IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2240-2020(O&M)
Date of decision: 19.01.2021

Inderjeet Singh

.......Petitioner

Versus

Ram Kanwar Chhikara

......Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Ms. Savita Bhandari, Advocates for the petitioner

Mr.Aishwarya Bajaj, Advocate for the respondent

ANIL KSHETARPAL, J.

The defendant-petitioner has filed revision petition under Article 227 of the Constitution of India challenging the correctness of the judgment passed by the learned trial court, which has been affirmed in appeal by the Additional District Judge, Sonepat.

The plaintiff-respondent filed a suit for permanent injunction on 14.02.2019 seeking to restrain the defendant from alienating the suit property in any manner. The plaintiff claims that the defendant entered into an agreement to sell on 24.1.2019 with respect to land measuring 11 kanals and 9 marlas against a total sale consideration of Rs.60,00,000/- on receipt of earnest money of Rs.6,00,000/-. It is claimed that Rs.1,00,000/- was paid in cash whereas the remaining amount of Rs.5,00,000/- was paid through a cheque. As per the agreement to sell, the sale deed was to be executed within a period of four months. The plaintiff submits that when he offered to pay the balance sale consideration, the defendant refused to accept.

The defendant contested the suit on various grounds. It was pleaded that the agreement to sell is a forged and fabricated document. It was claimed that the amount of Rs.6,00,000/- has never been received. It was also pleaded that the defendant was never handed over any cheque.

Both the courts as noticed above, finding prima facie case in favour of the plaintiff, granted injunction restraining the defendant from alienating the suit property

This Court has heard learned counsel for the parties at length and with their able assistance perused the paper book. Learned counsel for the petitioner submits that the suit filed by the plaintiff is pre-mature. She further contended that the amount of Rs.5,00,000/- alleged to have been paid through cheque has not been credited to the account of the defendant and hence, the agreement is proved to result of forgery. She further contended that in the absence of payment of Rs.5,00,000/-, there is no valid agreement to sell. She further submitted that on perusal of the agreement to sell, it is apparent that the defendant is alleged to have signed only on the last page i.e page no.3 of the agreement whereas the first two pages are not signed.

Per contra, learned counsel for the plaintiff has submitted that the defendant has signed the agreement to sell, copy whereof is Annexure P-2. He further submitted that the defendant did not present the cheque in the Bank for encashment. He further contended that both the Courts on appreciation of material have passed the order and in absence of perversity, this Court should not interfere.

Now let us analyze the arguments of the learned counsels. First argument of the learned counsel for the petitioner is to the effect that the suit is pre-mature. In the considered view of this Court, the suit is only for permanent injunction. The suit has been filed alleging that the defendant has refused not only to accept the balance payment but also refused to execute the sale deed. It has further been pleaded that the defendant is trying to alienate the property. In such circumstances, the suit for injunction cannot be held to be pre-mature. It is also not in dispute that the plaintiff has already filed an application under Order 6 Rule 17 to amend the plaint and incorporate the relief of specific performance of the agreement to sell.

Next argument of the learned counsel for the petitioner with regard to the agreement to sell being forged and fabricated. It may be noted here that such fact can be established only after leading the evidence. At present, the plaintiff has a prima facie case, because an agreement to sell in writing signed by the parties has been produced. Merely because first two pages of the agreement to sell are not signed, does not make the agreement to sell per se invalid.

Next argument of the learned counsel for the petitioner is with regard to the cheque of Rs.5,00,000/-, was never handed over, it may be noted here that it is not the case of the defendant that on presentation for encashment, the cheque was dishonoured. In any case, the contract can be executed on the basis of the consideration paid or promised to be paid. In the present case, some part of earnest money has been paid in cash, whereas the remaining amount was paid through cheque. The aforesaid cheque has never been dis-honoured. In the agreement to sell, itself, the details of the cheque drawn on a particular Bank have been specifically mentioned.

In view thereof, there is no ground to interfere with the orders passed by the Courts below. Hence, the revision petition is dismissed.

19.01.2021 **(ANIL KSHETARPAL)**
rekha **JUDGE**

Whether speaking/reasoned Yes /No
Whether Reportable Yes / No