

CR-8277-2017 (O&M)

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

CR-8277-2017 (O&M)

Date of decision : 18.03.2019

Meera Mishra and another

... Petitioners

Versus

Pankaj Rao

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. Bhuvan Bhalla, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

CM-25619-CII-2018

For the reasons stated in the application, which is supported by
an affidavit, Annexures R-1 to R-7 are taken on record.

CM stands disposed of.

MAIN CASE

The present revision petition is directed against the impugned
order, whereby the application of the petitioner-defendant seeking leave to
defend in a suit under Order 37 of the Code of Civil Procedure, has been
dismissed.

Mr. Sanjiv Gupta, learned counsel appearing on behalf of the
petitioners submitted that on bare perusal of the contents of the plaint, the

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suit does not fall under any of the provisions of Order 37 Rule 5 of CPC as it is not a case of hundi, cheque or pronote. It is a simpliciter case of an agreement to sell, whereby the respondent-plaintiff has sought the title and the documents and in the absence of the same, refund of ₹2,83,000/- by affixing the courts fee. Even the procedure is required under the aforementioned provisions of Order 37 was not followed.

Per contra, Mr. Bhuvan Bhalla, learned counsel for the respondent submitted that the sole ground in the application seeking leave to defend was that the summoning was not proper. This is what has been reiterated in the revision petition, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties and appraised the paper book.

It would be apt to reproduce paragraphs 3, 8 to 10 as well as prayer clause, which read as under:-

3. That the plaintiff in the good faith got ready to purchase the said flat No.155C situated at Sai Vatika Apartment, Sector 63, Faridabad and in this regard, an agreement to sale for a valuable consideration ₹ 28,30,000/- (Rupees Twenty Eight Lacs Thirty Thousand) inclusive of final builder payment to be demanded as per the latest ledger was entered between the plaintiff and respondent No.1. The respondent No.1 received a sum of ₹ 2,83,000/- (Two Lacs Eighty Three thousand) by way of earnest money being part of the total consideration money ₹ 28,30,000/- on 20th May 2015 and on the same date the terms and condition for the Agreement to sale were recorded in a document where in the respondent acknowledge the receipt of ₹ 2,83,000/- (Rupees Two Lacs Eighty Three Thousand) towards the earnest money and part payment for the total

consideration money of ₹ 25,47,000/- (Rupees Twenty Five Lacs Fourty Seven thousand only).

8. That the defendant No.2 on 22/09/2015 replied the email of plaintiff in which plaintiff requested the respondents to handover the property documents required for sanction of the Home Loan and defendant No.2 replied in order to shrug their responsibility to handover the documents as well as to misappropriate the earnest money paid by the plaintiff that CANS FINS bank is not approved by the builder, but approved Banks like HDFC, etc., are providing hassle-free loans and the documents demanded are non-standard documents so plaintiff and his banker need to work with the builder.

9. That the plaintiff once again reiterated the same prayer of handing over the legal documents relating to the title as well other documents related to the property concerned to the Agreement to sell vide email dated 27/09/2015 as by communication through speed post dated 01/10/2015.

10. That the best endeavor on the part of plaintiff to get the legal documents from defendants for the sanction of the Home Loan have repeatedly been failed with a illegal and mala fide motive on the part of the defendants to shrug the responsibility to hand over the documents and misappropriate plaintiff earnest money as already paid to the respondents. Thus the acts and deeds of respondents are illegal, unlawful and mala fide and in gross violation of clause 5 of the Agreement to sale dated 20/05/2015.

Prayer Clause

It is, therefore, most respectfully prayed that this Hon'ble Court would be pleased to pass

a. A decree in favour of the plaintiff and against the defendant for a sum of R s. 2,83,000/- with pendetelite and future interest @ 18% per annum from the filing of the present suit till realization.

b. The costs of the suit may be also awarded.

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c. Any other order/s as this Hon'ble Court deems fit and proper in the facts and circumstances of the case, may also pleased be passed."

On plain and simple plain reading of the aforementioned paragraphs as well as prayer clause, it is not evident that *ex facie*, the suit could not have been filed under Order 37 of the Code of Civil Procedure as the said provisions can be invoked in a suit upon bill of exchange, hundies or promissory note or a written contract and enactment, where the sum sought to be recovered is fixed. It was an agreement, where there is a default clause of payment of refund of earnest money, in case of non-supply of document. The remedy, in my view, lies elsewhere. Be that as it may, since the present petition is confined to only impugned order, declining the relief, I am of the view that it is a fit case, where the triable issues arise, leave to defend ought to have been granted.

Keeping in view the aforementioned facts, the impugned order, under challenge, is not sustainable in the eyes of law and the same is hereby set aside. The revision petition stands disposed of in the aforementioned terms.

18.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**