

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 868 of 2019 (O&M)

Date of decision : 21.2.2019

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M/s Vijay Kumar Vipin Kumar

.....Petitioner

vs.

M/s Hanuman Rice Mill and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Anurag Jain, Advocate for the petitioner

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H. S. Madaan, J.

Heard.

In a suit for recovery of Rs. 39,65,152/- filed by M/s Vijay Kumar Vipin Kumar Commission Agent against defendant M/s Hanuman Rice Mill, Tehsil Taraori, District Karnal and its partners, the plaintiff had moved an application under Order 39 Rules 1 and 2 CPC and under Order 38 Rule 5 CPC, craving for grant of ad interim injunction, restraining the defendants from alienating their property besides asking for attachment of their property before judgment, for the reason that defendants were taking steps to alienate their land measuring 57 kanal 3 marlas situated at vilage Shekhanpur, Tehsil Nilokheri, District Karnal, to avoid execution of the decree likely to

be passed against them and in case they succeed in doing so, the plaintiff would not be able to execute the decree causing irreparable loss and injury to it and that further defendants be ordered to furnish security for decree, which may be passed against them and their property be attached by conditional order of attachment.

The application was contested by the defendants.

The trial Court vide impugned order dated 2.11.2018, declined the request for grant of ad interim injunction for the reason that it was a suit for recovery and immovable property of the defendants was not the subject matter of the suit. However, prayer as regards passing conditional order of attachment, was accepted and defendants were directed to furnish sound surety/security of Rs.30,00,000/-.

Defendant Aakash Garg, furnished surety for the defendants for Rs.30,00,000/- for due compliance of the judgment and decree in case suit is decreed by the Court and in case the defendants failed to comply with the terms of the decree, undertaking that in that event he would be liable to pay the aforesaid amount to the plaintiff and his property and heirs shall be bound by the said surety bond. He had furnished an affidavit to the effect that the land in question is not agriculture land and has not been under cultivation and is adjoining the sheller M/s Subhash Rice Mills Kaul, District Kaithal and that it is surrounded by residential and commercial buildings, which fact can be got verified by appointment of Local Commissioner, for which the deponent is ready to bear the expenses. He has further

submitted in the affidavit that the market value of the land is not less than Rs.1,00,000/- per marla. Such bonds were accepted by the trial Court.

However, plaintiff felt aggrieved, coming up with the plea that value of the land was much less. A copy of the sale deed of the adjoining area, was placed on the record. However, as per the verification report by Arunendra Vijay Agrawal, Civil Engineer and Valuers, the cost of the land in question was assessed as Rs.2,42,34,000/- (enclosing photographs of the area).

Further grouse of the plaintiff is that the value of the land is Rs.30,00,000/- per acre as per the collector rate and surety bond with regard to said land has not been properly accepted by the trial Court. Vide order dated 13.12.2018, the trial Court has dealt with such aspect in detail, recording its subjective satisfaction with regard to the value of the land given by surety, observing that if deposition given by Akash Garg, vide affidavit dated 13.12.2018, is found to be incorrect than plaintiff can prove with appropriate evidence that affidavit was false one and he would be liable for the said act.

Feeling aggrieved by orders passed by the trial Court in that regard, the plaintiff has filed the present revision petition.

After hearing learned counsel for the petitioner, I find that there is absolutely no merit in the revision petition.

Order 38 Rule 5 CPC is a very stringent provision where the defendant is called upon to furnish security for production of property or to furnish security in anticipation of decree to be passed in favour

of the plaintiff. Normally properties of defendants are attached and sold after a decree is passed in favour of plaintiff against the defendants. The attachment before judgment is to be done in rare cases and not in routine that too when the trial Court records satisfaction that the defendant with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of the whole or any part of his property or is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court. The plaintiff is yet to prove his case. The trial Court in its wisdom has obtained surety from the defendants. The surety has given details of the land, the market price, which according to him is more than Rs.1,00,00,000/- and he has furnished affidavit duly sworn in that regard. Finding faults with such affidavit in the manner, which is being done by the plaintiff, is uncalled for.

The orders passed by the trial Court in my view does not suffer from any illegality or infirmity, which might have called for interference by this Court, while exercising the revisional jurisdiction by this Court. While the order dated 18.12.2018 is with regard to correction of typographical mistake in order dated 13.12.2018.

Therefore, the revision petition is without any merit and is dismissed accordingly.

21.2.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No