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

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Date of decision: April 17, 2023

Sukhbir Singh

....Petitioner

versus

Dharminder Singh and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA****Present:-** Mr. Sameer Sachdeva, Advocate for petitioner.

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**ARUN MONGA, J. (ORAL)****CM-6665-CII-2023**

For the reasons stated in application, same is allowed subject to all just exceptions.

**Main case (O&M)**

Petition herein is for setting aside impugned order dated 29.03.2023 (Annexure P-7) passed by learned First Appellate Court whereby interim stay order dated 01.10.2022 (Annexure P-6) passed by learned trial Court on an application under Order XXXIX Rules 1 and 2 read with Section 151 of Code of Civil Procedure, 1908 (for short 'CPC'), was vacated.

2. Learned counsel for petitioner would contend that defendant No.1 entered into an agreement with petitioner, to sell his land measuring 26 K-0M at the rate of Rs.6,00,000/- per acre i.e., total consideration of Rs.19,50,000/-. Defendant No.1 received Rs.19,00,000/- as earnest money at the time of agreement. Thereafter, defendant No.1 resiled from aforesaid agreement. Plaintiff filed suit for permanent injunction along with an application for interim stay. Said application was dismissed and plaintiff/petitioner challenged the same before learned First Appellate Court. Meanwhile, defendant No.1 sold the suit land to defendant/ respondent No.2 and made statement accordingly, and suit was dismissed as infructuous. Defendant No.1

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also got an FIR registered against plaintiff. The plaintiff/petitioner approached this Court by way of CRM-M-22708-2021 and was granted interim bail on 10.06.2021. Further contends that defendant No.2 tried to sell property further. Plaintiff/ petitioner filed suit (Annexure P-3) for specific performance of agreement to sell and also filed an application (Annexure P-4) for interim stay. Vide order dated 01.11.2022 (Annexure P-6), learned trial Court allowed the aforesaid application and defendant No.2 was restrained from alienating the land in question. Aggrieved, defendant No.2 filed an appeal before learned District Judge against aforesaid order, which was allowed vide impugned order dated 29.03.2023 (Annexure P-7) setting aside the interim order dated 01.11.2022 (Annexure P-6).

2.1. Learned counsel would further contend that learned First Appellate Court wrongly interpreted the undertaking given by petitioner in criminal case regarding not enforcing agreement in question till final outcome of proceedings in FIR. However, the given undertaking was that petitioner would enforce agreement to sell subject to final outcome of FIR proceedings. Further contends that respondent No.2 is trying to alienate suit property by creating third party rights.

3. Given the nature of order being passed, there is no necessity to issue notice to respondent/defendants, as no serious prejudice would be caused to them. Notice to respondents is thus dispensed with.

4. I have heard learned counsel for petitioner and gone through the record.

5. Impugned order dated 29.03.2023 (Annexure P-7) passed by learned District Judge, Ferozepur is premised, *inter alia*, on the following reasoning:

*“13. Perusal of the order passed by the Hon’ble High Court shows that petitioners were granted bail subject to undertaking that they would not enforce agreement to sell till finalization of proceedings in FIR. It is case of the defendant/appellant that agreement to sell in favour of respondent/plaintiff is forged and fabricated and does not bear signatures of defendant no.1 and FIR was lodged against plaintiff and his father and they went for securing anticipatory bail before the Hon’ble High Court and the Hon’ble High Court vide order dated 10.06.2021 in CRM-M-22708 of 2021 has allowed anticipatory bail of the petitioners on the basis of undertaking submitted by them. The order is re-produced as under:*

*The primary allegations against the petitioners, who are the uncle (chacha) and cousin of the complainant are that after the death of the father of the complainant, they forged an agreement to sell whereby the complainant purportedly agreed to sell 26 Kanal of land to the petitioners for a sum of Rs. 6 lacs per acre.*

*Learned counsel for the petitioners at the outset states that the petitioners will not enforce the said agreement to sell against the complainant. Notice of motion for 22.09.2021.*

*Meanwhile, in the event of arrest, the petitioners shall be released on interim anticipatory bail to the satisfaction of the Arresting/Investigating Officer, subject to the conditions provided under Section 438 (2) Cr.P.C. The petitioners are also directed to join the investigation and cooperate with the Investigating Agency, as and when required.*

14. *Thereafter, petitioner filed one CRM-M-19917 of 2021 in CRM-M-22708 of 2021 and vide order dated 20.07.2021 Hon'ble High Court disposed of that petition by passing following order:*

*Learned counsel for applicants petitioners states that in the order dated 10.6.2021, an undertaking on behalf of petitioners has been wrongly recorded that they would not enforce agreement to sell against complainant. The petitioners only intended to undertake that they would enforce agreement to sell subject to outcome of proceedings in FIR.*

*In view thereof, order dated 10.6.2021 passed in CRM-M-22708-2021 is modified to the extent that applicants petitioners undertake that they would enforce agreement to sell only subject to outcome of proceedings in FIR.*

15. *It is not disputed that proceedings in FIR are still pending and has not been finally disposed of. Relief of injunction is discretionary relief and has to be granted to the party whose conduct is equitable. In the present case, respondent/plaintiff has secured bail from the Hon'ble High Court subject to undertaking that he would not enforce agreement in question till the final outcome of proceedings in FIR registered against him but without waiting for the final conclusion of proceedings arising out of FIR registered against him*

*respondent/plaintiff has filed the present suit alongwith application for injunction, as such, he has violated the undertaking given in Hon'ble High Court and his conduct is not equitable and it is well established principle that one who seeks equity must do equity. In the present case, when conduct of the respondent/plaintiff itself is not equitable, then exercising discretion by the learned lower court without discussing this aspect amounts to mistake on the part of the learned lower court.*

16. *Learned lower court has further held that plaintiff would suffer an irreparable loss in case appellant/respondent is not restrained from alienating the suit land during pendency of the suit. Learned lower court has ignored the fact that in view of provisions of Section 52 of the Transfer of Property Act, rights of the plaintiff would stand protected and any alienation made during pendency of the suit would be subject to decision of the present suit and grant of injunction would rather act to the grater inconvenience of the appellant/respondent as with grant of injunction he would not be able to enjoy property fully.*

17. *So, order passed by the learned lower court is not sustainable and appeal filed by the appellant is allowed and order passed by the learned lower court on injunction application of respondent/plaintiff is set aside and injunction application of the plaintiff*

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*is deemed to have been dismissed. Record of learned lower court be returned. Copy of this judgment be placed on record of learned lower court. Appeal file be consigned to concerned record room, Ferozepur.”*

6.           Trite is to say that person claiming equity before the Court must at the same time conduct equitably in order to seek such a discretionary relief. Learned Appellate Court in my opinion has rightly observed the conduct of petitioner was not above board. Therefore, I find no grounds to interfere with those observations.

6.1.           Moreover, suit property in case alienated further shall be subject to the rule of *lis pendence* and the principle of ‘buyer beware’. Nonetheless the ends of justice will be met if a direction is given that respondent-defendant(s), in case wish to alienate suit property, shall insert specific clause in the agreement to sell/ sale-deed that property is being sold subject to the final outcome of pending suit and buyer shall not claim any special equity for having purchased the property during pendency of the trial. Ordered accordingly.

7.           Revision petition is thus disposed of.

8.           Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)  
JUDGE

April 17, 2023  
mahavir

Whether speaking/reasoned:                   Yes/No

Whether reportable:                           Yes/No