2024:PHHC:074738

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-6421-2023(O&M)
Date of Decision: May 24, 2024

M/s Rakushka International Private Limited

...Petitioner

Versus

M/s Wings Hospitality

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Akshay Bhan, Senior Advocate with
Mr.Rose Gupta and Ms.Garima, Advocates
for the petitioner.

Mr.Namit Gautam, Advocate
for the respondent.

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ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 31.08.2023 (Annexure P-1) passed by learned trial Court, whereby, an application filed by the petitioner-defendant, under Order 7 Rule 11 CPC, for rejection of the plaint, was dismissed.

The facts germane, to be noticed, are as follows:-

That, initially, respondent-plaintiff had filed a suit for permanent injunction to restrain the petitioner-defendant from transferring/alienating the suit property, as detailed in paragraph No.1 of the plaint, copy whereof is Annexure P-3. The claim set-up by the respondent-planitiff in the suit is that petitioner-defendant had entered into agreement to sell, in respect of the subject property, on 18.05.2023 for total sale consideration of Rs.42 crore. The petitioner-defendant had received Rs.4 crore, by way of six cheques and agreed to get the sale deed executed and registered in favour of the respondent-plaintiff or its nominees, on or before **30.11.2023**. Also, it was pleaded that respondent-plaintiff had always been ready and willing to perform his part of his contract. Further, it is asserted that on asking of the petitioner-defendant, the respondent-plaintiff had paid a sum of Rs.50 lakh, through RTGS to the petitioner-defendant on 05.07.2023, relating to which, the petitioner-defendant had given receiving confirmation. Furthermore, it is asserted that on 19.07.2023, the petitioner-defendant had returned part payment of Rs.50 lakh, in the bank account of the respondent-plaintiff, with dishonest and malafide intention. On being contacted, the respondent-plaintiff came to know that petitioner-defendant pulled out of the deal, as the price of the suit property had increased and hence, the money was returned. Thereupon, the respondent-plaintiff came to know about the defendant-petitioner having started negotiating to sell the suit property to some third person. Since, the date of execution/registration of the sale deed was yet to come, the respondent-plaintiff would not institute the suit for specific performance, as the said suit has not become mature and consequently, suit for injunction was filed.

In pursuance of the notice issued by learned trial Court, the petitioner-defendant made appearance through counsel and filed an application under Order 7 Rule 11 CPC, thereby, seeking rejection of the plaint, as filed by the respondent-plaintiff, inter alia, on the ground that the same is barred by law, in view of the bar contained in Section 41(h) of the Specific Relief Act, which provides that injunction cannot be granted, when an equally efficacious relief is available. As such, it was asserted that the plaint is barred by law and merits dismissal, at the threshold.

After hearing learned counsel for the parties and on appraisal of the material coming forth, vide impugned order dated 31.08.2023, the aforesaid application was dismissed.

Being aggrieved with the order of dismissal of the application, the petitioner-defendant had filed the present revision petition.

In pursuance of the notice issued, the respondent made appearance through counsel.

Learned counsel for the parties heard.

The basis of the contest between the parties to the lis is an agreement to sell dated 18.05.2023, copy whereof is Annexure P-2. Undisputedly, the agreement to sell was executed between the parties. The terms of the proposed transaction of sale, as such, are not disputed. The deal was struck for total sale consideration of Rs.42 crore, out of which. Rs.4 crore was given by the respondent-plaintiff, by virtue of six cheques, which fact, as such, is not disputed. The stipulated date for execution and registration of the sale deed was 30.11.2023. Also, it is not disputed that an amount of Rs.50 lakh was further credited, in the beneficiary account of the petitioner-defendant on 05.07.2023. Though, it is claim of the petitioner-defendant that cheques were not encashed earlier, on account of respondent-plaintiff having requested it, but anyhow, back entry of Rs.50 lakh, as such, is not disputed. The cheques were thereafter presented for encashment, in the month of August 2023, which were not encashed, for the reason 'funds insufficient'.

Such being the fact situation, prior to the stipulated date i.e. 30.11.2023 for execution and registration of the sale deed, finding all to be not well and there being reluctance, on the part of the petitioner-defendant, to safeguard the interest in the subject property, the suit for permanent injunction was filed, at the instance of the respondent-plaintiff, to restrain the petitioner-defendant from transferring/alienating the suit property, by way of lease deed etc., to any other person.

Now, it is the claim of the petitioner-defendant that the suit is barred, in view of the bar contained in Section 41(h) of the Specific Relief Act, which categorically provides that injunction cannot be granted, when an equally efficacious remedy/relief is available. To so substantiate his submissions, learned counsel for the petitioner-defendant has made reference to the plethora of case law, to emphasize that where the party concerned has made his intentions clear by his overt acts, herein in the present case, by virtue of reverse entry of Rs.50 lakh, therefore, it was incumbent upon the respondent-plaintiff to claim relief of specific performance, even, prior to the stipulated date of execution and registration of the sale deed.

In ***M/s Virgo Industries (Eng.) P. Ltd. vs. M/s Venturetech Solutions P. Ltd., 2012(4) RCR (Civil) 372***, the Hon'ble Supreme Court had held that pre-mature suit for specific performance of contract to sell is maintainable, while considering two civil suits having instituted for seeking a decree of permanent injunction and thereupon, the subsequent suit for performance of the agreement to sell were filed and both remained pending. In these circumstances, the observation with regard to the maintainability of the suit for specific performance, were given.

In, ***T.V.Ramakrishan Reddy vs. M. Mallapa & Anr, in Civil appeal No.5577 of 2021, decided on 07.09.2021***, the suit was filed for grant of perpetual injunction against the defendants to restrain them from interfering in the possession of the plaintiff and enjoyment of the suit property, wherein, he had asserted about having purchased the scheduled property, on the basis of the sale deed and being in peaceful possession of the suit property. Considering the same, it was held that the suit simplicitor for permanent injunction, without claiming declaration of title, as such, was not maintainable.

Even, in ***Balram Singh vs. Kelo Devi, 2022(4) RCR (Civil) 413***, relief of permanent injunction was sought to restrain the defendant from disturbing his possession in the suit property, on the basis of the agreement to sell, which was un-registered document. Similar was the factual position in ***Kehar Singh and others vs. Hira Singh and others, 2021(2) PLR 557***.

In, ***Anathula Sudhakar vs. P. Buchi Reddy (Dead) by LRs & Ors., 2008(2) RCR (Civil) 879***, the plaintiff had filed a suit for injunction, claiming possession, without seeking declaration of title.

There was distinction of the fact situation of the cases under consideration in the aforesaid case law and the case in hand.

Further, it is settled proposition of law that peculiar facts of each case, are to be examined, considered and appreciated, before applying any codified or judge-made law thereto. Sometimes, difference of even one additional fact or circumstance, can make the world of difference. In this regard, beneficial reference is made to decisions rendered in ***Padmausundara Rao and another vs. State of Tamil Nadu and others, 2002 (3) SCC 533***, ***Union of India vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75***, ***State of Orissa vs. Md. Illiyas, 2006 (1) SCC 275*** and ***State of Rajasthan vs. Ganeshi Lal, 2008 (2) SCC 533***.

Adverting to the case in hand, be it noted that it is suit for permanent injunction, filed with the hope and belief that defendant-petitioner could perform the questioned agreement, more particularly, when stipulated date has not elapsed.

Very true, that the respondent-plaintiff, simultaneously, at the time of filing of the suit for permanent injunction, could seek relief of specific performance of the questioned agreement, but however, various other circumstances spelt out, are also required to be taken note of. One has to keep in mind that the consideration amount, in the case in hand, is quite huge one. Though, specific performance could be sought, but however, specific performance also depends upon various facts. Not seeking specific performance, at first instance, will not ipso facto, debar the respondent-plaintiff from seeking relief of injunction, before the stipulated date, more particularly, considering the huge amount involved, for which the respondent-plaintiff may have also made arrangement for the payment, in the light of the target date fixed.

Such being the position, the suit for permanent injunction was maintainable and it cannot be said, at this stage, to be barred under Section 41(h) of the Specific Relief Act and thus, consequently, learned trial Court had rightly so concluded about the suit to be maintainable and dismissed the application under Order 7 Rule 11 CPC, filed by the petitioner-defendant. Thus, the impugned order warrants no interference.

Hence, the present revision petition sans merit and is hereby dismissed.

May 24, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**