

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

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CRM-A-338-MA-2015(O&M)
Date of Decision : **October 17, 2022**

STEEL STRIPS WHEELS LTDApplicant
VERSUS
MOHINDER SINGH AND ANRRespondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Akshay Bhan, Sr. Advocate with
Mr. H.S.Sandhu, Advocate and
Mr. Abhijeet Singh Rawaley, Advocate for the applicant.

Mr. Govind Rana, Advocate and
Mr. Satyam Tandon, Advocate for respondent No.1.

Mr. Balbir Kumar Saini, Advocate for respondent No.2.

PANKAJ JAIN. J. (Oral)

Counsel appearing for respondent No.1 brings to the notice of this Court that respondent No.1, Namely, Mohinder Singh has since died on 17.9.2022 and, therefore, proceedings qua him stand abated.

Counsel for the applicant does not dispute the aforesaid fact.

Consequently, the proceedings qua respondent No.1 are ordered to be abated.

The applicant seeks leave to appeal. As per the allegations in the complaint, it was stated as under:-

“Complainant M/s Steel Strips Limited, a private limited company has filed the present complaint through its authorized Manager, H.K.Sehgal, with the allegations that in the year 1998-99, the complainant company intended to purchase some agricultural land in District Panchkula and accused No.1 (Mohinder Singh) contacted the company, expressing desire to sell his agricultural land situated in Village Bir Ferozari, District Panchkula. The accused No.1, Mohinder Singh informed the complainant company that he and his family members had 304 Kanals of land in the

Village and it was free from all sorts of encumbrances. After negotiations and believing upon the representation made by accused no.1, an agreement to sell dated 17.5.1999 was executed between the parties for an amount of Rs.1,33,00,000/- . Thereafter, a sum of Rs.15,00,000/- was paid to accused no.1 as earnest money through Bank Draft No.RPK/728232 dated 17.5.1999. In the agreement to sell, there was a specific averment that land is free from all sorts of encumbrances and seller shall get income tax Clearance certificate and non encumbrance certificate issued. The date for execution of the sale deed was fixed as 17.11.1999 and it was also agreed between the parties that part possession of the disputed property, should also be delivered to be complainant company. However, the accused failed to get the sale deed executed by stipulated date, on the ground that certain formalities could not be completed. Accordingly, the complainant company extended the date for execution of the sale deed. On 26.5.2001, accused No.1, Mohinder Singh again approached the company on the ground that he was in dire need of money and demanded a sum of Rs.20,00,000/- towards part payment and upon payment, the accused also delivered vacant possession of the land in question to the complainant company. Consequently, the complainant company raised fencing around the land and planted various trees. Possession of seven shops and one servant room constructed in the agricultural land was also delivered to the company which were used by employees of the company. A telephone connection bearing No.01733-258202 was also installed on the said premises and the company continued in possession of the land. It is further alleged that the complainant company requested the accused no.1 to get the sale deed executed, but he postponed the matter on one pretext or the other. Finally, on 15.3.2005, accused no.1

disclosed to the complainant company about the surplus proceedings of the land which were pending before Collector Agrarian, Panchkula. It is alleged that proceedings were pending prior to the agreement to sell, but the accused never disclosed this fact to the complainant company. When this fact was confronted with the accused, he again assured the company that the proceedings shall be decided in his favour and he shall fulfill the contract and amended agreement to sell dated 15.3.2005 was executed, whereby the last date for execution of sale deed was fixed as 31.3.2006. However, on 31.3.2006, the accused no.1, Mohinder Singh did not get the sale deed executed and hence, legal notice was served upon accused no.1 on 1.4.2006 for the same purpose. Thereafter, on 17.4.2006, the company filed suit for specific performance at Chandigarh, wherein interim stay was granted in favour of the company. The said suit was returned for want of territorial jurisdiction and was refiled at District Court, Panchkula, wherein the written statement filed by accused no.1, it was submitted that on 10.6.2006, accused no.1 and 2, Mohinder Singh and Ramneek entered into another agreement to sell with accused no.2 & 3. Thereafter, accused no.1 & 2 started intimidating and threatened the complainant as well as employees deployed on agricultural land to relinquish the possession of land. On 30.12.2006, a complaint was also made in the police station in this regard, but no action was taken by the police. It is further alleged that on 3.1.2007, accused no.1, Mohinder Singh and accused no.3, Bijender Sharma accompanied with 10/12 other persons trespassed into the disputed property and took away the Keys of the shop, removed telephone connection and took away agricultural tools and assaulted the employees.”

The trial Court after examining the evidence threadbare dismissed the complaint and acquitted the respondents of the charges

framed against them vide impugned judgment dated 5.7.2014 holding as under:-

“As far as commission of offence of cheating is concerned, the perusal of the judicial file specially the jamabandi pertaining to the year 2008-09 (Ex.D10) reveals that the surplus proceedings first time initiated in the year 2003, whereas it is common ground that the agreement to sell was executed between the parties in the year 1999. Under such circumstances, it cannot be gain said that there was no dishonest intention at the inception of the transaction on the part of accused persons. Furthermore perusal of the documents i.e. agreement to sell (Ex.C2), supplementary challan (Ex.C8) reveals that the physical and vacant possession of the entire land was provided to the complainant's company. Under such circumstances, when the accused persons handed over the possession of the suit property to the complainant's company, it can easily be concluded that they had no dishonest intention at the very inception of the transaction, which is very much required for the commission of offence of cheating.”

Mr. Bhan appearing for the applicant submits that the trial Court erred while recording the findings which are contrary to each other. He refers to para No.12 of the judgment to submit that the trial Court found that as per the supplementary challan Ex.C8 physical and vacant possession of the entire land was provided to the company whereas in subsequent para No.13, the trial Court recorded that as per the revenue record placed on record as Exs.D1 to D13, it was the accused persons who have been shown to be in continuous possession of the disputed property. While attacking the aforesaid finding, he submits that the trial Court erred in believing the revenue record to exculpate the respondents of the offence of criminal trespass as he asserts that sine quo non to constitute criminal trespass would be dispossessing from the physical

possession.

I have heard the learned counsel for the parties and have gone through the records of the case.

Senior Counsel for the applicant is wrong in asserting that there is a contradiction between the findings recorded by the trial Court. In fact the trial Court has recorded the fact as was mentioned in the supplementary challan in para No.12 of the judgment but lateron found that the said factual position was wrong in view of the overwhelming evidence on record in terms of Exs.D1 to D13 which proved that it was the accused who remained in continuous physical possession of the property in question. The assertions made by the counsel with respect to their being physical possession also stands rebutted by the evidence on record which was brought by the accused in their defence in the form of records of title which have presumption of truth.

In view of the aforesaid position, no fault can be found with the judgment passed by the trial Court.

Consequently, the present application seeking leave to appeal is declined being without any merit.

October 17, 2022

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(PANKAJ JAIN)
JUDGE

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