

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

Sr. No.201

CR-71-2015

Date of decision: 15.01.2019

Hajra

....Petitioner

versus

Hakmuddin and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Virendra Rana, Advocate
for the petitioner.

Mr. J.S. Hooda, Advocate
for the respondents.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 28.11.2014 passed by the Civil Judge (Junior Division), Mewat (for short – the Trial Court) dismissing an application filed by the petitioner through which he sought to produce a certified copy of the cancellation report filed under Section 173 Cr.P.C. arising out of FIR No.135 dated 28.04.2012, registered under Sections 420, 467, 468, 471, 506 and 120-B IPC, at Police Station Tauru, District Mewat as also to allow her to lead additional evidence in respect of documents Mark-A to Mark-J by producing the Investigating Officer of the aforesaid FIR as well as by summoning the case file of State vs. Hakmuddin pending in the Court of the Additional Chief Judicial Magistrate, Nuh.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the petitioner filed a suit

seeking therein specific performance of an oral agreement of sale entered into between her and respondents No.1 and 2 with regard to the property detailed and described in the plaint (for short – the suit property). According to the petitioner, the agreed sale consideration was ₹40 lakhs out of which ₹39,95,666/- had been paid by the petitioner to respondents No.1 and 2 and the remaining amount merged as mortgage amount. Thus, on payment of the entire sale consideration, sale deed was executed on 06.01.2012. However, before the Sub Registrar, Tauru, at the time of registration of the sale deed, respondents No.1 and 2 backed out by their commitment giving a cause to the petitioner to file the aforesaid suit. On being put to notice, respondents No.1 and 2 appeared before the Trial Court. They denied any oral agreement between the parties and submitted that the sale deed dated 06.01.2012 being relied upon the petitioner was a result of fraud. They further denied giving of any receipt for the sale consideration of ₹39,95,666/- as was alleged by the petitioner to have been paid to them.

In addition to the filing of the aforesaid suit, the petitioner had also lodged against respondents No.1 and 2 a criminal case through FIR No.135 dated 28.04.2012 registered under Sections 420, 467, 468, 471, 506 and 120-B IPC, at Police Station Tauru, District Mewat. During the cause of investigation of the aforesaid FIR the investigating agency found that respondents No.1 and 2 had refunded the sale consideration of ₹39,95,666/- to the petitioner. Thus, finding the matter to be of civil nature a report under Section 173 Cr.P.C. was filed before the Competent Court seeking cancellation of the aforesaid FIR. Alongwith the report certain documents which included an agreement between the parties dated 12.01.2012 through which respondents No.1 and 2 had allegedly refunded the aforesaid amount

of ₹39,95,666/- as also a receipt issued by the petitioner in their favour were also attached. The petitioner appeared before the Competent Court and on 14.08.2013 filed a protest petition seeking therein rejection of the cancellation report submitted by the investigating agency. While such matter was pending, the petitioner filed an application in her civil suit seeking permission of the Trial Court to produce as additional evidence the aforesaid cancellation report alongwith the documents attached thereto. Such application was dismissed by the Trial Court on the ground that by the time the petitioner had filed the application, the respondents had already exposed their defence and on the ground of delay as also for the reason that the petitioner had not filed her application with clean hands.

Learned counsel for the parties have been heard.

The case set up by the petitioner in her civil suit is that in pursuance to an oral agreement, respondents No.1 and 2 had agreed to sell the suit property to the petitioner for ₹40 lakhs out of which the petitioner had paid to respondents No.1 and 2 an amount of ₹39,95,666/- and the balance payment was to be adjusted towards mortgage amount. It was further the case of the petitioner that after respondents No.1 and 2 received the entire sale consideration, as above, a sale deed dated 06.01.2012 was executed between the parties. However, before the Sub Registrar, respondents No.1 and 2 failed to get the sale deed registered.

On the other hand, respondents No.1 and 2 have denied any oral agreement between them and the petitioner as also receipt of any sale consideration from the petitioner. It is thus their case that there was no question of them walking out of the office of the Sub Registrar without getting any sale deed registered.

In the light of the above dispute, the evidence sought to be led by the petitioner as an additional evidence in the form of the cancellation report filed by the investigating agency in FIR No.135 dated 28.04.2012, assumes importance as in such cancellation report it has been duly recorded that no criminal case is made out against respondents No.1 and 2 for the reason that they have refunded ₹39,95,666/- to the petitioner. Supporting documents which includes a receipt by the petitioner of the aforesaid amount are also the part of the report. The contents and the supporting documents in the cancellation report would certainly throw light on the dispute between the parties as to whether any payment was made by the petitioner to respondents No.1 and 2 or not. It would thus assist the Trial Court to come to a just decision.

No delay is found in the filing of the application by the petitioner to lead additional evidence as before the filing of the protest petition against the cancellation report, her evidence had already been closed in the civil proceedings and such application for leading of additional evidence could only have been filed after respondents No.1 and 2 would have closed their evidence.

In view of the above, the impugned order is set aside and resultantly, the prayer made by the petitioner to lead additional evidence through her application Annexure P-2 is allowed. For leading such evidence, the petitioner shall be granted one effective opportunity. Needless to say that the respondents would be granted an effective opportunity to rebut such evidence in accordance with law.

It is clarified that permission to allow the petitioner to lead additional evidence is not an opinion expressed by this Court on the

genuineness of the same and its worth, in fact and in law, would be considered by the Trial Court at the time when the matter is finally adjudicated upon.

(DEEPAK SIBAL)
JUDGE

January 15, 2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No