notice and knowledge of the defendant and further inspite of supplementary collaboration agreement executed by the plaintiff with the defendant on dated 01.05.2010 Annexure P-IV defendant got issued notice dated 15.06.2012 through his advocate M.S. Ahluwalia, photocopy of which is annexed herewith as Annexure P-VIII stating therein, terminate and cancel the aforesaid collaboration agreement dated 30.11.2009 Annexure P-1. Though as submitted above plaintiff had been performing his part of the contract and till to date there is no breach of any term and condition on his part of the said agreement i.e. Annexure P-1 and supplementary agreement Annexure P-IV and defendant is legally not entitled to terminate and

cancel, the aforesaid collaboration agreement.”

[6]. On receipt of legal notice dated 15.06.2012, the plaintiff through its Advocate filed reply on 05.07.2012 stating that the plaintiff has been actively pursuing with the HUDA Department for demarcation of the plot, though it was not its function as per terms and conditions of the collaboration agreement. There was no fault on behalf of the plaintiff and the notice of cancellation of collaboration agreement was totally unwarranted. The prayer clause of the suit would give the following reading:-

“PRAYER:

In view of the facts and submissions made hereinabove and in the interest of justice and equity, plaintiff respectfully prayed that this Hon'ble Court may graciously be pleased to:-

- a) Pass a decree of declaration to the effect that plaintiff is entitled to 1st Floor, constructed area:- 1302 ft. (approx) of Plot no.1377, Sector 52, Gurgaon and other dues & benefits as per agreements Annexure P-1 & P-IV and also a decree of declaration to the effect that agreements Annexure P-1 & P-IV are in existence and defendant have no right to terminate and cancel the same.*
- b) Pass a decree of mandatory injunction there by directing the defendants to perform his part of Contract as per agreements Annexure P-1 & P-IV.*
- c) Pass a decree of permanent injunction restraining the defendants from alienating*

the plot in question by way of creating third party interest.

- d) *Any other relief which this Hon'ble Court deemed fit in the interest of justice, may also be granted."*

[7]. Along with the suit, an application under Order 39 Rules 1 and 2 CPC was filed. The trial Court dismissed the application vide order dated 06.02.2013 on finding that no *prima facie* case is made out in favour of the plaintiff. Balance of convenience and causing of irreparable loss in the event of not granting interim stay also went against the plaintiff. Interim stay was declined.

[8]. The order dated 06.02.2013 passed by the trial Court dismissing the application under Order 39 Rules 1 and 2 was unsuccessfully assailed by the plaintiff in appeal before the District Judge, Gurugram. The appeal was dismissed vide order dated 28.05.2013 and the said order has attained finality.

[9]. Plaintiff/respondent also filed an application under order 26 Rule 9 read with Section 151 CPC for appointment of Local Commissioner for inspection of the suit property and to take note of structural alterations carried out by the petitioner. The said application was also dismissed by the trial Court vide order dated 07.01.2015. Thereafter one application under Order 1 Rule 10 CPC was got filed by the plaintiff in collusion with one

Kuldeep Tyagi for impleading him as party defendant in the suit on frivolous ground. The said application was also dismissed by the trial Court vide order dated 07.01.2015.

[10]. Again an application was filed under Order 39 Rules 1 and 2 CPC by the plaintiff. The said application was also dismissed vide order dated 31.5.2014 and it was recorded in the order that the plaintiff is not entitled to restrain the defendant from alienating the suit property and from raising construction over it because the plaintiff is not the owner of the property and the collaboration agreement dated 30.11.2009 has been terminated by the defendant and the same is not in existence. The collaboration agreement was cancelled by legal notice dated 15.06.2012, therefore, the defendant/petitioner cannot be compelled to perform the terms and conditions of the non-existent document. Defendant/petitioner is owner of the property and is entitled to use and enjoy the fruits of the same. There cannot be any restraint against the true owner qua alienation of the suit property.

[11]. Thereafter application under Order 11 Rules 1 and 2 CPC came to be filed at the instance of the plaintiff/respondent on the ground that the defendant has caused breach of agreement and now she is raising unauthorized and illegal construction over the plot and. The very nature of the

interrogatories is reproduced as under:-

- a) *What is the current status of plot no.1377, Sector 52, Gurgaon.*
- b) *Is there any construction being carried out on the plot no.1377, Sector-52, Gurgaon.*
- c) *What is the nature and extent of construction being carried out on the plot no.1377, Sector-52, Gurgaon.*
- d) *Have you entered into an agreement with any person for the construction on plot no.1377, Sector-52, Gurgaon. Kindly furnish the nature and details of such agreement, if any.*
- e) *Have you created any third party interest or sold or in M/s Sangunity Exim (India) Vs Mrs. Renu Lamba any manner encumbered plot no.1377, Sector-52, Gurgaon or any part or construction thereon raised. Kindly furnish the names and particulars of the persons on whose favour any interest or encumbrance has been created in respect of plot no.1377, Sector-52, Gurgaon.*
- f) *Furnish all the agreements executed by you in respect of plot no.1377, Sector-52, Gurgaon.”*

[12]. Perusal of the aforesaid interrogatories would show that the same are in the context of status of plot in question viz-a-viz. extent of construction and encumbrances, if any created over the plot in question. The interrogatories in the context of nature of prayer made in the suit are not relevant. Plaintiff has not asked for enforcement of collaboration agreement by way of filing suit for specific performance, rather mandatory injunction is being sought for directing the defendant to perform her part of contract and permanent injunction is being sought restraining

the defendant from alienating the suit property. The notice dated 15.06.2012 for cancellation of collaboration agreement has not been challenged in the suit. Time was the essence of the contract. It was specifically mentioned that the plaintiff shall complete the construction within one year after obtaining sanction plan.

[13]. After dismissal of the applications under Order 39 Rules 1 and 2 CPC on two earlier occasions, the nature of interrogatories revolving around information which in my considered opinion is not relevant for any decision on merits in a suit for declaration, permanent injunction and mandatory injunction on the basis of collaboration agreement dated 30.11.2009. Factum of cancellation of collaboration agreement vide notice dated 15.06.2012 is an admitted fact in para no.17 of the plaint. Even a reply was filed by the plaintiff to the aforesaid legal notice.

[14]. Bare perusal of the collaboration agreement would show that Sanjiv Kapoor has signed the same on behalf of the plaintiff-Company and the defendant/petitioner has signed the same. Collaboration agreement is an admitted document between the parties.

[15]. A reference was made by learned counsel for the

petitioner towards number of documents allegedly signed by the plaintiff itself on behalf of the petitioner by forging her signatures, which is apparent from one of the document (Annexure P-10) collectively attached with the petition showing difference in the signatures of the petitioner appearing on collaboration document and on those documents even with naked eyes. On the basis of forged and fabricated document, the petitioner has already filed a criminal complaint and has also led evidence at pre-summoning stage.

[16]. In the orders passed by the trial Court in the applications under Order 39 Rules 1 and 2 CPC, the petitioner was held entitled to raise construction over the suit property and also to alienate the suit property being owner of the same. The application under Order 11 Rules 1 and 2 CPC allowed by the trial Court has no merit. Even otherwise the plaintiff can lead its substantive evidence and the information which is sought to be extracted, is not incriminating information which would help the Court in deciding the issue authoritatively in any manner. The petitioner cannot be compelled to furnish such information which would negate the benefits of orders passed under Order 39 Rules 1 & 2 CPC in her favour.

[17]. In view of attending facts and circumstances of the case, I find that even irrespective of the stage of the suit, filing of

application under Order 11 Rules 1 and 2 CPC is not a *bona fide* act by the plaintiff. The prayer in terms of Order 39 Rules 1 and 2 CPC has already been dismissed by the trial Court as well as the lower Appellate Court on 06.02.2013 and 28.05.2013 respectively. Even in second attempt, the prayer was also dismissed by the trial Court on 31.05.2014. Even the prayer in terms of Order 26 Rule 9 CPC was dismissed by the trial Court and an effort to get one Kuldeep Tyagi impleaded in collusion with the plaintiff was also negated by the trial Court. Keeping in view the incriminating facts on record, the impugned orders are not legally sustainable as interrogatories themselves are irrelevant as per proviso to Order 11 Rule 1 CPC. Even the interrogatories as sought by the plaintiff do not conform to the mandatory requirement of Order 11 Rules 3 and 4 CPC.

[18]. For the reasons recorded hereinabove, I deem it appropriate to accept this revision petition. Consequently the impugned orders dated 18.11.2015 and 05.07.2016 passed by the Civil Judge (Jr. Divn.) Gurgaon (now Gurugram) are set aside. Normal consequences to follow.

April 25, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No