IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1003-2022
Decided on : 22.04.2022

Gurpal Singh ...... Petitioner

Versus

S.B.P.Shine Start Pvt. Ltd. and another ...... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. N.K.Verma, Advocate
for the petitioner.

Mr. Mrigank Sharma, Advocate
for the respondents.

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Manjari Nehru Kaul, J.(Oral)

By way of instant revision petition filed under Article 227 of Constitution of India, the petitioner-plaintiff is challenging the order dated 22.02.2022 (Annexure P-9) vide which Addl. District Judge, SAS Nagar (Mohali) affirmed the order of dismissal of the application under Order 39 Rule 1 and 2 CPC passed by the trial Court.

For the sake of convenience, the parties to the lis hereinafter would be referred to by their original position in the suit.

On 05.11.2019, a sale deed was executed between the plaintiff and the defendants with respect to four kanals of land situated in village Chajju Majra comprised in Kh/Kh No.150/174-175 Kh. No.21//18(8-0), Kh./kh. No.86/104 Kh. No.21//6/1/2(2-13), 21//13/2(4-0), 21//14(8-0), 21//15(8-0), 22//10/4/2(1-16), 22/11/1(3-12), 20/2(3-12), Kh/Kh No. 206/251 Kh. No.21//16(8-0), 21//17(8-0) belonging to the plaintiff for a total consideration of Rs.1,45,00,000/-. Defendant No.2 gave some amount

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as earnest money to the plaintiff prior to the registration of the sale deed. At the time of execution of the sale deed, defendant No.2 gave some post dated cheques to the plaintiff. Though some of the cheques given by the defendant No.2 were honoured and encashed, however, three cheques amounting to Rs.60 lacs were dishonoured. It was in this background, an application under Order 39 Rule 1 and 2 CPC was filed by the plaintiff seeking relief of temporary injunction restraining the defendants from alienating and changing the nature of the suit property during the pendency of the case i.e. suit for declaration for cancellation of the sale deed and permanent injunction instituted by the plaintiff.

Learned counsel for the petitioner-plaintiff *inter alia* contends that the defendants had played a big fraud upon him and executed the sale deed dated 05.11.2019 with respect to the suit property without as much as paying the total sale consideration. Still further, the defendants had started raising construction on the suit property and after raising construction they were planning to alienate the same thereby causing irreparable loss to the petitioner. Learned counsel submits that both the Courts below erred in ignoring that not only the execution of the sale deed dated 05.11.2019 was admitted by the defendants but they had also admitted to having issued cheques in favour of the plaintiff, which stood dishonoured. Thus, it was evident that the defendants had committed breach of contract, which had resulted in monetary losses as well as mental harassment to the plaintiff. It was also argued that the Courts below erroneously observed that since the project undertaken by the defendants on the suit property was a huge project it would lead to multiplicity of litigations in case the application under

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Order 39 Rule 1 and 2 was allowed. In support of his submissions, learned counsel has placed reliance on ***Kewal Krishan vs. Rajesh Kumar and ors., 2022(1) RCR (Civil) 207, Janak Dulari Devi and another vs. Kapildeo Rai and another, 2011(4) RCR (Civil) 708 and Vidhyadhar vs. Mankikrao and another, 1999(3) SCC 573***.

Per contra, learned counsel for the respondents-defendants submits that the plaintiff has already instituted a complaint under Section 138 of Negotiable Instruments Act qua the cheques, which were allegedly dishonoured on presentation in the bank. He further contends that no irreparable loss could be said to have been caused to the petitioner and still further, liberty has already been granted by the trial Court to the plaintiff to amend the plaint by adding the relief of recovery of the balance sale consideration.

Heard learned counsel and perused the relevant material available on record.

It would be apposite to observe here that relief of injunction being an equitable and discretionary relief, cannot be claimed as a matter of right. The Court at the stage of deciding an application under Order 39 Rule 1 and 2 CPC cannot be expected and is not required to go into the merits of the case. The tests to be applied while granting temporary injunction are: (i) whether the plaintiff has a *prima facie* case (ii) whether balance of convenience is in favour of the plaintiff (iii) whether the plaintiff would suffer irreparable loss in the absence of interim injunction not being granted to him.

All the aforementioned three ingredients must co-exist and in

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the absence of even one out of the above three, an application under Order 39 Rule 1 and 2 CPC would fail.

Adverting to the case in hand, the plaintiff by way of instant suit is seeking relief of declaration of sale deed dated 05.11.2019 as null and void, on account of alleged non-payment of the entire sale consideration. This Court, however, is of the opinion that mere non-payment of entire sale consideration would not by itself be a ground for cancellation of sale deed. Any person aggrieved on account of non-payment of the entire sale consideration has a remedy to seek the relief of recovery of balance sale consideration rather than claiming the relief of declaration of sale deed as null and void as has also been held by Hon'ble Supreme Court in ***Vidhyadhar's case(supra) and Dahi Ben v. Arvindbhai Kalyanji Bhanusali, 2020(7) SCC 366.*** This Court thus, has no hesitation in observing that the plaintiff has failed to make out a *prima facie* case in his favour. It would not be out of context to observe here that the claim of the plaintiff can be duly satisfied monetarily by recovery of remaining sale consideration. Hence, it cannot be said that the plaintiff would suffer irreparable loss in case interim injunction is not granted to him.

The apprehension of the plaintiff that the defendant-company after converting the nature of the suit land would alienate it and earn profits at his expense is totally misconceived. Once the sale deed stands duly registered and executed, the natural consequences to flow, would be to the effect that the title would pass on to the respondent-company. Hence, in the circumstances, the plaintiff has no right to and cannot question the use of land in whatever manner the defendant-company deems fit. It would also be

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worthwhile to notice that the suit land is just a small fraction of the entire project of the defendant-company. They have obtained No Objection Certificate (NOC) alongwith the requisite clearance from various departments for the construction of their residential colony. The grant of interim injunction would without a doubt halt the entire project. Thus, this Court fully concurs with the findings of both the Courts below that the grant of interim injunction at this stage in the absence of any *prima facie* case in favour of the plaintiff would lead to multiplicity of litigations.

Before concluding, this Court may observe that once post dated cheques had been issued by the defendant-company, even accepted by the plaintiff, and admittedly some of them were also encashed by the plaintiff, the only remedy, which would be left with the petitioner in case some of the cheques were dishonoured, would be to file a suit for recovery as has not only been rightly observed by the Courts below but liberty too has been granted to the plaintiff for amending the plaint accordingly. The plaintiff having accepted the post dated cheques from the defendant-company cannot thus escape the consequences of the subsequent events i.e. the cheques given by the defendant-company having been dishonoured.

As a sequel to the above, this petition being devoid of merits stands dismissed. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

22.04.2022 **(MANJARI NEHRU KAUL)**
sonia **JUDGE**

Whether speaking/reasoned: Yes
Whether reportable : Yes

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