

110.

2023:PHHC:156135

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

CR-5445-2023 (O&M)

Date of decision: 06.12.2023

Satish Kumar Choudhary

.... Petitioner

Versus

Saroj Devi

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Dinesh Kumar Dakoria, Advocate, for the petitioner.

GURBIR SINGH, J. (Oral)

CM-17078-CII-2023

Application is allowed, as prayed for.

CM-17492-CII-2023

Prayer in this application filed under Section 151 CPC is to place on record copies of orders dated 18.04.2023, 02.05.2023 and 25.05.2023 as Annexures A-1, A-2 and A-3.

For the reasons mentioned in the application, same is allowed. Documents Annexures A-1, A-2 and A-3 are taken on record subject to all just exceptions.

CR-5445-2023

1. Prayer in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 04.09.2023 (Annexure P-1) passed by learned Civil Judge (Junior Division), Gurugram

vide which the application filed by the petitioner-defendant (hereinafter called, “defendant”) for preponing the date of hearing in the civil suit has been dismissed and further his request for issuance of notice to the plaintiff on the application under Order 7 Rule 11 read with Section 35-A and 151 of CPC for rejection of the plaint has been declined.

2. Brief facts as culled out from the petition are that respondent-Saroj Devi, plaintiff (hereinafter called, “plaintiff”) filed a civil suit for specific performance with consequential relief of permanent injunction, accompanied with an application under Order 39 Rules 1 and 2 read with Section 151 CPC. An agreement to sell dated 31.08.2019 was executed between the parties i.e. plaintiff and defendant in respect of a plot measuring 770.22 square yards, for a total sale consideration of Rs.3,58,05,444/-. Out of said amount, Rs.1,62,00,000/- was paid by the plaintiff as earnest money. The sale deed was to be executed on or before 30.09.2019. However, on 27.12.2019, the said date was extended to 10.01.2020 by way of amended agreement. But since on said date, the balance sale consideration could not be paid by the plaintiff, both the parties mutually entered into a Memorandum of Settlement dated 19.10.2020 (Annexure P-6). The defendant paid the full amount. But despite receiving full amount, the plaintiff is not withdrawing the civil suit, as per the compromise. Left with no other option, the defendant filed application under Order 7 Rule 11 read with Section 35A and 151 of CPC for rejection of the plaint under Order 7 Rule 11 read with Section 35A and 151 CPC and seeking direction to return his original cheques No.000090 dated 22.12.2020 and 000087 dated

20.01.2021; cancelled original agreement to sell dated 31.08.2019; cancelled amended agreement to sell dated 27.12.2019, along with an application for preponing the date of hearing of the suit from 08.11.2023 to some early date, but said application for preponing has been dismissed vide order dated 04.09.2023.

3. It is contended that despite having received the whole amount, the respondent is not coming to the court to withdraw the suit. The respondent-plaintiff and her husband are threatening the petitioner-defendant that now they will fight the case on merits and drag the civil suit for 10 to 12 years. It is further submitted that at this stage, the petitioner would be satisfied if his application (Annexure P-10) is decided in a time bound manner.

4. I have heard the submissions of learned counsel for the petitioner and have gone through the paper book.

5. Without going into the merits of the case, the present petition is disposed of with a direction to the trial Court to dispose of the application (Annexure P-10) of the petitioner filed under Order 7 Rule 11 read with Section 35-A and 151 of CPC for rejection of the plaint, positively by 31.01.2024, in accordance with law.

(GURBIR SINGH)
JUDGE

06.12.2023

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No