IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.6125 of 2014 (O&M)
Date of decision:08.01.2019

Archana Jain and another ... Petitioners

Vs.

C.S.Aggarwal and others ... Respondents

CR No.6102 of 2014 (O&M)

M/s German Gardens Ltd. and others ... Petitioners

Vs.

C.S.Aggarwal and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Arun Jain, Senior Advocate with
Mr. Dhruv Mittal, Advocate
for the petitioners (in CR No.6102 of 2014).

Mr. Harkesh Manuja, Advocate
for the petitioners (in CR No.6125 of 2014).

Mr. Gaurav Mitra, Advocate and
Mr. Gorangg Gupta, Advocate
for respondents No.1 and 2 (in both petitions)

Mr. Hemant Bassi, Advocate
for respondent No.3 ((in both petitions.

<u>AMIT RAWAL J.</u>

This order of mine shall dispose of two Civil Revision Petitions bearing Nos.6125 of 2014 filed on behalf of petitioner-defendants No.2 and

3 and 6102 of 2014 on behalf of petitioner-defendants No.4 to 11 for rejection of the suit bearing No.338 of 2012 (hereinafter referred to as "second suit") titled as "C.S.Aggarwal and others vs. D.K.Jain and others" claiming specific performance of the agreement to sell dated 05.02.2007 and lease agreement dated 30.11.2006.

It was alleged that respondent-plaintiff no.2 alongwith respondent no.12 filed a civil suit no.74 dated 20.01.2010 (hereinafter referred to as "first suit") against defendant no.1- D.K.Jain claiming the permanent injunction on the basis of lease agreement dated 30.11.2006.

In the aforementioned suit, injunction was sought by the plaintiffs, namely, Anjali Bhardwaj and Rockman Projects Limited against the defendants against dispossession in respect of suit land referred to in paragraphs 6 and 7 of the plaint of 2010 on the premise that the plaintiffs in first suit decided to undertake project for development, operation and maintenance of a Special Economic Zone (SEZ) and in this regard, sought the approval of the Govt. by submitting an application dated 14.07.2006. Vide letter dated 22.08.2006, the Govt. of India granted the approval which was initially valid for a period of one year. Defendants no.2 to 11 (in first suit) entered into lease agreement dated 30.11.2006 for taking lease of several parcels of land forming one single chunk containing an aggregate area of 267 acres approximately described in Annexure A to Annexure J alongwith an agreement to sell dated 05.02.2007 containing the various terms and conditions.

D.K.Jain-defendant no.1 (in first suit) was authorized by the other defendant-companies, i.e. owners of the land through various resolutions entered into to execute the lease agreement and understanding was arrived at that land would eventually be transferred and sold to Anjali Bhardwaj and Rockman Projects Limited, plaintiffs. Even the original documents purportedly were handed over.

Defendants No.4 to 11 (in first suit) through defendant no.1-D.K.Jain entered into an agreement to sell dated 5.2.2007 with plaintiffs no.1 and 3, whereby, it was agreed that the plaintiffs shall purchase the land from the owners for a consideration of Rs.12,00,000/- per acre and a sum of Rs.2,80,00,000/- was paid and owing to the threat extended by the defendants, cause of action arose to institute the suit for injunction.

The plaintiffs (in second suit) C.S.Aggarwal and Anjali Bhardwaj sought the specific performance of the agreement to sell dated 05.02.2007 alleging that various defendants therein were owners of various parcels of land, whereby, authorized signatory D.K.Jain, defendant no.1 entered into agreement to sell with plaintiffs and had received a sum of Rs.2,80,00,000/- as earnest money which was duly admitted and acknowledged. Defendant no.8 received an amount of Rs.10,94,50,000/- out of which a sum of Rs.8,80,00,000/- was towards the rent/advance rent in respect of the suit land and remaining amount of Rs.2,14,50,000/- was towards further advance part of the sale consideration regarding the sale of suit land, thus, vendors jointly received a sum of Rs.4,94,50,000/- as part sale consideration (Rs.2,80,00,00/- + Rs.2,14,50,000/- received by defendant no.8). In pursuance to the lease deed, defendant no.12 (in second suit) alongwith plaintiffs were put in possession of the land in question. Plaintiffs had been ready and willing to perform the part of the contract but defendants did not come forward for performance of the agreement.

As indicated above, two applications were filed for rejection of the plaint under Order 7 Rule 11 CPC on the following grounds:-

a) Once the suit for injunction was filed and there was already a breach as alleged without seeking amendment, subsequent suit for specific performance after withdrawal of previous suit without any permission during its pendency, would not be maintainable.

b) the plaintiffs failed to produce on record the original documents, i.e., alleged agreement to sell and lease deed which were forged and un-registered.

c) The suit for specific performance was barred as per the provisions of Order 2 Rule 2 CPC.

The aforementioned application was opposed by the plaintiffs regarding its maintainability, admissibility. It was alleged that plaintiff no.1 C.S.Aggarwal (in second suit) was not a party in other suit.

It is yet to be decided whether the agreement to sell was an outcome of fraud and mis-representation for which detailed evidence is required.

The trial Court vide impugned order dated 12.08.2014 dismissed the application.

Mr. Arun Jain, learned Senior counsel assisted by Mr. Dhruv Mittal, (in CR No.6102 of 2014) and Mr. Harkesh Manuja, (in CR No.6125 of 2014) learned counsel appearing on behalf of the petitioners submitted that target date for execution of the agreement to sell dated 05.02.2007, was 05.02.2012, thus, in case of any breach, injunction suit was filed in January, 2010. Plaintiffs were not prevented to seek specific performance of the agreement to sell. The impugned order is not sustainable in the eyes of law because the Courts below swayed away of the point raised for consideration of the application, that adjudication of objection required detailed evidence but failed to notice that averments made in the plaint would itself reflect suit *ex facie* not maintainable, thus, the provisions of Order 7 Rule 11 CPC were wholly attracted. There is no averment in the plaint that petitioner-defendants entered into agreement to sell with the plaintiffs, therefore, the suit cannot proceed.

The agreement to sell dated 05.02.2007 required compulsorily registration and in the absence of the same, the suit for specific performance was not maintainable. No copy of registered power of attorney or any other resolution from defendants no.2 to 11 has been produced with the plaint nor any such document of the relevant time, has been produced. The plaintiffs averred that they entered MOU with one Kohli Housing and Development Private Limited and agreed to transfer 74% share for a sum of Rs.185 crores as per the agreement dated 19.2.2008 and the aforementioned agreement was frustrated. The plaintiffs were involved in various criminal and civil litigation. The suit was filed before the High Court at Delhi. Vide order dated 02.07.2014, the application filed under Order 7 Rule 11 CPC, was allowed and rejected the plaint qua respondents no.4 to 11 and the petitioners, who were impleaded as defendants no.2 to 13. The suit was barred under Order 2 Rule 2 CPC, in view of the judgment rendered by the Hon'ble Supreme Court in **M/s Virgo Industries (Eng.) Pvt. Ltd. vs. M/s Venturetech Solutions Pvt. Ltd. 2012(4) Civil Court Cases 307 SC.**

The compliance of the provisions of Order 7 Rule 1(j) CPC regarding disclosure of pendency of suit between the parties as per the amendment applicable to Punjab and Haryana is conspicuously wanting and thus, urged this Court for setting aside the impugned order by rejecting the plaint.

Per contra, Mr. Gaurav Mitra, Advocate and Mr. Gorangg Gupta, learned counsels appearing on behalf of respondent No.1 and 2 opposed the prayers of the petitioners and supported the impugned order by submitting that application was bereft of any reasons. It was filed only to delay the adjudication of the suit as the defendants had no defence. The suit for injunction had already been withdrawn on 03.09.2013, in view of the pendency of the suit for specific performance.

In support of the aforementioned submissions, relied upon the ratio decidendi culled out by the Hon'ble Supreme Court in **Inbasegaran Vs. S.Natarajan 2015(11) SCC 12,** whereby, the similar objection with regard to the applicability of provisions of Order 2 Rule 2 CPC was taken and it was held that cause of action would show that relief sought in injunction suit and second suit were quite distinct. The aforementioned judgment has been rendered after taking into consideration the ratio decidendi culled out in M/s Virgo Industries (Eng.) Pvt. Ltd.'s case (supra).

Reliance was also laid upon **Sucha Singh Sodhi (dead) through legal representatives vs. Baldev Raj Walia and another 2018(6) Supreme Court Cases 733** and **Sejal Glass Limited vs. Navilan Merchants Pvt. Ltd. 2017(4) RCR (Civil) 416; 2017 AIR (SC) 4477**.

In rebuttal, Mr. Hemant Bassi, learned counsel has relied upon various judgments regarding applicability of provisions of Order 2 Rule 2 CPC. The details of which have been given as under:-

Shamsher Singh vs. Gurtek Sikngh @ Tek Singh and others 2014(3) PLR 283 and regarding parameters for rejection of the plaint relied upon the ratio decidendi culled out by the Hon'ble Supreme Court in **Church of Christ Charitable Trust & Educational Charitable Society represented by its Chairman vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustees 2012(3) RCR (Civil) 811** to submit that averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments in the plaint.

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

The plaintiffs in the previous suit were as under:-

Anjali Bhardwaj and Rockman Projects Limited, whereas, in second suit, C.S.Aggarwal and Anjali Bhardwaj.

The lease agreement is between M/s German Gardens, Archana Jain as lessors and Rockman Projects, whereas, agreement to sell is between M/s Sidhartha Mercantile Limited, M/s Super Prompt Holding Limited, M/s Super Quick Holding Limited, M/s Urgent Holdings Limited, M/s Monsoon Leasing Finance Limited, German Gardens Limited, M/s Rajdhani Securities Limited and Tower Leasing and Finance Ltd. i.e., defendants herein and the vendees, who through Director D.K.Jain alleged that they had entered into lease agreement with vendors C.S.Aggarwal and Anjali Bhardwaj. The first suit was filed in January 2010, whereas, second suit on 05.11.2012 after the expiry of stipulated date i.e. 05.02.2012, for execution and registration of the sale deed.

No doubt, in M/s Virgo Industries (Eng.) Pvt. Ltd.'s case (supra), the Hon'ble Supreme Court after noticing the fact found that when there was breach and the party had cause of action to seek redressal under the statutory provisions of law, the suit for specific performance filed after injunction, held to be barred under Order 2 Rule 2 CPC but in the present case, the plaintiffs as noticed above are different than the one of the plaintiffs in first suit and second suit for specific performance (sought to be rejected). In such circumstances, it is yet to be discerned through evidence whether the provisions of Order 2 Rule 2 CPC would apply or not.

It is settled law that for entertaining the application under Order 7 Rule 11 CPC, the averments in the plaint have to be seen and not the entire defence. The petitioners are not prevented to take all the possible objections and press for framing of proper issues and may choose to lead evidence in support but cannot seek the rejection of the plaint in the manner and mode as noticed above.

As per the facts of the present case where the first suit between the different parties had already been withdrawn on 03.09.2013. The legislature incorporated the provisions of Order 2 Rule 2(1) CPC enabling the plaintiffs to file the suit on the basis of cause of action by including all the reliefs which were available. However, sub-rule 2 of Rule 2 of Order 2 provides that where plaintiff omits to sue intentionally or relinquish any portion of claim then he cannot be permitted to claim such relief in a subsequent proceedings. In order to examine such question whether the plaintiff is entitled to claim the specific performance of agreement to sell as previous suit was based on different cause of action between the different parties. It would be premature to hold the maintainability of the suit at this stage. Even when the issues have not been framed. When the Rules require unity of all the claims based on the same cause of action in one suit, it does not contemplate unity of existing or separate cause of action which will be subject matter of adjudication for the Court to decide whether the subsequent suit for specific performance was based upon the different cause of action or not or the rule will operate as a bar or otherwise. The trial Court can also examine whether the previous suit formed the foundation of the subsequent suit or not or the plaintiffs could claim the same relief when the suit for injunction was filed particularly when C.S Aggarwal was not a party.

There is no dispute with regard to the judgments cited by Mr. Bassi but facts of each and every case as noticed above have to be examined.

The interim order dated 09.10.2018 is also vacated. However, it will not prevent the respondent-plaintiffs to seek interim stay before the trial Court.

Resultantly, the impugned order cannot be said to be suffering from illegality and perversity or without jurisdiction.

The revision petitions are dismissed.

(AMIT RAWAL)
JUDGE

January 08, 2019
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No