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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2475-2020 (O&M)
Date of decision: 01.02.2023

BHAJAN SINGH

...Petitioner

VS

HARWINDER SINGH AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sumeet Jain, Advocate,
For the petitioner.

Mr. R.S.Randhawa, Advocate,
For respondent No.1.

ARUN MONGA, J. (ORAL)

Petition herein, under Article 227 of Constitution of India is for quashing the impugned order dated 13.03.2020 (Annexure P-8) passed by learned Civil Judge (Junior Division), Ludhiana vide which application filed by petitioner/defendant No.5 seeking dismissal of suit pursuant to a compromise, was dismissed and the suit for possession by way of specific performance of agreement to sell instituted by respondent No.1, was ordered to be listed for plaintiff's evidence.

2. I have heard learned counsel for the parties and gone through the case file.

3. In fact, before proceeding further, it is apt to notice that the controversy in hand as succinctly summed up by my learned brother H.S.Sidhu, J. (as he then was seized of the matter) in order dated 06.11.2020, which is reproduced herein below:

"It is stated that respondent No.1-plaintiff had filed a suit for specific performance wherein the petitioner herein was impleaded as defendant No.5. During the pendency of the suit,

a compromise (P.3) was entered into between the plaintiff and defendant Nos.5 & 6. In the compromise, the plaintiff was referred to as First Party whereas defendant No.5 and defendant No.6 were mentioned as Second Party and Third Party respectively. Compromise contained details of the price, payment terms as well as scheduled date of execution of the sale deed. It also contained specific provisions to deal with the eventuality of a default. As per the compromise, the plaintiff (respondent No.1 herein) had agreed to pay a sum of Rs.20 lacs to defendant No.5 (petitioner) on or before 16.01.2019. It is further stipulated that if the plaintiff failed to make the aforesaid payment before 16.01.2019, the contract was to be treated as cancelled and the plaintiff would have no right to pursue the suit.

Learned counsel, inter alia, contends that in discharge of his obligation, in the light of compromise, the plaintiff had issued two cheques of Rs.10 lacs each, which were, however, dishonored on account of lack of funds. Thereafter, the petitioner filed an application before the trial Court seeking dismissal of the suit, in terms of the compromise as the plaintiff had failed to deposit the required payment of Rs.20 lacs before 16.01.2019. Learned trial Court has wrongly rejected prayer made in the application filed for dismissal of the suit and instead proceeded to frame additional issue No.8 to the effect “whether the suit is liable to be dismissed on ground of non-compliance of terms of compromise dated 30.11.2018?” while directing the plaintiff to lead their evidence. It is contended that the impugned order to the extent of proceeding with the suit without first determining the effect of non-compliance of the compromise is illegal and unjust. The trial Court ought to have treated the issue qua effect of non-compliance of the terms of compromise as preliminary issue and then proceeded with the case.

Notice of motion to respondent No.1 only, at this stage, for 22.12.2020.

Till, then, learned trial Court is requested to adjourn the proceedings beyond the date fixed by this Court.”

4. In the background of the aforesaid order, arguments have been heard today. While on one hand, learned counsel for respondent No.1 strenuously opposes the petition citing the Apex Court’s judgment rendered in case titled ***Major S.S.Khanna Vs. Brigadier F.J.Dhillon***¹ and on the other hand, learned counsel for petitioner submits that once the novation of the agreement has been clearly admitted by respondent No.1, he cannot turn

around to status quo ante when the earlier agreement of specific performance was executed between the parties, since the same stands novated by the compromise.

5. While I am in agreement with the proposition of law canvassed by learned counsel for respondent No.1 but at the same time, one cannot be oblivious to unequivocal stand taken by plaintiff-respondent No.1 in para 2 of the reply to the application filed by defendant No.5 (petitioner herein) seeking dismissal of their suit in view of the novation of the agreement. The same, being apposite, is reproduced herein below:

“That the application under reply is sheer abuse of the process of law and has been filed by the defendant No.5 just to harass the plaintiff, as such the same is liable to be dismissed. It is important to mention here that in total an amount of Rs.32,00,000/- (Rupees Thirty Two Lacs only) stand paid to defendant and the detail of the same is as under on 30/11/2018 an amount of Rs.15,00,000/- through Demand Draft has been received by Beant Singh defendant in the court. After that on 06/12/2018, an amount of Rs.3,50,000/- has been given to defendant. After that on 11/12/2018, an amount of Rs.1,50,000/- has been given to the defendant through cheque. After that on 11/01/2019 an amount of Rs.1,50,000/- has been given to the defendant and an amount of Rs.3,50,000/- has been given to defendant in the Court. After that on 03/04/2019, amount of Rs.7,00,000/- given to the defendant Beant Singh. So the question non readiness and willingness does not arise at all.”

6. From the aforesaid averments made by plaintiff/respondent No.1, it is clearly borne out that novation of the agreement is indeed admitted but the impugned order is being defended on the ground that since the preliminary issue sought to be decided by petitioner/defendant would also require adducing of the evidence and the same, therefore, it is a mixed question of facts and law and has to be decided in accordance with law after conducting the entire trial and its decision otherwise would cause prejudice to plaintiff.

7.

I am of the view that in order to balance the equities, it would rather be more appropriate that learned trial Court, at this stage, ought to reframe issues in the light of novation of the agreement, which is concededly not denied by plaintiff and proceed further with the trial after either framing additional issues in light of subsequent developments in the suit and/or reframing of all the issues once again, as it may deem fit, per its discretion.
8.

Accordingly, revision petition is disposed of with liberty to petitioner as well as to respondent(s) to file appropriate application for reframing the issues all over again or to get the additional issues framed, as the case may be.
9.

Needless to say, after the needful as above is done, learned trial Court shall proceed with the trial in accordance with law.
10.

Disposed of accordingly.
11.

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

February 01, 2023

vandana

(ARUN MONGA)

JUDGE

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No