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

CR-14348-2018 (O&M)

Date of decision : 18.08.2022

Harinder Kumar and another

...Petitioners

Vs.

Harpreet Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. K.B.Raheja, Advocate
for the non-applicant/petitioners.

Mr. K.S.Brar, Advocate
for the respondent Nos.1 to 3.

Mr. Aman Dhir, Advocate
for the applicant-proposed respondent Nos.4 and 5.

MANOJ BAJAJ, J.

CM-22144-CII-2019

Petitioners(defendants) are aggrieved against the order dated 05.10.2018 (Annexure P-5) passed by Additional Civil Judge (Senior Division), Sri Muktsar Sahib, whereby their application for issuance of direction to the plaintiffs to execute the sale deed pursuant to the subject agreement to sell dated 09.05.2014, was dismissed.

Briefly, the facts of the case are that the plaintiffs (respondents) brought a suit for possession by way of specific performance of agreement to sell dated 09.05.2014 executed in their favour by defendants for sale of the suit property measuring 1162 yards comprised in khewat No.532, khatoni No.1263 and khasra No.8 situated in the area of Tibbi Sahib Road, Main Road, District Sri Muktsar Sahib for a total sale consideration of Rs.1,32,00,000/-. According

to plaintiffs, they were ready and willing to perform their part of the contract, but the defendants failed to execute the sale deed and claimed possession of the suit property. In the alternative prayer for recovery of Rs.50 lacs has been made i.e.Rs.25 lacs earnest money and equivalent amount as damages.

Upon notice, defendants appeared and filed their written statement, wherein preliminary objections regarding locus standi, delay, concealment of material facts etc. have been raised, and on merits pleaded that the plaintiffs themselves were not willing to perform their part of the contract. Further, while admitting execution of agreement and receipt of earnest money, it has been pleaded that the defendants are ready and willing to perform their part of the agreement. The other averments contained in the plaint were denied and in the end, it was prayed that the suit filed by the plaintiffs be dismissed.

Immediately after completion of pleadings, the defendants moved an application dated 22.02.2018 (Annexure P-3) and prayed for a direction to the plaintiffs to get the sale deed executed. The said application was contested by plaintiffs by filing a reply, wherein they claimed that defendants are not in possession of the suit property, and opposed the prayer. The application was dismissed by the trial Court vide impugned order dated 05.10.2018. Hence this revision petition.

On 27.09.2019, this Court disposed of the revision petition by passing the following order:-

“Learned counsel for the parties are agreed that the present petition can be disposed of with direction to the plaintiff-respondents that they shall deposit the balance amount before the trial Court and thereafter, the sale deed shall be executed but the said amount shall not be disbursed to the petitioner-defendants till as such time the possession of the

property in dispute is handed over to the plaintiff-respondents herein.

In view of the above, the present petition is disposed of. The plaintiff-respondents shall deposit the balance amount within four weeks from today i.e. on or before 27.10.2019 before the trial Court and thereafter, the sale deed shall be executed within one week of the deposit of the said amount i.e. on or before 4.11.2019. However, the said amount shall not be disbursed to the petitioner-defendants till as such time the possession of the property in dispute is handed over to the plaintiff-respondents. However, in case, the plaintiff-respondents fail to deposit the said amount before the trial Court on or before 27.10.2019, the suit shall stand dismissed.”

Subsequently, petitioners filed miscellaneous application bearing No. CM-22144-CII-2019 seeking recalling of the above order and on 24.10.2019, this Court entertained the same and stayed the operation of the order dated 27.09.2019.

During the pendency of this miscl. application, Mr. Aman Dhira, learned counsel moved an application bearing No. CM-22689-CII-2019 on behalf of applicants-Chandan Dabra and Surinder Singh seeking their impleadment in the revision petition, on the ground that they are in possession of the suit property.

Notice of this application was also issued on 30.03.2022 to the non-applicants, however, no reply has been filed either by the petitioners or the contesting respondents.

Learned counsel for the plaintiffs-respondent Nos.1 to 3 has submitted that the claim made in the plaint relates to the specific performance of the agreement to sell dated 09.05.2014, as well as decree for possession,

whereas the order dated 27.09.2019 passed by this Court confines only to the execution of the sale deed, with a condition that the sale consideration be not paid to the defendants till the possession is handed over to the plaintiffs. He submits that since the defendants are not in possession of the suit property and considering the same, the trial Court had declined the application moved by defendants, therefore, the order passed by this Court on 27.09.2019 deserves to be recalled as the rival stand of the parties based upon disputed facts can only be decided effectively on the basis of evidence of the parties. According to learned counsel, mere execution of sale deed in favour of plaintiffs and payment of balance sale consideration to the vendors would not conclude the transaction for sale of immovable property, until the possession is delivered to the purchasers. Learned counsel prays that the order dated 27.09.2019 be recalled and the revision petition be adjudicated upon merits.

While opposing the prayer, Mr.Raheja, learned counsel for the petitioners (defendants) has argued that once the defendants have not contested the claim of the plaintiffs as raised in the suit, there is no necessity to enter into the trial and their suit can be decreed on the basis of admission of defendants. He submits that the application was filed only for this purpose and order passed by this Court is also based upon the consent of the parties, thus, according to him, the order dated 27.09.2019 passed by this Court is justified, and does not deserve to be recalled.

After hearing learned counsel for the parties and considering the above background, this Court finds that the order dated 27.09.2019 neither reflects a complete settlement between the parties nor effectively decides the controversy relating to agreement to sell dated 09.05.2014, much less the issue

of delivery of possession. Once the plaintiffs have made a categorical prayer in the suit for delivery of possession also pursuant to the agreement to sell, the said relief cannot be left undecided. Consequently, the order dated 27.09.2019 is not sustainable.

In view of the above, the order dated 27.09.2019 is recalled and the revision petition restored to its original number and is taken up for hearing on merits.

Main case

Learned counsel for the petitioners (defendants) has argued that the trial Court has failed to exercise the jurisdiction in accordance with law, as it wrongly dismissed the application of defendants based upon their admission, in favour of plaintiffs. He submits that once the defendants are not disputing the execution of agreement to sell dated 09.05.2014 and are also ready to execute the sale deed in favour of the plaintiffs, the suit can be finally decided by issuing directions to the plaintiffs to perform their part of the agreement to sell. He prays that the impugned order be set aside and application by defendants for issuance of directions to the plaintiffs be allowed.

Controverting the arguments raised by Mr. Raheja, learned counsel for the respondents (plaintiffs) has argued that the defendants are not in possession of the suit property, and the execution of the sale deed only would be partial relief, and without delivery of possession the claim of plaintiffs would remain unsatisfied. He submits that the trial Court has carefully examined the pleadings of the parties, particularly the stand of the plaintiffs in response to the application by defendants, and rightly declined the said application. He prays that the petition be dismissed.

After hearing the learned counsel for the parties and carefully going through the pleadings and material on record, this Court finds that the application by defendants seeking direction to plaintiff confines only to the execution of sale deed pursuant to the agreement to sell dated 09.05.2014, and if the same is accepted, it would amount to partial redressal of the grievance of the plaintiffs, as the relief of possession of suit property would remain pending. No doubt, if the written statement by defendants contain clear, specific and unambiguous admission relating to the relief claimed by plaintiffs in the suit, the Civil Court would be justified in passing a decree on the basis of such an admission, and for that even no formal application is required to be filed by any of the parties to the suit. Order XII Rule 6 CPC empowers the Court to deliver judgment on admission and such an admission can be oral also.

Of course, the admission is best evidence, which can be used against the party, but considering the averments in the application moved by the defendants, it is clear that the defendants have expressed their willingness to execute the sale deed only, and averments in the application are silent regarding delivery of possession. During the course of hearing, it is not disputed by Mr. Raheja, learned counsel that in the plaint a specific decree for handing over the possession of the suit property is also prayed for by the plaintiffs. A perusal of the impugned order dated 05.10.2018 reveals that the trial Court has carefully examined the material on record, before declining the application by the defendants and it does not suffer from any illegality or impropriety, thus, does not warrant any interference.

At this stage, Mr. Aman Dhir, learned counsel prays for withdrawal of the misc. application bearing Nos.CM-22689-CII-2019 and CM-

23675-CII-2019 to avail appropriate remedy before the trial Court.

The prayer is accepted and misc. application Nos.CM-22689-CII-2019 and 23675-CII-2019 are dismissed as withdrawn.

In view of the above discussion, the revision petition fails and is dismissed.

(MANOJ BAJAJ)
JUDGE

18.08.2022
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No