IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-7299-2024
Date of Decision: 12.01.2026

HARISH SINGH BHALLA …Petitioner

Versus

MOHAN SINGH SACHDEVA …Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present:- Mr. Vaibhav Sehgal, Advocate for the petitioner.

VIKRAM AGGARWAL, J.(Oral)

The instant petition, preferred under Article 227 of the Constitution of India, assails the order dated 21.08.2024 (Annexure P-8) passed by the Court of Civil Judge (Jr. Division), Ludhiana, vide which the application filed by the respondent/plaintiff (Mohan Singh Sachdeva) under Order 38 Rule 5 of the Code of Civil Procedure 1908 (for short 'the CPC') was allowed.

2. The facts, as emanating from the revision petition, are that the respondent/plaintiff approached the petitioner/defendant in November 2015, to purchase shop No.7 (comprising of the property described in the plaint) situated at Taraf Mohal Bhagat, Hadbast No.164, Tehsil and District Ludhiana, Abadi Sohan Singh Nagar (hereinafter referred to 'as the disputed property'). Agreement to sell dated 05.12.2015 (Annexure P-1) was executed vide which the disputed property was agreed to be sold to the respondent/plaintiff for

a total sale consideration of Rs.1,49,00,000/-. A sum of Rs.25,00,000/- was paid as earnest money. Rs.30,00,000/- was to be paid on or before 01.04.2016 and the sale deed was to be executed and registered on 30.06.2016, upon payment of the balance sale consideration. It is the case of the petitioner/defendant that despite many reminders, the sum of Rs.30,00,000/- which was to be paid on or before 01.04.2016 was not paid nor did the respondent/plaintiff come forward for registration of the sale deed.

3. Under the circumstances, the petitioner/defendant served legal notice dated 19.02.2018 (Annexure P-2) intimating the respondent/plaintiff about the cancellation of the agreement to sell dated 05.12.2015 (Annexure P-3).

4. A suit for permanent injunction was also instituted by the petitioner/defendant against the respondent/plaintiff restraining him from interfering in any manner in peaceful possession of the petitioner/defendant over the suit property. The said suit was accompanied by an application under Order 39 Rules 1 and 2 CPC, which was allowed vide order dated 21.08.2024 (Annexure P-4.).

5. The respondent/plaintiff instituted a suit (Annexure P-5) for recovery of Rs.24,00,000/- against the petitioner/defendant. During the pendency of the same, an application under Order 38 Rule 5 CPC (Annexure P-6) was moved which was contested by the petitioner/defendant by way of a reply (Annexure P-7).

6. Vide the impugned order dated 21.08.2024, the trial Court allowed the application leading to the filing of the revision petition.

7. I have heard learned counsel for the petitioner.

8. Learned counsel submits that the trial Court erroneously allowed the application moved by the respondent/plaintiff without appreciating the controversy, without giving any cogent reasons and in violation of the settled law on the subject.

9. Learned counsel, while referring to the application and the impugned order, submits that the application was also based on presumptions, so is the impugned order. Learned counsel submits that as per the settled law, an order under Order 38 Rule 5 CPC is not to be passed in a mechanical manner and the Court, before passing such an order, should be satisfied about the intention of the defendant.

10. No one had put in appearance on behalf of the respondent/plaintiff despite notice.

11. I have considered the submissions made by learned counsel for the petitioner.

12. It is well settled that the object of Order 38 Rule 5 CPC is to prevent a defendant from defeating the realization of the decree that may ultimately be passed in favour of the plaintiff, either by attempting to dispose of or by removing from the jurisdiction of the Court, his movable or immovable property. It is settled that before exercising such a power, the Court should be satisfied that there is a reasonable chance of a decree being passed in the suit against the defendant. Reference in this regard can be made to the judgment of Hon'ble Apex Court in the case of ***M/s Raman Tech & Process Engg. Co. and Another Versus Solanki Traders*** **2008(2) SCC 302**.

13. Reverting to the facts of the present case, concededly, the agreement to sell was executed on 05.10.2015 which, as per the petitioner, was cancelled vide legal notice dated 19.02.2018 and the suit for recovery was filed on 04.12.2018. Indisputably, no suit for possession by way of specific performance of the agreement to sell dated 05.10.2015 was filed.

14. Coming to the application moved under Order 38 Rule 5 CPC, the only averment made therein was that the respondent/plaintiff apprehended that in order to frustrate the decree to be passed in the suit, the petitioner/defendant may dispose of the property in dispute to some person so that the decree under the suit cannot be satisfied. Apart from this, no specific averment was made as regards the alienation of the disputed property. If this was not enough, the trial Court passed the order again on presumptions as was the case in the application. The findings recorded by the trial Court make an interesting reading. It appears that the trial Court dealt with the case as an application under Order 39 Rules 1 and 2 CPC and not an application under Order 38 Rule 5 CPC. The relevant extract from the order passed by the trial Court reads as under:-

> **" In the present case, it is not disputed that agreement to sell dated 05.12.2015 got executed between the parties to the suit. It is also not disputed that applicant/plaintiff paid the earnest money of Rs.25,00,000/- to the respondent/defendant as the same is admitted by the respondent/defendant in another suit titled as "Harish Singh Bhalla Vs Mohan Singh" bearing CIS No.CS/3899/2018, in his plaint. The applicant has already paid a huge amount to the respondent at the time of execution of agreement to sell dated 05.12.2015.**

> **Which party has failed to comply with the terms and conditions of the agreement to sell dated 05.12.2015 is a matter of evidence. At this stage, this Court is of the view that if respondent disposed off the whole or any party of the suit property to some other person, then it would cause irreparable loss to the applicant and it would also lead to multiplicity of litigation. Hence, prima facie case is made out in favour of plaintiff/applicant and balance of convenience also tilt in his favour. Hence, the present application under Order 38 Rule 5 CPC stands allowed and the suit property is ordered to the attached till further orders."**

15. A perusal of the aforesaid extract shows that the trial Court proceeded to allow the application only on the basis of presumptions. This, in the considered opinion of this Court, is not the scope of the provision and for passing an order under Order 38 Rule 5 CPC, much more is required to be available on record.

16. That being so, the impugned order is found to be clearly unsustainable. The revision petition is, therefore, allowed and the order 21.08.2024 passed by the Court of Civil Judge (Jr. Division), Ludhiana is set aside and consequently, the application under Order 38 Rule 5 is dismissed.

(VIKRAM AGGARWAL)
JUDGE

12.01.2026
Himanshu

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