

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

CR-1559 of 2021 (O&M)
Date of decision: 07.01.2022

Sushila Devi

...Petitioner

Versus

Hardesh Kumari

...Respondent

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

Present: Mr. Sandeep Singal, Advocate for the petitioner.

Ms. Promila Nain, Advocate for the respondent.

H.S. MADAAN, J.

Case taken up through video conferencing.

1. Briefly stated facts of the case are that, plaintiff Smt. Sushila Devi entered into an agreement to sell with defendant Mrs. Hardesh Kumari on 13.03.2020 for a sum of Rs.2,07,50,000/- and the former paid a sum of Rs.2,07,50,000/- as earnest money to the latter; the property of defendant, which was subject matter of the agreement to sell was mortgaged with Oriental Bank of Commerce, NIT Faridabad and as per terms of the agreement on plaintiff's making the payment of Rs.79,92,500/- on or before 10.04.2020, the defendant was to get the mortgage redeemed from the bank and the remaining consideration amount of Rs.1,07,50,000/- was to be paid on or before 22.05.2020; according to the plaintiff, she has been ready and willing to get the sale deed executed and registered after paying the remaining

sale consideration amount but on account of outbreak of COVID-19 pandemic resulting in lock-down imposed on 23.03.2020, which was extended from time to time as well as restrictions imposed on movement of people from one place to other, the plaintiff could not perform her part of the contract; the defendant had sent a legal notice dated 29.05.2020 to the plaintiff, to which plaintiff sent response, showing the readiness and willingness to get the sale deed executed; the plaintiff also got served a legal notice upon the defendant; defendant failed to come up for execution of sale deed, therefore, the plaintiff brought a suit for specific performance of agreement to sell, wherein, she moved an application for ad-interim injunction, restraining the defendant from alienating the suit property to some other person or raising any type of construction thereon.

2. On notice, the defendant appeared and filed written statement and reply opposing the suit as well as application.

3. After hearing arguments, the trial Court of Civil Judge (Jr. Divn.) Gurugram, vide order dated 19.02.2021 accepted the application.

4. Feeling aggrieved, the defendant had filed an appeal before District Judge, Gurugram, which was assigned to Addl. District Judge, Gurugram, who vide order dated 06.08.2021 accepted the appeal, setting aside the order passed by the trial Court, however, observing that any alienation of the suit property made during the pendency of the suit, shall be only done after giving information of pendency of

litigation to the proposed vendee with a specific recital in that behalf in the agreement/contract with the proposed vendee, so as to avoid any multiplicity of litigation.

5. The plaintiff feeling dissatisfied with such order passed by Addl. District Judge, Gurugram has approached this Court by way of filing the present revision petition, which is being opposed by learned counsel for the respondent.

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

7. Admittedly, the plaintiff had not made payment of Rs.79,92,500/- on or before 10.04.2020 to the defendant as settled between the parties through agreement to sell dated 13.03.2020. The reason given by the plaintiff is that it was on account of outbreak of COVID-19 pandemic, though, the plaintiff claims that she has been ready and willing to perform her part of the contract but the fact cannot be lost sight of that, one of the main conditions with regard to payment of Rs.79,92,500/- on or before 10.04.2020 was not complied with. It is a matter of evidence as to whether there was any justification for the plaintiff in not doing so and considering the circumstances of the case, it is to be seen whether the plaintiff has in fact been ready and willing to perform her part of the contract throughout and is still ready and willing to do so. Similarly, it is also to be seen whether such willingness was also there on the part of defendant to complete the transaction or she has committed intentional default herself. Though,

the trial Court had granted ad-interim injunction to the plaintiff, which order has since been set aside by the appellate Court, however, issuing direction to the defendant that in case alienation of the suit property is to be made during the pendency of the suit, then the proposed vendee be apprised about the pendency of litigation by specific recital in the agreement/contract to avoid multiplicity of litigation. The rights of the plaintiff stand adequately protected by such direction. Even otherwise, principle of *lis pendens* is there to provide adequate safeguard to the plaintiff and any construction etc., made by the defendant on the suit property would be at own risk and responsibility of defendant without prejudice to the rights of the plaintiff, if she ultimately succeeds in the litigation.

8. I do not find any illegality or infirmity with the impugned order passed by Addl. District Judge, Gurugram, which is quite detailed, well reasoned and does not suffer from any perversity. The revision petition is bound to fail and the same stands dismissed accordingly.

07.01.2022

sumit.k

(H.S. MADAAN)
JUDGE

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