

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

125

CR-326-2024 (O&M)**Reserved on : 19.01.2024****Date of decision : 23.01.2024**

Radhey Shyam Khungar

... Petitioner(s)

Versus

M/s R.K. Dye House through its proprietor
Ravinder Kumar and Others

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Promila Nain, Advocate for the petitioner.

ALKA SARIN, J.

1. The present revision petition has been preferred against the impugned order dated 06.01.2024 dismissing the application filed by the petitioner herein for *ad interim* mandatory injunction.

2. The brief facts relevant to the present case are that the plaintiff-petitioner herein filed a suit for symbolic possession by way of specific performance of the agreement to sell dated 28.11.2022 as described in the plaint as well as for mandatory injunction. The prayer for mandatory injunction reads as under :

“Mandatory injunction directing the defendant No.3 & 4 to take the entire loan amount alleged to be obtained by the defendants No.1 and 2 by creating equitable mortgage of the suit property and to adjust the said loan amount paid by the plaintiffs in the remaining sale consideration and if the loan amount is excess than the remaining sale consideration, then in that case, the plaintiffs are entitled to recover the said excess amount from the defendants No.1 and 2 alongwith interest and also directed the defendant No.3 & 4 to handover all

the original title deeds and other documents qua the suit property to the plaintiffs by releasing the same from equitable mortgage with permanent injunction restraining the defendants No.1 and 2 forever from interfering in the peaceful possession of the plaintiffs or to dispossess the plaintiffs from the suit property forcibly and illegally and also from alienating, transferring or creating any further charge over the suit property in any manner whatsoever”.

3. Along with the plaint an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1906 was also preferred. The same was decided by the order dated 04.12.2023 and the defendant-respondents were restrained from alienating the property in question. Defendant-respondents No.1 and 2 were restrained from alienating the property in question in favour of a third party as also from dispossessing the plaintiff-petitioner from the actual physical possession of the property till the final decision of the suit. Subsequently, an application was filed by the plaintiff-petitioner for allowing the plaintiff-petitioner to clear the loan of defendant Nos.3 and 4 subject to adjustment in the sale consideration and to recover the excess amount from defendant Nos.1 and 2. The said application was dismissed vide impugned order dated 06.01.2024. Hence, the present revision petition.

4. Learned counsel for the plaintiff-petitioner would contend that in case the plaintiff-petitioner is allowed to clear the loan, it would be in the interest of all the parties. It is further the contention that in case the loan amount is cleared, the interest component would stop.

5. Heard.

6. In the present case, SARFAESI proceedings have already been initiated and notice under section 13(2) of the Securitization and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has already been issued to defendant-respondents No.1 and 2. The plaintiff-petitioner has made exactly the same prayer in the suit and is now seeking the said relief as an ad interim mandatory injunction relief. It is a settled law that the reliefs which tantamount to decretal of the suit at an interim stage cannot be granted. The learned counsel has not been able to convince this Court that the plaintiff-petitioner is entitled to the said relief of ad interim mandatory injunction which is also the exact same relief claimed in the suit.

7. In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed. Pending application(s), if any, also stand disposed off.

23.01.2024

D.Bansal

**(ALKA SARIN)
JUDGE**

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