

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-2047-2021(O&M)

Date of decision:-27.9.2021

Darshan Singh

...Petitioner

Versus

Balwinder Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.B.S. Bhalla, Advocate
for the petitioner.

H.S. MADAAN, J.

Case taken up through video conferencing.

This petition under Article 227 of the Constitution of India is directed against order dated 31.8.2021 passed by Additional District Judge – I, Moga vide which the application filed by petitioner/defendant Darshan Singh for rejecting the plaint in Civil Suit No.09 of 2018 titled '*Balwinder Singh and another Versus Darshan Singh and another*' had been dismissed.

Briefly stated, the facts of the case as can be gathered from the perusal of the record are that plaintiffs Balwinder Singh and Harchand Singh, both sons of Amar Singh, residents of Chakki Wali Gali, Baba

Isher Singh Nagar, Moga had filed a civil suit against defendants Darshan Singh son of Phangan Singh and Chhinder Singh son of Mukhtiar Singh, residents of Patti Mehar, VPO Ghal Kalan, Tehsil and District Moga, seeking possession by way of specific performance of agreement dated 25.9.2015, further extended on 8.8.2016, relating to land measuring 60 kanals 6 marlas situated at village Ghal Kalan, Tehsil and District Moga and in the alternative suing for recovery of Rs.95 lakhs on account of refund of earnest money as well as damages with interest @ 12% per annum and as a consequential relief restraining the defendants from alienating the property to any one in any way except the plaintiffs. That suit was filed in the Court of Additional District Judge-I, Moga (Exercising the Powers of Commercial Court under the provisions of Commercial Court Establishment Act), Moga.

Notice of the suit was given to the defendants, who put in appearance. Defendant Darshan Singh filed an application for dismissal of suit/rejection of plaint for the reason of lack of jurisdiction of Commercial Court contending that in the agreement to sell, there is no mention of immovable property being used exclusively in trade or commerce as defined in the Commercial Courts Act. That application was resisted by the plaintiffs challenging maintainability of the application contending that applicant Darshan Singh is estopped by his own act and conduct from filing the application inasmuch as a compromise had been effected between the parties and statements of defendants were recorded in the Court; the issue whether the suit fall within the jurisdiction of this Commercial Court has already been decided on 21.5.2018 by the Court of

Additional District Judge, Moga exercising the powers of Commercial Court under the provisions of Commercial Court Establishment Act; in terms of the compromise arrived at between the parties on 7.12.2018, the defendants were to make payment of Rs.82.50 lacs on or before 30.6.2020 as full and final settlement, failing which, the defendants were bound to execute the sale deed of property in favour of the plaintiffs, as per compromise; the defendants have failed to comply with the terms of compromise and rather moved the application to delay the proceedings.

After hearing the learned counsel for the parties, the trial Court vide impugned order dismissed the application. The operative part of the order for ready reference is being reproduced as under:

5. *I have heard learned counsel for the parties and have gone through the record.*

6. *As per case of plaintiffs, defendants Darshan Singh and Chhinder Singh are owner of land as mentioned in the head note of the plaint. Darshan Singh is owner of land measuring 48 kanals 5 marlas and Chhinder Singh is owner of land measuring 12 kanals 1 marlas. As per case of plaintiffs, the defendants were running a Company under the name and style of Skylark Ceramix Company Limited since 1997 and as per mutual settlement, the entire assets and profits of the Company retained by defendants and its value has been assessed with mutual consent as Rs.95 lakhs. The defendants were unable to make the payment of Rs.95 lakhs. So, they agreed to sell the land as mentioned in the head note of the plaint @ Rs.15 lakh per acre. The defendants executed agreement*

to sell dated 25.09.2015 and Rs.95 lakhs were treated as earnest money in the agreement to sell. The sale deed was to be executed on or before 25.09.2016 after clearing the bank liability. The defendants did not clear the amount due towards the bank. The defendants were unable to get No Due Certificate from the Bank.

7. *Learned counsel for defendants has placed reliance on judgment of Hon`ble Supreme Court in case Ambalal Sarabhai Enterprises Limited Versus K.S. Infraspace LLP and another, (2020) 138 ALR 286, The ratio of above said judgment is not disputed, but is not applicable to the facts and circumstances of the case. Perusal of case file shows that finding has already come on record vide order dated 21.05.2018 that it is a commercial dispute as defined under Section 2(c) of The Commercial Courts Act, 2015. This Court is of the view that order cannot be reviewed. The defendants were having remedy to challenge this order. Accordingly, this Court is of the view that no ground is made-out to reject the plaint/dismiss the suit, hence the same stands dismissed.*

8. *Perusal of case file shows that plaintiffs have already moved an application for enforcement of the compromise dated 7.12.2018. Reply to that application has to be filed. Now for filing reply to above said application, to come-up on 24.09.2021.*

Feeling aggrieved by the said order petitioner/defendant No.1 has approached this Court by way of filing the present revision petition.

I have heard learned counsel for the revisionist besides going through the record.

In the earlier litigation between the parties, the issue with regard to jurisdiction of the Commercial Court to entertain and try the dispute has been set at rest in view of the observations made by learned Additional District Judge, Moga vide order dated 21.5.2018. The defendants themselves had submitted to the jurisdiction of the said Court entering into compromise with the plaintiffs there. Now they are said to have not complied with the terms and conditions of the compromise. In that way, the defendants are estopped from challenging the jurisdiction of the Commercial Court in the matter. As far as the contention raised by learned counsel for the petitioner that such objection could not be raised by the defendants in the earlier litigation on account of the earlier counsel representing them not defending the case properly, such contention is not acceptable. Every practising Advocate is supposed to be properly acquainted with the law and conducting the case to the best of his ability. The defendants cannot wriggle out of the situation in such a manner by passing on blame to their earlier counsel.

As far as the judgment referred to by learned counsel for the petitioner **Ambalal Sarabhai Enterprises Ltd. Versus K.S. Infraspac LLP and another, (2020) 15 SCC 585** by the Apex Court, that does not find application to the present case due to different facts and circumstances and the context in which such observations had been made. In this case as already observed, the defendants had submitted themselves to the jurisdiction of the Commercial Court by entering into compromise with the plaintiffs there and had not challenged the jurisdiction of the Commercial Court to entertain and try the matter. Furthermore, there is

clear finding by the Court in that regard. The defendants cannot make a sudden turn around and start challenging the jurisdiction of Commercial Court.

I find that the impugned order is well reasoned, which does not suffer from any illegality or infirmity and no interference therewith is called for while exercising jurisdiction under Article 227 of the Constitution of India.

Thus, finding no merit in the civil revision petition, the same stands dismissed.

27.9.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No