

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

119

1. RSA-379-2022 (O&M)
Date of decision: 28.05.2024

SUBEGH SINGH ..Appellant

Versus

SUKHDEV SINGH ..Respondent

2. CR-4866-2022

SUBEGH SINGH ..Petitioner

Versus

SUKHDEV SINGH ..Respondent

3. CR-7125-2023

SUBEGH SINGH ..Petitioner

Versus

SUKHDEV SINGH ..Respondent

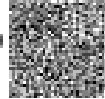
CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harpal Singh Sirohi, Advocate
for the appellant/petitioner.

Mr. Nakul Sharma, Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

1. By this order, a regular second appeal and two connected revision petitions arising between the same parties shall stand disposed of.
2. The parties to this litigation are real brothers. The respondent filed a suit for recovery of Rs.48,15,000/- against the appellant. It was claimed by the plaintiff (respondent herein) that the defendant entered into an agreement to sell, wherein, he agreed to sell 1/3rd share of his rice mill,



which is not in running condition, situated at village Machhrai Kalan, Tehsil Amloh, District Fatehgarh Sahib, on receipt of Rs.40,00,000/- out of total sale consideration of Rs.42,00,000/- vide agreement to sell dated 30.06.2009. The sale deed was agreed to be executed and registered on or before 30.06.2010. Ultimately, the period for execution of the sale deed was extended upto 05.01.2011 and defendant received Rs.2,00,000/- in addition to the previously paid Rs.40,00,000/-. Subsequently, there was a settlement between the parties and the defendant agreed to pay Rs.45,00,000/- and he issued a post dated cheque of Rs.45,00,000/- in favour of the plaintiff, which was dishonoured on presentation. The plaintiff also filed a complaint under Section 138 of the Negotiable Instruments Act, 1881.

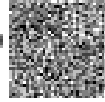
3. On the other hand, the defendant while contesting the suit, denied the execution of the agreement to sell, extension of time and receipt of any amount. It was further claimed that the compromise deed dated 26.08.2011 was not executed out of his free will and was executed only because of the pressure of local police.

4. During the pendency of the suit, the parties arrived at a consensus.

5. On 01.08.2018, the statement of the plaintiff was recorded, which reads as under:-

“Statement of Sukhdev Singh Plaintiff:-

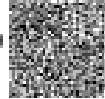
Stated that, my compromise with defendant Subegh Singh has been got done through respectable persons namely, Shamsher Singh r/o Rurkee, Kuldeep Singh r/o Masrai, Gurdev Singh Lambardar r/o Masrai Khurd, and as per the compromise whichever oath I have to take, the detail of that is Mark A, On which I identify my signature. This oath I am bound to take in Gurudwara Sahib of the village Masrai, on coming Sunday date 2.8.2018 at 10



A.M in the morning, in the presence of Panchayat members. After taking the oath I will receive Rs. 44 Lakh from defendant Subegh Singh, as per compromise. Which Subegh Singh defendant will receive from purchaser of registered sale deed, that 44 lakh defendant will transfer in my account through RTGS. Before executing registered sale deed of one acre land of agreement to sell, regarding that I will give statement so that on giving statement stay order regarding that acre will be got vacated from court and Subegh Singh at that time will give me the cheque of Rs. 44 Lakh, for RTGS, on coming to my account of amount through RTGS cheque will be cancelled and I shall be bound to handover the check to the defendant after receiving Rs. 44 Lakh. I shall be Bound by my this Statement, after my receiving Rs. 44 Lakh, there will be no due balance of present case as per agreement and case of Cheque which is pending in the court of Additional Sessions Judge FGS, after receiving this amount I shall have no balance of this case towards Subegh Singh and as per compromise if Subegh Singh, gives me Rs. 44 Lakh then I will get allowed the appeal of Subegh Singh as per Compromise and shall be Bound to give statement to get the order of punishment vacated.”

6. The learned counsel representing the respondent has asserted that there was no stipulation that the plaintiff will get the injunction order vacated with respect to one acre of land out of the total land to enable the defendant to sell the same and pay the amount.

7. On the request of the Court, the original statement, which has been recorded in ‘gurmukhi’ language has been repeatedly read over. It is evident that the plaintiff has secured an order of injunction restraining the defendant from alienating the property. The plaintiff agreed to get the stay vacated with respect to one acre of land in order to enable the defendant to sell the same, which shall be paid to the plaintiff through Real Time Gross Settlement (RTGS) transaction. It is specifically recorded in the aforesaid statement that the defendant after getting the amount of Rs.44,00,000/- from the vendee, will transfer the amount in favour of the plaintiff.



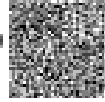
8. The aforesaid statement was accepted by the defendant (appellant). Ultimately, on 13.08.2018, the statements of both the parties were recorded, which reads as under:-

*“Statement of Subegh Singh Defendant:-
Stated that, I have read and heard the statement of plaintiff, which is correct, I shall be bound to give Rs.44 Lakh as per Compromise to the plaintiff after one and half month if I do not give this amount, to the plaintiff then the plaintiff shall be entitled to recover the amount of suit along with interest and cost of suit and I may not raise any objection. Plaintiff Sukhdev singh and his son has taken oath in the Gurudwara Sahib, which the writings in this regard are Mark B, on which there are my signatures”*

9. The trial Court decreed the suit for recovery of Rs.48,15,000/- from the defendant along with interest at the rate of 12% per annum with effect from 26.09.2011 till the filing of the suit and *pendente lite* interest as well as future interest at the rate of 6% per annum till realization of the amount on 16.10.2018. The decree has been passed under Order XII Rule 6 of the Code of Civil Procedure, 1908. The first appeal filed by the defendant has been dismissed.

10. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

11. In the two connected revision petitions, the defendant assails the correctness of various orders passed by the Executing Court. The learned counsel representing the appellant contends that the entire approach of the Courts was incorrect. The defendant does not have liquid cash. He was required to sell one acre out of the total land in order to pay the amount to the plaintiff. He submits that the plaintiff did not get the restraint order vacated. Hence, the defendant was unable to sell the same. It is contended



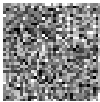
that the defendant is still ready to honour the agreement. He is prepared to pay Rs.5,00,000/- through cheque and pay remaining amount within a period of next three months provided the injunction order passed by the Court is vacated. This offer was put to the plaintiff, who is present in the Court along with his son and his counsel. They did not accept the same.

12. The learned counsel representing the respondent submits that the appellant (defendant before the trial Court) applied for extension of time, which was declined. He submits that on 13.08.2018, the defendant never insisted for vacating the injunction order. He hence submits that at this stage, this Court should not interfere.

13. This Court has considered the submissions and analyzed the arguments of the learned counsel representing the parties.

14. As already noticed, the parties are brothers. The defendant-appellant appears to be short of liquid cash. He is prepared to honour the agreement provided the Court permit him to sell one and half acre of land by vacating the stay order. The stay order already stands vacated particularly when the suit has been decided. The learned counsel representing the appellant submits that in execution proceedings, the aforesaid property has been attached.

15. Keeping in view the facts of the case, this Court is of the opinion that the interest of justice would be met if the appellant is permitted to sell the property i.e. one and half acre out of 33 kanal and 4 marlas land within a period of next three months.



16. A cheque bearing No.033721, dated 07.06.2024, amounting to Rs.5,00,000/- (Rupees Five Lakh only) has been handed over to the plaintiff, which at this stage has been accepted by him.

17. Keeping in view the position, the appellant is permitted to sell one and half acre of land and the attachment order qua the same shall stand vacated.

18. to enable the Executing Court to clarify/modify the attachment order, the defendant will inform the Executing Court, the exact khasra number, which he intends to sell.

19. The Executing Court will revoke the order of attachment.

22. The appellant shall be bound to pay the remaining amount as per the decree passed by the trial Court within a stipulated period, failing which the Executing Court will proceed with the matter.

21. With these observations, the regular second appeal as well as both the civil revision petitions are disposed of.

22. All the pending miscellaneous applications, if any, are also disposed of.

May 28th, 2024

Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No