

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5588-2019(O&M)
Date of decision: 24.2.2020

Ashish Munjal

.....Petitioner

Versus

Ashok Kumar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Mr. Rajiv Sharma, Advocate for the respondents

ANIL KSHETARPAL, J. (ORAL)

CM Nos.4145-4146-CII-2020

Allowed as prayed for.

Main case

The defendant-petitioner has filed the present revision petition under Article 227 of the Constitution of India against the order dated 30.8.2019 passed by Civil Judge, Junior Division, Faridabad.

With respect to a piece of land which has already been acquired, plaintiffs and defendant had entered into an agreement to sell hoping that the land shall be released. The agreement to sell is with respect to a land measuring 100 sq. yards. The plaintiffs namely Ashok Kumar and Manish Kumar filed a suit for specific performance of the agreement to sell dated 16.4.2018 with a consequential relief of permanent injunction. On 20.6.2019, learned Trial Court passed the following order:-

“Case file put up before me being the vacations Judge, Faridabad. Vakalatnama on behalf of defendant filed. Adjournment is requested for filing the written statement and reply to the application for temporary injunction. Heard. Adjourned to 16.7.2019 for filing the written statement and reply to the injunction application by defendant.

Till the next date, the defendant is restrained from interfering with the possession of the plaintiff over the land measuring 100 sq. yards forming subject matter of the agreement to sell dated 16.4.2018 as well as from alienating further said land measuring 100 sq. yards. At the same time, the plaintiffs are restrained from the interfering with the possession of the defendant over the remaining land measuring 433 sq. yds as per the site plan attached with the agreement dated 16.4.2018 until the next date of hearing.”

As it is clear from the reading of the order that injunction with regard to 433 sq. yards was granted in favour of the defendant whereas injunction with regard to 100 sq. yard was granted in favour of the plaintiffs. The defendant filed an application for grant of police help on the ground that entire land measuring 533 sq. yards which includes 433 sq. yards has been encroached upon by the plaintiffs in violation of injunction order. It may be mentioned here that the plaintiffs do not

claim any right, title or interest over this 433 sq. yards plot. The learned Court passed an order on 30.8.2019, operative part whereof reads as under:-

“By filing the present application, the defendant seeking the police assistance execute the order dated 20.6.19 but the defendant/applicant has already lodged FIR against the plaintiffs regarding the suit property under section 148/149/447/382/506 IPC. Therefore, by filing the FIR, the defendant has already availed police assistance in order to redress the grievance which he has against the plaintiff qua suit property. The intervention of police is also fortified by the perusal of the photographs placed on record by the applicant with the application in hand where the police officials can be clearly seen on the spot of occurrence. As far the authorities relied upon by the applicant are concerned, there is no doubt about the law laid down in the authorities but the same are not applicable to the particular facts and circumstances of the present case as in the present case the applicant has already availed remedy on criminal side by filing the criminal case against the plaintiffs. Therefore, in the light of above said discussion, the instant application is hereby disposed off as at this stage, this court is of considered view that the request of the

applicant to provide police assistance is not maintainable. However, if the applicant has any grievance that the opposite party to the suit is not complying with the order dated 20.6.19 passed by the learned predecessor court and made contempt of that order, then the applicant is at liberty to avail legal remedy for taking the legal action regarding the contempt, if any, of the order dated 20.6.19.”

Learned counsel for the respondent has submitted that Haryana Urban Development Authority has been impleaded as party in the suit but in the present revision petition, Haryana Urban Development Authority has not been impleaded as party. Keeping in view the nature of order which this Court proposes to pass, it would not be appropriate to delay the disposal of the present revision petition because this Court has decided only to request the learned Trial court to re-decide the application.

This Court has heard learned counsel for the parties and with their able assistance, gone through the documents filed. A Civil Court has the jurisdiction to get its interim orders implemented. Merely because aggrieved party has filed an FIR or has a locus to file application complaining violation of interim order, does not debar the aggrieved party to file an application for grant of police help.

Hence, the learned Trial Court erred in dismissing the application on the ground that defendant-petitioner has filed FIR and has a remedy complaining violation under Order 39 Rule 2-A CPC. The

aforesaid jurisdiction is for punishment, however, it does not debar the Court which granted injunction to pass appropriate orders in the facts of the case.

Keeping in view the aforesaid facts, order dated 30.8.2019 is set aside. Learned Trial Court is requested to re-decide the application in accordance with law. It shall be open to parties to contest the application on all grounds available to them in law.

24.2.2020

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Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)**JUDGE**

Yes / No

Yes / No