In the High Court for the States of Punjab and Haryana at Chandigarh

Date of Decision: March 12, 2019

1) C.R. No.8436 of 2016 (O&M)

Sarabjit Kaur and others ... Petitioners

Versus

Gurdeep Singh and others ... Respondents

2) C.R. No. 2150 of 2017 (O&M)

Jasvir Singh and another ... Petitioners

Versus

Gurdeep Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sarju Puri, Advocate,
for the petitioners in both the petitions.

Mr. Naveen Batra, Advocate,
for respondents no. 1 to 4 in both the petitions.

***Amit Rawal, J.* (Oral)**

This order of mine shall dispose of both the afore-mentioned civil revisions bearing CR Nos. 8436 of 2016 and 2150 of 2017.

Civil Revision No. 8436 of 2016 filed by the petitioners, who are defendants no. 4 to 7 and in Civil Revision No. 2150 of 2017, petitioners are defendants no.1 and 2, are directed against the impugned order dated 01.10.2016 (Annexure P/1) whereby application of the plaintiff-respondent no.1 to 4 under Order 38 Rule 5 CPC has been allowed and suit property has been ordered to be attached.

Respondents No.1 to 4-plaintiffs filed a suit for recovery of Rs. 56,97,616/-, i.e. Rs.42 lakhs as principal amount and Rs. 14,97,616/- as interest on the basis of agreement / Yadashat Tehrir dated 06.11.2012 along with future interest against the defendants on the premise that plaintiffs had executed 10 sale deeds referred in para no.2 of the plaint for a total amount of Rs. 2,81,25,000/-, but the defendants had only paid Rs.1,14,20,000/- and for the remaining amount of Rs. 1,67,00,000/-, defendants executed an agreement dated 06.11.2012 in the presence of the witnesses, to be paid on or before 26.11.2012.. Out of the said amount, defendants paid only Rs.1,25,00,000/- to the plaintiffs by way of 11 (eleven) cheques and Rs. 20 lakhs in cash and balance amount was not paid, therefore, sought to be recovered.

Defendants no. 4 to 7 contested the suit on the ground of locus standi, maintainability and alleged agreement to be forged and fabricated and also liable to be dismissed on account of mis-joinder and non-joinder of necessary party as plaintiff no.1 and 4 were not party to the alleged agreement and so were the defendants. During the pendency of the suit, plaintiffs moved an application for attachment of property under Order 38 Rule 5 CPC before the Court whereby all the defendants being called upon to furnish security in the sum of Rs. 1,50,00,000/- within period of three months.

Mr. Sarju Puri, learned counsel, appearing on behalf of the petitioners, submitted that Civil Revision No. 8436 of 2016 filed by the petitioners-defendant nos. 4 to 7 are not even a party and they could not have been called upon to furnish security, even qua the other contesting defendants being alleged signatory of the agreement i.e. defendant nos. 1 and 2 i.e. petitioner in C.R. No. 2150 of 2017. Learned counsel relied upon a judgment of the Supreme Court in ***M/s Raman Tech & Process Engg. Co. and another vs. M/s Solanki Traders,*** reported in ***2008(1) R.C.R. (Civil) 195: 2008(2) SCC 302*** to contend that the aforementioned provisions of law should not be exercised mechanically or merely for the asking but sparingly. In other words, the purpose is not convert an unsecured debt into a secured debt.

Mr. Naveen Batra, learned counsel, appearing on behalf of respondents no.1 to 4 submitted that all the defendants i.e. petitioners herein are jointly and severally liable to pay compensation and supported the impugned order on the premise that being fair and just and it also include the element of interest as it has protected the interest of the plaintiffs.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submissions of learned counsel for the petitioners in CR No. 8436 of 2016 and partly in CR No. 2150 of 2017 on the premises that on going through the contents of the plaint, there is no single witness as to how the petitioners-defendants no. 4 to 7 are liable to pay the amount. In other words, suit is bereft of any explanation, until and unless such explanation is withheld.

In my view, the trial court ought not to have imposed the condition in furnishing security while entertaining the application in hand. Impugned order under challenge is not sustainable, thus, hereby set aside.

C.R. No. 8436 of 2016 stands allowed.

There is no dispute to the ratio which has culled out in judgment cited supra that even the matter is yet to be proved that defendant nos.1 and 2 was actual agreed to repay the amount, it would be a matter of evidence. But the fact of the matter is that sale deeds (ten in numbers) as noticed above, have been executed by the defendants, but it has to be proved in accordance with law. The principal amount of Rs. 42 lakhs, in my view, furnishing security of Rs. 1,50,00,000/- is on the higher side. The trial Court should have protected the interest of the defendants by confining to the amount sought for. Resultantly, impugned order is modified instead of furnishing security of Rs. 1,50,00,000/- it is confined to Rs. 60 lakhs (Rs. sixty lakhs).

C.R. No. 2150 of 2017 is disposed of in the above terms.

March 12, 2019 **(Amit Rawal)**
vkd **Judge**

Whether speaking / reasoned : Yes

Whether reportable : No