

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.5805 of 2018 (O&M)
Date of Decision.20.03.2019

Shareshtha Rani ...Petitioner

Vs

Prem Sagar and another .Respondents

2. C.R. No.5814 of 2018

Shareshtha Rani ...Petitioner

Vs

Surinder Kumar and another .Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kuldip Singh, Advocate for
Mr. Ghulam Nabi Malik, Advocate
for the petitioner.

Mr. Anil Kumar Joshi, Advocate
for the respondent No.1.

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of two revision petitions bearing No.5805 and 5814 of 2018 preferred by the plaintiff against the two common impugned orders whereby application of respondents No.1 and 2 i.e. defendants No.1 and 2 seeking leave to defend in the suit filed under Order 37 of the Code of Civil Procedure has been allowed.

The petitioner-plaintiff filed the suit under Order 37 CPC for recovery of ₹27,10,000/- i.e. ₹20,00,000/- being principal and ₹7,10,000/- as interest @12% p.a. on the premise that she wanted to purchase one plot in Naya Gaon. One Raj Kumar met husband of the plaintiff and introduced himself as property dealer and with defendant No.1 as main property dealer. Defendant No.1 shown

one plot referred in the plaint measuring 200 sq. yards out of total land measuring 6 kanals 19 marlas belonging to one Surinder Kumar, defendant No.2, which was already booked for sale on behalf of Surinder Kumar. The husband of the plaintiff contacted Surinder Kumar to confirm regarding sale of the plot and in the middle of September, 2011, defendant No.1 contacted the plaintiff and her husband and the finalized the deal for a sum of ₹29,00,000/- i.e. @₹4,35,000/- per marla. Plaintiff had paid a sum of ₹10 lakhs as earnest money and it was orally settled that the balance amount of ₹19 lakhs shall be paid by the plaintiff at the time of sale deed. However, on 26.09.2011, defendant No.1 met plaintiff and her husband and started pressing hard for release of ₹10 lakhs to defendant No.1. Defendant No.1 also shown one typed GPA/SPA in his favour under the signatures of Surinder Kumar, defendant No.2. By giving details of payment to the defendants, it was averred that in the month of November, 2011, Surinder Kumar, defendant No.2 cancelled the GPA/SPA executed in favour of defendant No.1. On this plaintiff became suspicious and enquired from defendant No.1 but he assured that there was no cancellation. However, he started giving lame excuses and did not come forward for execution of the sale deed. It in these circumstances the suit was filed.

Plaintiff in the applications submitted that all the payments were made prior to the date of agreement dated 30.09.2011 and the cheques were given to the plaintiff without any consideration.

Learned counsel appearing on behalf of the petitioner submitted that while allowing the application for leave to defend, trial

court did not notice provisions of Rule 3 of Order 37 CPC which provides that where a part of amount claimed by the plaintiff is admitted by the defendant to be due from him leave to defend shall not be granted, unless the amount so admitted to be due, is deposited. There was sufficient evidence on record that the defendant had admitted the receipt of the amount from the petitioner-plaintiff, therefore, grant of leave to defend is illegal and not sustainable in the eyes of law.

Per contra, learned counsel appearing on behalf of the respondents submitted that the trial found from the contents of the application as involvement of trivial issue. Imposition of condition cannot be ordered as a matter of right unless and until there were very hard pressed circumstances. Conviction of defendant No.1 under Section 138 of the Negotiable Instruments Act would not be material for adjudication. The only thing is to be examined is the parameters laid down under Rule 3 Order 37 CPC. Since the case of the plaintiff did not fall in aforementioned parameters, leave to defendant has rightly be granted.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of learned counsel for the petitioner, as the orders under challenge cannot be said to be suffering from any infirmity for the simple reason that the case pertained to recovery of ₹27,10,000/- on the basis to agreement to sell. It is yet to be deciphered whether the suit for recovery under Order 37 CPC in respect of non-performance of agreement would be maintainable or not but the fact of the matter

is that dispute is raised by both the parties and unless and until contents of the agreement are not proved, simplicitor suit for recovery under Order 37 CPC without leave to defend cannot proceed. In such circumstances, imposition of condition shall be too onerous.

In view of such circumstances, the impugned orders cannot be said to be suffering from any infirmity, much less, cannot be said to be passed without or beyond jurisdiction. No ground for interference is made out. Resultantly, both the revision petitions are dismissed.

(AMIT RAWAL)
JUDGE

March 20, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No