

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 106

Case No. : C. R. No. 6977 of 2018

Date of Decision : January 09, 2019

Ajaib Singh Petitioner

vs.

Avinash Kumar Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Shubhashish Kukreti, Advocate
for the petitioner.

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DEEPAK SIBAL, J. (Oral) :

The present petition is directed against the order dated 18.09.2018 passed by the Civil Judge (Junior Division), Bathinda (for short – the trial court) dismissing the application filed by the petitioner-defendant under Order 7 Rule 11 CPC through which he had sought rejection of the respondent's plaint.

The brief facts, as culled out from the record as also after hearing learned counsel for the petitioner, are that the respondent filed a suit seeking therein specific performance of agreement to sell dated 24.04.2015 through which the petitioner had allegedly agreed to sell to the respondent House No. 33, situated in Sector 2, HBN Sunrise City, Jassi Pau Wali, Mansa Road, Bathinda (for short – the suit property). In the alternative, the respondent had sought recovery of Rs.40,00,000/- from the petitioner which included refund of earnest money paid by him as also

consolidated damages. Permanent injunction to restrain the petitioner from alienating any portion of the suit property was also sought.

The case set up by the respondent in his plaint was that the petitioner had projected to the respondent that his grandson Lovemeet Singh had been allotted the suit property but since he was a minor, it was the petitioner who had paid the entire value of the suit property and that it was he who was Lovemeet Singh's natural guardian. To show that the suit property had been allotted to Lovemeet Singh under the guardianship of the petitioner, he had shown to the respondent receipts of the payments made by the petitioner to the developer on Lovemeet Singh's behalf with regard to the suit property wherein the fact of the petitioner being guardian of Lovemeet Singh was duly mentioned. After convincing the respondent that it was the petitioner who was Lovemeet Singh's guardian, the petitioner lured the respondent to enter into an agreement with him and accordingly, Lovemeet Singh, through the petitioner as his guardian, agreed to sell the suit property to the respondent for a total sale consideration of Rs.40,00,000/-. Rs.10,00,000/- was paid by the respondent to the petitioner as earnest money and possession of the suit property was delivered to the respondent. According to the respondent, the petitioner had further assured the respondent that after getting necessary permission from the Guardian Judge, he would execute the sale deed in favour of the respondent. On making inquiries, the respondent came to know that father of Lovemeet Singh was alive and thus, the above fraud played by the petitioner upon the respondent came to light occasioning the filing of his suit for the aforesaid

reliefs.

On being put to notice, the petitioner appeared before the Trial Court and filed an application under Order 7 Rule 11 CPC seeking rejection of the respondent's plaint primarily on the ground that the respondent had himself acknowledged in the plaint that the agreement to sell dated 24.04.2015, on which he had based his entire suit, had been entered into by the petitioner on behalf of Lovemeet Singh for which he had no authority. The Trial Court dismissed the petitioner's application giving him a cause to knock the doors of this Court through the present petition.

The respondent has filed a suit seeking therein specific performance of agreement to sell dated 24.04.2015 through which the petitioner, acting as legal Guardian of his minor grandson Lovemeet Singh, agreed to sell the suit property to the respondent. In the alternative, the respondent has sought recovery of Rs.40,00,000/- from the petitioner, which includes consolidated damages. Permanent injunction to restrain the respondent from further alienating the suit property has also been sought. The pleaded case of the respondent is that Lovemeet Singh, who was the allottee of the suit property was a minor. The petitioner, by showing certain documents to the respondent, convinced him that it was he who was Lovemeet Singh's legal Guardian and after doing so, lured the respondent to enter into an agreement with him for the sale of Lovemeet Singh's property and not only that, in pursuance to such agreement, he received from the respondent an amount of Rs.10,00,000/- as earnest money. It is further the case of the respondent that the petitioner projected that he would get appropriate orders from the Guardian Court in his favour and then get the sale deed registered. However, inquiries made by the respondent revealed

that father of Lovemeet Singh was alive and thus, it was he who was Lovemeet Singh's natural Guardian and not the petitioner. Thus, according to the respondent, the petitioner had played a fraud upon him, on the basis of which he filed a suit for specific performance and in the alternative, sought recovery of earnest money paid by the respondent to the petitioner as also damages.

The afore-averments made in the plaint show that the respondent has pleaded fraud having been played by the petitioner, for which he has not only sought specific performance of the agreement entered into between the parties but in the alternative, has sought recovery of earnest money paid by the respondent to the petitioner as also damages.

In view of the above facts and in particular, the prayer made by the respondent in his suit seeking recovery of the earnest money paid by the respondent as also for claiming damages from the petitioner, the respondent's plaint does not merit outright rejection as the same does disclose a cause of action qua the petitioner.

Dismissed.

It is clarified that the present order would not influence the Trial Court in any manner at the time of final disposal of the suit.

(DEEPAK SIBAL)
JUDGE

January 09, 2019
monika

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>