

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2612-2009

Date of Decision: 20th March, 2019

Rakesh Malhotra

.....Petitioner

Versus

Devki Nandan

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Tarun Yadav, Advocate, for
Mr. Jai Vir Yadav, Advocate, for the petitioner.

Mr. Ashwani Talwar, Advocate, with
Mr. Sahej Mahajan, Advocate, for the respondent.

Harnaresh Singh Gill, J.

Challenge in the present petition is to the order dated 27.4.2009 passed by the learned Additional Sessions Judge, Fast Track Court, Gurgaon, whereby while setting aside the summoning order dated 3.6.2005 passed by the learned Judicial Magistrate, Ist Class, Gurgaon, the criminal complaint filed by the petitioner, was dismissed.

A criminal complaint under Sections 406/420/120-B IPC was filed by petitioner-complainant, Rakesh Malhotra, alleging therein that the respondent being the original allottee of residential plot No. 336 (which was later on changed to 548) measuring 502.13 square yards vide allotment letter dated 20.9.1986, entered an agreement to sell dated 20.4.1987 with the petitioner-complainant for a total sale consideration amounting to Rs.98,839/- (already paid by respondent-Devki

Nandan to M/s Ansal Builder). Balance sale consideration was to be paid by the petitioner-complainant directly to M/s Ansal Builder. Various documents, including the General Power of Attorney, were executed with a further undertaking from the respondent that he would get the property registered in the name of the petitioner-complainant, when he completes the construction thereon. On the entire payment having been made to M/s Ansal Builders by the petitioner, respondent-Devki Nandan was called upon to execute the sale deed and, accordingly, the sale deed was executed in favour of the respondent. Respondent-Devki Nandan, assured the petitioner that he would get the sale deed executed in favour of the petitioner or his nominee on the basis of the General Power of Attorney, already executed. Later on, the petitioner came to know that respondent-Devki Nandan, had sold the said property in favour of Kamaljit Singh and Bikramjit Singh. Hence, pleading a fraud, criminal prosecution was sought to be launched against respondent-Devki Nandan and aforesaid Kamaljit Singh and Bikramjit Singh.

On the basis of pre-summoning evidence, the learned Judicial Magistrate, Gurgaon, vide order dated 3.6.2005, summoned the respondent and aforesaid Kamaljit Singh and Bikramjit Singh, to stand the trial under Section 420 read with Section 120-B IPC. However, vide order dated 12.9.2006 passed in CRM-13948-M-2006 filed by aforesaid Kamaljit Singh and Bikramjit Singh, a Coordinate Bench of this Court, set aside the

said summoning order and quashed the criminal complaint qua the petitioners therein i.e. Kamaljit Singh and Bikramjit Singh.

Aggrieved of the summoning order dated 3.6.2005, respondent-Devki Nandan, filed a revision petition before the learned Sessions Judge, Gurgaon. As stated above, vide order dated 27.4.2009, the learned Additional Sessions Judge, Gurgaon, set aside the summoning order and dismissed the very criminal complaint qua respondent-Devki Nandan as well. The said order has been challenged by the petitioner-complainant, by way of the present revision petition.

It may be noticed herein that apart from the summoning order and the criminal complaint filed by the petitioner-complainant having been quashed by a Coordinate Bench in CRM-13948-M-2006 – Col.(Retd.) Bikramjit Singh Sandhu and another Vs. Rakesh Malhotra and others, decided on 12.9.2006, the civil proceedings initiated at the behest of the petitioner, also stand finally settled before the Hon'ble Supreme Court in Civil Appeal No. 11070 of 2018, arising out of SLP(C) No. 22667 of 2016 – Rakesh Malhotra Vs. Kamaljit Singh Sandhu & Others, decided on 16.11.2018.

The petitioner had filed a Civil Suit regarding the same property, which is subject matter of the present criminal proceedings as well. In the said suit, the learned trial Court passed a decree for alternative relief i.e. to recover the money along with interest @ 9% from the date of the payment till realization. However, in appeal, the first Appellate Court, set aside the judgment and decree passed by the trial Court and

decreed the suit filed by the petitioner. There-against, Kamaljit Singh Sandhu and Bikramjit Singh filed Regular Second Appeal No. 4015 of 2011 before this Court. The said appeal was allowed by a Coordinate Bench of this Court on 29.2.2016 and the judgment and decree passed by the lower Appellate Court, was set aside and the decree of the trial Court was restored.

Against the judgment dated 29.2.2016, petitioner-Rakesh Malhotra, approached the Hon'ble Apex Court by way of in Civil Appeal No. 11070 of 2018, arising out of SLP(C) No. 22667 of 2016 – Rakesh Malhotra Vs. Kamaljit Singh Sandhu & Others. The Hon'ble supreme Court vide judgment dated 16.11.2018, while declining to interfere with the judgment of the this Court and while upholding the decree for alternative relief, put an end to the litigations between the parties. The relevant extracts from the judgment of the Hon'ble Supreme Court, would read as under:-

“Considering the aforementioned facts and circumstances of the case, the plaintiff is not entitled to such reliefs, except of decree of recovery of amount paid to the original defendant No.1.

In the aforesaid facts and circumstances of the case, we are in complete agreement with the view taken by the learned trial Court as well as that of the High Court, in not granting the other reliefs and granting the decree of recovery of the amount paid by the original plaintiff to the original defendant No.1 only. In view of the reasons stated above, we see no reason to interfere with the judgment and order passed by the High Court and, consequently, the present appeal deserves to be dismissed and is accordingly dismissed.

However, as agreed, the original defendant Nos. 2 and 3 are directed to pay a sum of Rs.10,00,000/- to the

original plaintiff *ex-gratia* which they have agreed to pay to put an end to the litigation and to buy a peace, to be paid to the original plaintiff within a period of six weeks from today. On payment of the aforesaid amount of Rs.10,00,000/- to the original plaintiff by original defendant Nos. 2 and 3, any proceedings pending between the parties, if any shall stand terminated.”

Learned counsel are ad-item as regards the aforesaid factual position.

It may be noticed that the criminal complaint filed by the petitioner against respondent-Devki Nandan, Kamaljit Singh and Bikramjit Singh, is in respect of the same property, which was the subject matter of the aforesaid civil proceedings and in the civil proceedings, the matter has attained finality upto the Hon’ble Supreme Court. As noticed above, the Hon’ble Supreme Court, has categorically directed that on payment of Rs.10,00,000/- by Kamaljit Singh and Bikramjit Singh (defendant Nos. 2 and 3 in the civil suit), all other proceedings, if any, between the parties, shall come to an end.

After taking into consideration the aforesaid undisputed factual position, I am of the considered opinion that once by way of the order dated 16.11.2018 the Hon’ble Supreme Court has directed that on payment of Rs.10,00,000/- by Kamaljit Singh and Bikramjit Singh, the proceedings, if any, between the parties, shall stand terminated, the present proceedings, shall also come to an end. Once, the matter stands finally settled before the Hon’ble Supreme Court, there is no legal justification, in proceeding any further in the present matter.

Even otherwise, on merit, no case is made out to interfere with the impugned order passed by the learned Additional Sessions Judge. The learned Additional Sessions Judge, found that as per the petitioner-complainant himself, the agreement to sell was entered by him with the respondent on 20.4.1987, but for next 15 years, the sale deed was not executed. Hence, the complainant filing a complaint on 28.1.2002 as regards the fraudulent act arising out a document executed in the year 1987, had failed to prove any dishonest intention on the part of the respondent. In my view the said finding is perfectly justified. There is neither any misreading or misinterpretation of the evidence nor do I find any material illegality or infirmity in the impugned order.

In view of the above, the present petition is devoid of any merit and the same is, accordingly dismissed.

(HARNARESH SINGH GILL)
JUDGE

March 20, 2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No