

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 1234 of 2020

Date of Decision: 24.2.2020

Bhim Singh

...Petitioner

Vs.

Ram Raj Singh

...Respondent

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Dev Kaushik, Advocate
for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

1. The challenge in this petition brought under Article 227 is to the impugned order dated 9.1.2020 passed by the learned Civil Judge, Junior Division, Bahadurgarh, District Jhajjar directing the petitioner to furnish bank guarantee in a sum of ₹10,00,000/- to claim defence of the trial in a suit for recovery of money amounting to ₹10,00,000/- brought by the plaintiff against the defendant-plaintiff from an agreement of sale of immovable property. The plaintiff chose not to file a suit for specific performance. Instead he opted to file the present suit for recovery of earnest money, even when limitation was available for claiming relief of possession by way of specific performance.

2. Learned counsel has argued that the direction is harsh and onerous and should not have been imposed as a pre-condition on the defendant after succeeding in his application under Order IX Rule 13 CPC for setting aside the ex-parte judgment and decree dated

31.1.2016. His contention is that the order is contrary to the principles laid down in the judgments of the Supreme Court delivered in GMG Engineering Industries and others Vs. ISSA Green Power Solution and others, 2015 (15) SCC 659 and V.K. Industries Vs. M.P. Electricity Board, Rampur, Jabalpur, 2002 (2) RCR (Civil) 334 and is, therefore, liable to be set aside and in any case its rigour scaled down from furnishing bank guarantee to some other form of security, when a bank guarantee means to cash locked in bank for disposal till end of the reopened *ex parte* trial and its outcome. This may mean for years together. This is an onerous burden, which the two judgments cited, discourage.

The legal position is apparent that it will not be necessary to hear the plaintiff/respondent in passing of this order as it would put him to needless cost and expenses and wastage of time in his own suit only to meet the same fate as is proposed.

The petition is allowed and the order is set aside with the modification that instead of bank guarantee, the petitioner will furnish surety of ₹ 10,00,000/- to the satisfaction of the trial Court.

(RAJIV NARAIN RAINA)
JUDGE

24.2.2020

kv

Whether speaking/reasoned: Yes
Whether reportable: Yes/No