

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

110

Civil Revision No.3549 of 2021

Date of decision: 07.01.2022

Sachin Goyal and others

...Petitioners

Versus

Arunesh Aggarwal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pankaj Jain, Sr. Advocate with
Mr. Divya Suri, Advocate,
Mr. Sachin Bhardwaj, Advocate and
Mr. Gaurav Mittal, Advocate
for the petitioners.

Mr. Sanjay Kaushal, Sr. Advocate, with
Mr. Aman Dhir, Advocate
for respondent no.1-Caveator.

ANIL KSHETARPAL, J (Oral)

The hearing of the case is being held through video conferencing on account of restricted functioning of the Courts.

Defendant no.1 to 3, in a suit for grant of decree for partition and exclusive possession of the suit property, are the petitioners in the present revision petition.

An order passed by the trial court refusing to dispose of the suit in terms of a settlement arrived at during the pendency of the suit is being challenged through this revision petition.

During the pendency of the suit, the settlement arrived at between some of the parties to the suit on 06.11.2017 and the subsequent statements of the some of the parties in the court in terms of the settlement is

not in dispute.

It may be noted here that there are as many as 31 defendants in the suit, whereas the alleged settlement is only between the plaintiff and defendant no.1 to 3. In other words, the remaining defendant no.4 to 31 are not parties to the settlement.

After suffering statements on 06.11.2017, for disposal of the suit in terms of the settlement of even date, the parties did not press for the part disposal of the suit. The petitioners chose to press a previous application filed by them under Order 7 Rule 11 CPC for rejection of the plaint before the trial court which was, however, dismissed on 12.04.2018. The defendants assailed its correctness by filing Civil Revision No.3044 of 2018, which was ultimately dismissed as withdrawn on 09.05.2018. An application for appointment of receiver was filed by the plaintiff on 11.08.2017, which was decided on 11.02.2019. Defendant no.1 to 3 (petitioners herein) filed an appeal which was also dismissed on 06.09.2019. It has been stated that a Civil Revision is pending against the order passed by the trial court as well as by the first appellate court on the application for appointment of a receiver during the pendency of the suit. Thereafter, the court proceeded to frame an issues on 11.02.2019. In between, the plaintiff sent a notice on 13.03.2018 to defendant no.1 to 3 to implement the settlement. Defendant no.1 to 3 still did not file reply.

Defendant no.1 to 3 for the first time filed an application on 01.09.2019, for disposal of the suit in terms of the settlement dated 06.11.2017, which has been dismissed by the Court.

This Bench has heard the learned senior counsels for the parties at length and with their able assistance perused the paper book.

The learned counsel representing the petitioners while contending that when a contract between the parties has been entered into and a statement on the basis thereof have been recorded, the Court is bound to pass a decree in terms of the settlement. He further contends that the trial court has wrongly observed that since defendant no.4 to 31 were not party to the settlement and the undertaking on the part of the defendants to hand over vacant possession of 10 rooms cannot be implemented particularly when the possession is with the tenants, is erroneous. He further contends that the settlement arrived at by the parties does not infringe any statutory law and therefore, the observations made by the trial court are erroneous.

Per contra, the learned senior counsel representing the plaintiff has contended that once defendant no.1 to 3 did not pray for disposal of the suit in terms of the settlement in the year 2017 and continued to defend the suit for a period of more than 4 years. Now, the defendants cannot be permitted to take a U-turn and pray for disposal of the suit in terms of the settlement. He further contends that there is no material to prove that defendant no.1 to 3 were prepared to perform their part of the contract, dated 06.11.2017.

After having heard the learned counsel representing the parties, this court proceeds to analyze the arguments of the learned senior counsels.

From the facts noticed above, it is evident that after 06.11.2017, neither defendant no.1 to 3 nor the plaintiff requested the trial court to dispose of the suit in terms of the settlement. As per the settlement, defendant no.1 to 3 were required to pay a sum of Rs.2,10,00,000/- to the plaintiff which admittedly, has not been paid. It is also not in dispute that defendant no.1 to 3 did not hand over the possession of 10 rooms in House

No.187, situated within the Lal Dora of village Dhanas to the plaintiff by 13.11.2017.

At this stage, it will be appropriate to extract the alleged settlement arrived at between the parties which was filed in the Court. It is extracted as under:-

*“This compromise deed is being executed between Arunesh Aggarwal aged 55 years, son of Sh. J.K Aggarwal r/o #513, Sector IIB, Chandigarh, hereinafter called as first party, which includes his successors, assignees, legal representatives etc.
and*

Sh Ghanshyam Dass aged 66 years son of Late Sh. Jagan Nath, Nitin Goyal & Sachin Goyal both sons of Sh. Ghanshyam Dass Goyal, all residents of #647, Milk Colony, Dhanas Chandigarh, hereinafter called as second part, which includes his successors, assignees, legal representatives etc.

Whereas the first part has filed a suit for partition and possession etc. of house no. 187 situated within the red line of Village Dhanas duly shown in the rough site plan attached with the suit, as well as partition and possession on building no. 259, situated within red line of village Sarangpur duly shown in the rough site plan attached with the suit, against the second part and tenants. Now with the intervention of the respectable people of the locality and common friends of the parties, the first and the second part have settled all their disputes with regard to above two properties, and other disputes if any, on the following terms and conditions:

1. That the first part in terms of this compromise deed agreed to get the sale deed registered of his entire share in building no. 259, situated within red line of village Sarangpur (duly shown in the rough site plan) in favour of second part or their nominee on or before 13 November, 2017. Similarly the second part will get the sale deed registered of their respective shares in house no. 187 situated within the red line of Village Dhanas (duly shown in the rough site plan), in favour of the first part or his nominee, on or before 13 November, 2017, and at the time of execution of both sale deeds, the second part will pay Rs. 2,10,00,000 (Two crore ten lakhs only) to the first part.

2. That the second part will handover the possession of at least 10 rooms in House no. 187 situated within red line of village Dhanas to the first part by 13 November, 17 and the second part undertakes to get remaining portion/rooms: vacated and deliver the possession to the first part as expeditiously as possible. The first part shall also make the required efforts and extend cooperation to the first part in getting the remaining rooms vacated.

3. That the first part and second part will not initiate any proceedings i.e, civil, criminal or Misc, BH proceedings against each other in any manner, except for compliance of the terms of this compromise deed. The payments made by the first party to the second party and second party to the first party prior to this compromise deed shall stands waived off settled.

4. That in case any party of this compromise deed will back out from the terms of this compromise deed then the other party can get the terms of this compromise deed executed through court of law.

5. That this compromise deed has been executed between first part and second part without any pressure, coercion or influence .of any type and has been executed with the mutual consent of first and second part with their sound mental state of mind.

IN WITNESS WHEREOF both the parties have set their hands on this compromise deed today on 06/11/2017 at Chandigarh in the presence of the witnesses.

WITNESS NO.1

FIRST PART

Sd/-Ishwar Chand
#1503/11-D,
Chandigarh

Sd/-Arunesh Aggarwal

WITNESS NO.2

SECOND PART

Sd/- Varun
#812/17,
Panchkula.

1. Sd/-Ghanshyam Dass
2. Sd/- Nitin Goyal
3. Sd/-Sachin Goyal”

It is evident that the parties at a particular point of time did enter into settlement which contained reciprocal promises. It is also evident that defendant no.1 to 3 did not fulfill their part of the various promise in the

contract. They never made any over attempt to get the settlement implemented for a period of 4 years.

Keeping in view the aforesaid facts, the trial court, in the considered opinion of this Court, has not erred in dismissing the application. However, it is observed that the observations made by the trial court with regard to legality of the agreement dated 06.11.2017 are erroneous and therefore, set aside.

The order passed by the trial court is upheld for the reasons different from the trial Court.

The revision petition is dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

January 07, 2022
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No