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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4175-2022 (O&M)

Date of Decision:28.09.2022

SHIKHA JAIN AND ANR.

.. Petitioners

Vs.

VARUN AGGARWAL

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Alok Mittal, Advocate for the petitioners.

...

Manoj Bajaj, J. (Oral)

Petitioners (defendants) have filed this revision petition under Article 227 Constitution of India to challenge the order dated 24.08.2022 (Annexure P-11) passed by Civil Judge (Jr. Divn.), Gurugram in Civil Suit No.1954-2021, only to the limited extent, whereby further evidence of the plaintiff has been ordered to be produced on 12.10.2022.

Briefly, the facts of the case are that plaintiff (respondent) brought a suit for declaration alongwith specific performance of agreement to sell dated 11.01.2021 relating to plot bearing No.6 measuring 500 sq. yards, Block E, Sushant Lok, Phase-II, Gurugram executed by defendants (petitioners) for a total sale consideration of Rs.3,95,60,000/-, and against it, a sum of Rs.80,00,000/- stood paid to the defendants on different occasions as earnest money. As per pleadings, the plaintiff has been always ready and willing to perform his part of the contract, but the defendants did not keep their word, and are bent upon to sell the suit property. On this cause of action, the suit was filed on 05.07.2021, which is pending adjudication.

Upon notice, the defendants appeared on 07.07.2021 and

expressed their willingness to execute the sale deed upon receipt of the balance sale consideration and considering the submissions of the parties, the trial Court restrained the defendants from alienating the suit property, while adjourning the suit for 29.09.2021, for filing written statement as well as reply to the injunction application.

Dissatisfied with the order dated 07.07.2021, the defendants filed appeal before the District Judge, Gurugram and the same was dismissed vide order dated 19.01.2022 (Annexure P-3), being not maintainable, as the plaintiff's application under Order XXXIX Rules 1 and 2 CPC was yet to be finally adjudicated upon by the trial Court.

Subsequently, the defendants filed an application dated 02.09.2021 (Annexure P-5) under Section 151 CPC for directing the plaintiff to deposit the balance sale consideration of Rs.3,15,60,000/- along with interest @ 18% p.a. in terms of agreement to sell dated 11.01.2021, with further prayer for keeping the said amount in a fixed deposit, and for adjourning the suit *sine die*, till the decision of another suit bearing No.1751 of 2021 titled "*Deepak Jain Vs. Bimla Jain and others*". As per the contents of this application, the Civil Suit No.1751 of 2021 does not challenge the sale deed, whereby the title of the suit property was acquired by the petitioners (defendants in the present suit) and it is only for permanent injunction, wherein neither any declaration has been sought for nor any relief of partition/possession has been prayed for. It is claimed that the defendants (petitioners) are free to execute and get registered the sale deed in favour of plaintiff-Varun Aggarwal on receipt of balance sale consideration along with interest, in terms of agreement to sell dated 11.01.2021. The defendants (petitioners) also expressed their readiness to

undertake not to create any third party right in respect of the suit property, till the disposal of Civil Suit No.1751 of 2021 and to execute the sale deed in favour of the plaintiff after the disposal of Civil Suit No.1751 of 2021.

Later, the defendants (petitioners) filed their written statement on 11.02.2022, wherein they raised various objections relating to the cause of action, maintainability of suit in the absence of any challenge to the notice dated 30.06.2021 terminating the agreement to sell dated 11.01.2021, valuation of the suit etc., however, on merits, the defendants claimed themselves to be the absolute owner in possession of the suit property and did not dispute the execution of agreement to sell. As per averments, it was denied that the plaintiff has been ready and willing to perform his part of the agreement. While denying the other averments in the plaint, it has been prayed that the suit of the plaintiff be dismissed.

Thereafter, on 02.05.2022, the plaintiff filed his replication controverting the stand of the defendants in the written statement, and at that stage, the parties were asked to make an attempt for settlement of dispute in terms of Section 89 CPC, but the said offer by the Court was declined by the parties, who preferred for adjudication of the dispute by the civil Court. After considering the pleadings, the trial Court framed seven issues and fixed the case for 24.08.2022 for the evidence of plaintiff.

On 24.08.2022, the Civil Judge (Jr. Divn.), Gurugram passed the impugned order, which reads as under:

“One PW namely Varun Aggarwal is present and tendered his affidavit along with documents Ex.P1 to Ex.P30. His cross-examination deferred on request of learned counsel for defendants. Now to come up on 12.10.2022 for cross-examination of PW1 and for remaining plaintiff's evidence.

Two separate applications (I) under Order VII Rule 1 r/w Section 114 r/w Section 151 CPC filed on behalf of defendants (II) under Order 14 Rule 5 r/w order 14 rule 2 (2)

filed on behalf of defendants. Copies given. Reply to the above said applications be also filed on date fixed on behalf of plaintiff.

Arguments on stay application shall also be heard on date fixed.”

Learned counsel has argued that the defendants had terminated the agreement to sell dated 11.01.2021 by serving notice dated 30.06.2021 upon the plaintiff and in this regard, a specific pleading is contained in the written statement, but the plaintiff has not challenged this notice, therefore, his suit would not be maintainable. He submits that though the issues were framed on 02.05.2022, but no issue regarding maintainability of the suit relating to lack of any challenge to the notice dated 30.06.2021 was framed, therefore, the defendants (petitioners) filed application seeking review of the order dated 02.05.2022.

He submits that apart from the review of the order dated 02.05.2022, another application for framing of additional issues and treating issues No.1 and 2 framed on 02.05.2022, as preliminary issues was filed on the same day, and both applications are pending adjudication. He submits that previously, the Civil Judge (Jr. Divn.), Gurugram had granted an interim injunction in favour of the plaintiff (respondent) and against the defendants (petitioners) vide order dated 07.07.2021 (Annexure P-2), but the application under Order XXXIX Rules 1 and 2 CPC is yet to be finally decided. Learned counsel has pointed out that though the order dated 07.07.2021 was assailed by way of an appeal before the District Judge, Gurugram, however, the same was dismissed as not maintainable vide order dated 19.01.2022 (Annexure P-3). He submits that the approach adopted by the Civil Judge (Jr. Divn.), Gurugram in adjourning the case for producing further evidence of the plaintiff is wrong and illegal, as the applications for

impugned order dated 24.08.2022 (Annexure P-11) warrants interference.

After hearing the learned counsel and considering the material on record, this Court finds that the applications seeking review of the order dated 02.05.2022, and for framing of additional issues were filed on 24.08.2022 and the copies of the same were given to the plaintiff on the said date, therefore, the time was granted to plaintiff for filing reply. On 24.08.2022, the plaintiff had tendered his own affidavit along with documents in evidence, but for his cross-examination the defendants had prayed for an adjournment, whereupon, the case was adjourned for 12.10.2022. Further, it is also noticed in the impugned order that arguments on the stay application shall also be heard.

Mr. Alok Mittal, learned counsel heavily relied upon the notice dated 30.06.2021 allegedly served upon the plaintiff by defendants, whereby they terminated the agreement to sell dated 11.01.2021, and argued that the suit for specific performance of agreement to sell is not maintainable, as there is no challenge to this notice.

But, during the course of hearing, Mr. Alok Mittal, learned counsel fairly stated that subsequent to the notice dated 30.06.2021, the defendants expressed their willingness to execute the sale deed in favour of plaintiff, in case the buyer agrees for making the balance payment of sale consideration, and this willingness was expressed by them on 07.07.2021. Subsequently also, the defendants reiterated this stand in their application dated 02.09.2021, whereby they sought direction to the plaintiff to deposit the balance sale consideration in the Court, while seeking adjournment of the suit *sine die*, to await the decision of another suit bearing No.1751 of 2021.

The plea in respect of the notice dated 30.06.2021 is introduced through the written statement dated 11.02.2022, and since the application pertaining to this notice is pending adjudication before the Civil Judge (Jr. Divn.), Gurugram, therefore, this Court does not deem it appropriate to address this issue at this stage. Through the impugned order dated 24.08.2022, Civil Judge (Jr. Divn.), Gurugram has not at all carried any effective proceedings, much less by deciding the rights of the parties in any manner, therefore, it is apparent that the revision petition is not founded upon any valid cause of action.

Thus in light of the above background, this Court has no hesitation in holding that the defendants have unnecessarily invoked the superintendence powers of this Court under Article 227 Constitution of India, and wasted precious time of the Court, therefore, the defendants deserve to be saddled with exemplary costs.

Resultantly, the petition is dismissed with costs of Rs.50,000/- to be deposited with the District Legal Services Authority, Gurugram within a period of two months. The trial Court shall ensure the recovery and deposit of the costs.

28.09.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No