IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5043 of 2014
Date of Decision: 19.03.2019.

Raghbir Singh Sandhu. ...Petitioner

Versus

Sanjay Garg and others. ....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Rahul Sharma-I, Advocate for the petitioner.

Mr. D.K. Bhatti, Advocate for respondent Nos.1 and 2.

Service of respondent No.3 dispensed with being proforma respondent.

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B.S.WALIA, J (Oral)

1. Challenge in the revision petition is to order Annexure P/6, dated 15.05.2014, passed by the learned Addl. Civil Judge (Senior Division), Panchkula, dismissing the application filed by the petitioner-defendant under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC).

2. Brief facts of the case leading to the filing of the revision petition are that the respondent-plaintiff filed a suit for permanent injunction for restraining petitioner/defendant No.1 from alienating plot No.35, Sector-4, Urban Estate, Panchkula (for short the 'house in question'). Petitioner-defendant No.1 thereupon filed an application under Order 7 Rule 11 CPC contending that the civil suit did not disclose any

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cause of action as it was based on a receipt of token money dated 16.12.2009, containing a clause that the agreement to sell was to be executed on a subsequent date. It was further contended that there was no mutual meeting of minds, therefore, there no cause of action accrued in favour of respondent Nos.1 and 2-plaintiffs and further that there was no actionable document in the eyes of law in order to support the claim of respondent Nos.1 and 2-plaintiffs in the civil suit, therefore, the civil suit deserved to be dismissed under Order 7 Rule 11 CPC.

3. A perusal of the impugned order reveal that the learned trial Court took into account that the as per claim put forth by respondent Nos.1 and 2/plaintiffs, agreement dated 16.12.2009 was executed between the parties and a sum of ₹2 Lakh was paid as token money to the petitioner-defendant No.1 and the parties were to meet on 17.12.2009 for execution of the final agreement but the petitioner-defendant No.1 did not turn up for the same. The learned trial Court further held that while deciding an application under Order 7 Rule 11 CPC, only the contents of the plaint were to be gone into and the question as to whether ₹2 Lakh was given as token money or whether agreement dated 16.12.2009 created any right in favour of respondent Nos.1 and 2/plaintiff could be decided only after evidence was led by the parties and the Court could not resolve the issues without recording evidence.

4. A perusal of the plaint filed by respondent Nos.1 and 2/plaintiffs reveals that money was paid by respondent Nos.1 and 2/plaintiffs to petitioner/defendant No.1 on 16.12.2009 as token money prior to final agreement due on 17.12.2009 and that last date of execution

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of the sale deed had not been fixed as the final agreement was to be executed on 17.12.2009. Relevant extract of the plaint filed by respondent Nos.1 and 2/plaintiffs is reproduced as under:-

> "4. That the total sale consideration was settled for Rs.1,95,00,000/- (rupees one Crore ninty Five Lacs only). That out of total sale consideration an amount of Rs.2,00,00/- (Indian Rupees Two lacs only) had been paid as earnest money. That the defendant No.1 received the abovesaid amount of Rs.2,00,000/- as earnest money and duly evidenced the same vide receipt of token/earnest money dated 16.12.2009 in the presence of attesting witnesses.
>
> 5. That however, while taking the abovesaid amount of Rs.2.00 lacs and executing the receipt of token/earnest money, it was specifically mentioned by the defendant No.1 that the abovesaid money is token payment prior to final agreement due tomorrow 17.12.2009.
>
> 6. That the last date of execution of the sale deed was not fixed as the final agreement was still to be executed on 17.12.2009."

5. Hon'ble the Supreme Court in Speech & Software Technologies (India) Pvt. Ltd. vs. Neos Interactive Ltd. 2009 (1) SCC 475 and Single Bench of Hon'ble the Bombay High Court in Makers Development Services Pvt. Ltd. vs. M. Visvesvaraya Industrial Research and Development 2008 (5) BCR 821, held that an agreement to enter into

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an agreement to sell is not enforceable nor does it confer any right on the parties.

6. The civil suit filed by respondent No.1 and 2/plaintiffs is for permanent injunction for restraining petitioner/defendant No.1 or his servants or assignees from alienating the house in question by way of sale gift or mortgage or in any manner whatsoever and from creating any charge or encumbrances over the house in question in favour of anybody else except respondent Nos.1 and 2/plaintiffs and further for restraining petitioner/defendant No.1 from transferring the house in question in favour of anybody else except respondent Nos.1 and 2/plaintiffs and with consequential relief of mandatory injunction directing petitioner/defendant No.1 to get transferred the house in question along with all rights appurtenant thereto in favour of respondent Nos.1 and 2/plaintiffs and to execute the sale deed in favour of respondent Nos.1 and 2/plaintiffs on payment of ₹1,95,00,000/- as per terms and conditions of receipt of token money dated 16.12.2009.

7. A perusal of Annexure P/2 i.e. agreement dated 16.12.2009, executed between the parties as has been produced by none else then respondent Nos.1 and 2/plaintiffs themselves before the learned trial Court reveals a categorical endorsement on the same by petitioner /defendant No.1 that the money was token payment prior to final agreement due tomorrow (17.12.2009) with Mr. Sood. Besides, the clause pertaining to the right of the purchaser in the eventuality of the seller party backing out for the sale of the aforesaid property due to any reason giving the purchaser the right either to accept the damages settled between the parties or to get the

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aforesaid property transferred in his name through the Court of law was specifically struck out by putting a cross (X) on both sides of the clause. It is, therefore, clear that payment which was made, was recorded as token payment for which final agreement to sell was to be executed on the next date. In other words, the agreement to sell was yet to be executed, therefore, at best Annexure P/2 dated 16.12.2009 was an agreement to enter into an agreement to sell as is clear from the decision of Hon'ble the Supreme Court in Speech & Software Technologies (India) Pvt. Ltd.'s case (supra). Therefore, no cause of action accrued in favour of respondent Nos.1 and 2/plaintiffs on the basis of agreement dated 16.12.2009 (Annexure P/2) to institute a civil suit seeking permanent injunction as noted above.

8. In the circumstances, the impugned order is legally unsustainable and is set aside. However, in order to do substantial justice between the parties, I deem it appropriate to direct petitioner/defendant No.1, who had received a sum of ₹2 Lakh as token money, to refund the same to respondent Nos.1 and 2/plaintiffs by way of demand draft along with interest @ 7.5% per annum w.e.f. 16.12.2009 till date of actual realization.

9. Revision petition is allowed in aforementioned terms.

(B.S.WALIA)
JUDGE

19.03.2019.
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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