

CR-1789-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1789-2023 (O&M)
Reserved on : 24.05.2023
Date of decision : 29.05.2023

Amit Sachdeva ... Petitioner(s)

Versus

Lalit ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Ruchi Sekhri, Advocate for the petitioner.

ALKA SARIN, J.

1. The present revision petition has been preferred challenging the order dated 17.02.2023 (Annexure P-5) whereby the application under Order 39 Rules 1 and 2 CPC for *ad interim* injunction filed along with the appeal has been dismissed by the First Appellate Court.
2. The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for possession by way of specific performance of the agreement/*sainama* dated 16.11.2011. The application under Order 39 Rules 1 and 2 CPC filed with the suit was dismissed and the appeal preferred against the dismissal of the said application was also dismissed. Subsequently, the suit was also dismissed vide judgment and decree dated 12.09.2022. An appeal was preferred by the plaintiff-petitioner along with

an application under Order 39 Rules 1 and 2 CPC for *ad interim* injunction which application has been dismissed vide the impugned order dated 17.02.2023 (Annexure P-5). Hence, the present revision petition.

3. Learned counsel for the plaintiff-petitioner would contend that since the agreement was admitted, hence, stay ought to have been granted.

4. Heard.

5. In the present case the Appellate Court in the impugned order dated 17.02.2023 has held as under :

“7. Perusal of record reveals that after the filing of suit, the Ld. Lower Court had dismissed the application Under Order 39 Rules 1 & 2 CPC of the applicant and thereafter the applicant approached the Appellate court and, there also he could not succeed and even his suit was also dismissed on merits. Now again he moved application for ad interim injunction on the same facts. So, therefore, concurrent findings of three courts below holding that no case is made out against the applicant. Even otherwise, the Ld. Lower court in the impugned judgment observed that that the agreement in the present case was settled for consideration of amount of Rs.4,28,00,000/-whereas, the advanced payment which was made was Rs.10,00,000/- only. The Ld. Court during the arguments relied upon judgment in case Satnam Singh Vs. Satnam Singh, 2022 (3) ICC 849 and argument that even on the basis of sainama the interim

stay can be granted. However, perusal of judgment of Hon'ble Supreme Court in case Satnam Singh (supra) reveal that the Hon'ble Supreme Court nowhere held that even on the basis of Sainama the interim stay can be granted. Moreover, the Ld. Lower Court has rightly relied upon judgment "Jitender Kumar Vs. Vijender Kumar 2019(2) CCC 402(Delhi)" wherein it was held that relief of specific performance is not to be granted where only nominal amount is paid out of total sale consideration. In the said case barely 4.5% of total sale consideration was paid. Similar view was taken by the Hon'ble Supreme Court in case titled as "Saradamani Kandappan Vs. Mrs. S.Rajalakshmi 2011(3) Apex Court Judgments 167(S.C.)" wherein it was held that 'payment of nominal consideration will not entitle grant of discretionary relief of specific performance because even if the proposed seller on the suit being decreed much later than the date of agreement to sell gets only the sale price with interest and that with this amount the seller cannot purchase an equivalent property which he would have purchased many years earlier when the agreement to sell was entered into. The Ld. Counsel for the appellant/applicant during the course of arguments also admitted the abovesaid factum with regard to payment of nominal payment. In these circumstances,

this court is of the view that no prima facie case is made out in favour of applicant and, balance of convenience also does not lie in his favour and, therefore, the present application is dismissed being devoid of any merit.”

6. Learned counsel for the plaintiff-petitioner has not been able to deny that only 4.5% of the total sale consideration was paid. Learned counsel for the plaintiff-petitioner has also not been able to dispute the fact that even before the Trial Court, no *ad interim* injunction was granted. No perversity in the impugned order has been highlighted nor has there been any gross or manifest failure of justice.

7. In view of the above, no *prima facie* case is made out nor the balance of convenience lies in favour of the plaintiff-petitioner. The present revision petition which is wholly devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

29.05.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO