

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

CR-3916-2022 (O&M)

Date of Reserved : 21.03.2024.

Date of Pronouncement: 06.05.2024.

M/s Lamba Exports Pvt. Ltd.

...Petitioner.

Versus

M/s Dhir Global Industries Pvt. Ltd. and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Sarvesh Malik, Advocate and
Mr. Yogender Verma, Advocate
for the petitioner.

Mr. Alankar Narula, Advocate and
Mr. Parmeet Gupta, Advocate
for respondents No.1 to 3.

Mr. Amit Jhanji, Sr. Advocate with
Mr. Gaurav Goel, Advocate and
Ms. Zaheen Kaur, Advocate
for respondent No.4.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioner/ plaintiff has challenged order dated 06.09.2022 passed by learned Additional District Judge, Gurugram, vide which appeal preferred by the respondents/ defendants No.1 to 3 against the order dated 19.07.2022 passed by Civil Judge (Junior Division), Gurugram, was allowed and order dated 19.07.2022 in terms of which stay was granted, has been set aside.

2. The relevant facts for adjudication of the present revision petition are that the plaintiff/ petitioner filed a suit for specific performance

of contract, declaration and mandatory injunction with consequential relief of permanent injunction alleging that the plaintiff and defendants No.1 to 3/ respondents entered into agreement to sell dated 13.08.2021 for the property bearing UV-375. Udyog Vihar, Phase-IV, Gurugram. The sale consideration was settled at Rs.21 Crores. The plaintiff had paid Rs.30 Lakhs as earnest money and Rs.1,20,00,000/- to bank (defendant No.4) with offer letter for approval of one time settlement. It was alleged that defendant No.1 had offered Rs.12 Crores as full and final settlement of dues towards the bank loan and the plaintiff paid Rs.1,20,00,000/- as mandatory upfront amount. After paying bank dues, the balance sale consideration of Rs.8,70,00,000/- was to be paid to defendant No.1 at the time of registration of the sale deed. In pursuance to agreement dated 13.08.2021, the plaintiff had again paid Rs.30 Lakhs to defendants No.1 to 3. Thus, defendants No.1 to 3 had received a sum of Rs.1,90,00,000/- from the plaintiff as part sale consideration. Then plaintiff later received a legal notice dated 25.03.2022 from defendant No.1 vide which defendant No.1 tried to resile from its obligations and sent a demand draft of Rs.30,00,000/- in favour of the plaintiff to avoid the performance of agreement to sell dated 13.08.2021, alleging that on account of rejection of one time settlement offer by the bank, the agreement to sell stands frustrated. The plaintiff sent a reply dated 30.03.2022, denying the contentions raised in the notice and returning the original demand draft of Rs.30,00,000/- to defendants No.1 to 3. It has been alleged that there was no such condition in the said agreement to sell that in the event of rejection of one time settlement from the concerned bank, the agreement to sell would be considered as rescinded/ revoked. It was averred

that defendants No.1 to 3 have unlawfully threatened to terminate the agreement to sell dated 13.08.2021 and to create third party rights in favour of the said property. There was no reason whatsoever for defendants No.1 to 3 to seeks to cancel/ terminate the said agreement and the acts of defendants No.1 to 3 are clearly illegal, malafide and malicious. It was alleged that defendants No.1 to 3 intend to enter into agreement with third parties in respect of the said plot and try to defeat the legitimate rights and interest of the plaintiff in the said property. Upon inquiry, the plaintiff came to know that defendants No.1 to 3 are negotiating a fresh transaction in respect of the said property in question with certain third parties and defendants No.1 to 3 are likely to create third party rights and interest in the suit property and are unnecessarily taking the cover of defendant No.4 and some alleged proceedings before the Company Law Board. In case defendants No.1 to 3 succeed in creating third party rights and interest in the said plot, in that event the plaintiff shall suffer irreparable loss and injury. Defendants No.1 to 3 have finally refused to agree to the reasonable, just and bonafide request of the plaintiff. It was submitted that the plaintiff has always been ready and willing and is still ready and willing to perform its part of contract. Hence, the present suit was filed by the petitioner/ plaintiff.

3. Alongwith the suit, the plaintiff also filed an application for interim injunction for restraining defendants No.1 to 3 from selling, alienating, encumbering or charging the suit property or from making any kind of lien on the suit property in favour of any third person till the pendency of the suit. The trial Court vide the impugned order dated 19.07.2022, allowed the aforesaid interim injunction application. Feeling

aggrieved against the said order, the appellants/ defendants No.1 to 3 have preferred the appeal before the Appellate Court, Gurugram, which was allowed vide order dated 06.09.2022. Aggrieved against the said order of the Appellate Court, the present revision petition has been filed.

4. Learned counsel for the revision petitioner has contended that the Appellate Court by misinterpreting various clauses of agreement to sell dated 13.08.2021 has erroneously held that the agreement was contingent in nature and the respondents are unable to perform as the one time settlement offer of the respondents has been rejected by the bank and performance of the contract was solely dependant on this aspect. The rejection of one time settlement offer cannot be construed as an impossible event which would make the contract void and a new offer can be made by any of the parties and contract can be enforced. He has contended that respondents No.1 to 3 continued to accept payment from the petitioner, even after the rejection of the one time settlement offer, which was rejected on 20.12.2021. Respondents No.1 to 3 duly received sum of Rs.5,00,000/- from the petitioner on 27.12.2021, against due receipt. He has argued that it is an admitted position and fact that the sole responsibility of settling the loan and removing the lien of the bank, which existed over the property in question, was upon respondents No.1 to 3, which was very categorically made part of the agreement and no other meaning or interpretation can be assigned to the same. He has urged that it is of utmost importance till the dispute between the parties is settled, the respondents be restrained from creating any third party interest over the suit property, as it would defeat the whole purpose of filing the suit and respondents No.1 to 3 cannot be

allowed to rescind the agreement unilaterally, just in order to serve their purpose of unjust enrichment. He has submitted that findings of the Appellate Court are inconsonance with the legal and factual position on record and the impugned judgment is not sustainable in the eyes of law. In support of his contention, he has relied upon Smt. Nirmal vs. Lakhpatt Singh, 2001(4) R.C.R. (Civil) 164; Maharwal Khewaji Trust (Regd.), Faridkot vs. Baldev Dass, 2004(4) R.C.R. (Civil) 760 and M/s J.P. Builders and another vs. A. Ramadas Rao and another, 2011(1) SCC 429.

5. On the other hand, it has been contended by learned counsel for the respondents that with the rejection of the One Time Settlement offer by their banker, the respondents had no further choice or option but to terminate the agreement to sell in question, as without the One Time Settlement, the appellants/defendants No.1 to 3 had no right, title or interest to execute a transfer deed in favour of the respondents or any other party. The termination of the agreement was not predicated or dependent upon the respondents, but on the contrary dependent and predicated on the successful acceptance of the One Time Settlement by the bank. He has contended that the property in question is a mortgaged property and cannot be sold without the consent of the mortgagee. The petitioner/plaintiff was well aware and informed of such mortgage as is apparent from the agreement to sell. It was in categorical terms recorded in the agreement that the rights of petitioner/plaintiff fructified/came into existence only and upon the acceptance of the One Time Settlement by M/s Punjab National Bank and all the further proceedings were subsequent to the approval of the One Time Settlement

between the respondents/defendants and their banker. The entire amount as paid by petitioner/plaintiff was duly returned and refunded by the bank and the respondents, after receiving the fund made by the bank, the petitioner deliberately and intentionally refused to encash the demand draft provided by the respondents returning the same received under the agreement to sell. He has contended that a well reasoned order has been passed by the Appellate Court, Gurugram and the present revision petition is liable to be dismissed. In support of his contentions, he has placed reliance upon **Mardia Chemicals Ltds. vs. Union of India and others, (2004) 4 Supreme Court Cases 311** and **P. Mohanraj and others vs. Shah Brothers Ispat Private Limited, (2021) 6 Supreme Court Cases 258.**

6. I have heard learned counsel for the parties and have gone through the relevant record.

7. The perusal of agreement to sell dated 13.08.2021 reveals that the sale consideration was fixed as Rs.21 Crores and Rs.30 Lakhs was the earnest amount. The petitioner, who was second party i.e. M/s Lamba Exports Private Limited, paid Rs.1,20,00,000/- to the bank with the offer letter for approval of One Time Settlement. It was mentioned in the agreement to sell that M/s Dhir Global has offered a sum of Rs.12 crores as full and final settlement of the dues towards the bank, therefore, on the basis of the above said offer, the second party i.e. M/s Lamba Exports has paid a sum of Rs.1,20,00,000/- as mandatory upfront amount. Clause 4 and 5 of the agreement to sell are relevant clauses which are reproduced as under:-

“4. That after paying Bank dues of Rs.12 Crores to the bank as per the OTS, the balance sale consideration, amount of

Rs.8,70,00,000/- shall be paid to the first party at the time of registration of sale deed.

5. *That once O.T.S. (one time settlement) has been arrived between the P.N.B., first party and second party and the O.T.S. shall be signed by the P.N.B. Bank, first party and the second party than payment of balance consideration amount shall be paid by the second party to the bank on behalf of the first party within 90 days.”*

8. The Appellate Court has rightly held that from the aforesaid clauses 4 and 5 manifest that the agreement to sell itself is predicated. This Court does not agree with the contention of learned counsel for the petitioner that there is nothing in the agreement that it will be subject to acceptance of One Time Settlement proposal. Rather the performance of terms of the agreement are contingent, upon the bank accepting the One Time Settlement offer. Admittedly, the bank is not a party to the agreement to sell. When the property in question is mortgaged with the bank and is a secured asset, then without there being any acceptance of One Time Settlement by the bank, vendor/respondents/defendants are not capable for passing of the title and title cannot be transferred without the prior written consent of the bank. Thus, the agreement to sell is a contingent agreement depending upon the obtaining of the approval from the bank. The perusal of agreement to sell reveals that it has been clearly written in the agreement that once the One Time Settlement is arrived between Punjab National Bank, the vendor and the vendee and the One Time Settlement is signed by the bank, the vendor and vendee, only then the balance sale consideration

amount shall be paid by the vendee to the bank on behalf of the vendor. The Appellate Court has rightly held that when the performance of the core terms of the agreement are dependent upon the approval of a third party, the agreement to sell is nothing but a contingent agreement, the performance of which is uncertain because of un-controlable circumstances and without the bank's approval to the One Time Settlement, the contract cannot be concluded. If the petitioner/plaintiff has made payment of earnest money and tendered Rs.1,20,00,000/- as upfront amount for the One Time Settlement to the bank, it does not make a *prima facie* case in favour of the petitioner/plaintiff. The Appellate Court has rightly held that petitioner/plaintiff has a right for recovery of the amounts given in pursuance to the agreement to sell, but he cannot insist for specific performance of agreement to sell, the performance of which has become impossible, as the bank has refused to accept the One Time Settlement. By restraining the alienation of the suit property, the bank/respondent No.2 cannot be stopped from proceeding to realize the outstanding amount from the petitioner by liquidating the secured assets i.e. the suit property.

9. The case law cited by learned counsel for the petitioner is not applicable to the facts of case in hand. In M/s J.P. Builders' case (supra), the clauses of the agreement in that case, did not insist the sale deed to be executed only after acceptance of One Time Settlement proposal by the bank. The vendors had agreed to sell the property, to execute the sale deed after discharge of the mortgage in favour of the defendants and it was only execution of the sale deed, which was postponed to a future date. Moreover, in the said case, it being the contingent contract was not an issue before the

Trial Court and no such plea has been raised in the written statement. So after considering that plaintiff had proved his readiness and willingness and financial ability to complete the sale transaction, the plaintiff was held entitled to specific performance of the contract.

10. Thus, there being no illegality or infirmity in the impugned order no interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

11. All pending applications, if any, also stand disposed of accordingly.

12. Nothing expressed hereinabove shall be construed as an expression on the merit of the case.

(SUKHVINDER KAUR)
JUDGE

06.05.2024.

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No