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The Defendant with Intent to Obstruct or Delay the Vs. Smt. Sabra and Another

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Court : Punjab and Haryana

Decided On : Jan-09-2014

Appellant : The Defendant with Intent to Obstruct or Delay the

Respondent : Smt. Sabra and Another

Judgement :

204 In the High Court of Punjab and Haryana at Chandigarh Civil Revision No.7042 of 2013 Date of decision: January 09, 2014.

M/s R.S.India Infra Power PVT.Ltd....Petitioner Versus Smt.

Sabra and anotherRespondents CORAM: HON'BLE MRS.JUSTICE SABINA
Present: Mr.N.D.Achint, Advocate for the petitioner.

Mr.HaRs.Aggarwal, Advocate for the respondents.

**** SABINA, J.

Petitioner has filed this petition challenging the order dated 06.08.2012 passed by the trial court, whereby an application moved by the petitioner under Order 38, Rule 5 Civil Procedure Code (hereinafter reads as 'CPC') was dismissed.

Learned counsel for the petitioner has submitted that execution of the agreement to sell in question was not in dispute.

Petitioner had filed suit for recovery of the earnest money to the tune of ` 38,51,000/-.

Learned counsel has further submitted that it was necessary in the interest of justice to direct the respondents to furnish security qua the said amount so that in case the suit filed by the petitioner was allowed, the petitioner would be in a position to recover the decretal amount.

Learned counsel for the respondents on the other hand has opposed the petition and has submitted that the petitioner had failed to fulfill the terms of the agreement to sell and amount of the earnest money paid by the petitioner stood be forfeited.

Order 38 Rule 5 CPC reads as under: Where defendant may be called upon to furnish security for production of property.-(1) Where, at any stage of a Rani Sarita suit, the Court is satisfied, by affidavit or otherwise, that 2014.01.14 11:03 I attest to the accuracy and integrity of this document Chandigarh Civil Revision No.7042 of 2013 -2- the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,- (a) is about to dispose of the whole or any part of his property, or (b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void.

Thus, as per above provision, the court had ample power to direct the defendant to furnish security so that the defendant may not obstruct or delay the execution of any decree.

In the present case admittedly agreement to sell dated 10.03.2010 was executed between the parties.

Respondents have received ` 38,51,000/- from the petitioner by way of earnest money.

Petitioner has filed suit for recovery of the earnest amount in question.

Both the sides have pleaded that the opposite party had failed to perform its part of the agreement.

Both the parties are yet to lead their evidence in support of their pleas.

It would be seen during trial as to whether the petitioner or respondents had failed to perform their part of the contract.

Since it is a Rani Sarita 2014.01.14 11:03 I attest to the accuracy and integrity of this document Chandigarh Civil Revision No.7042 of 2013 -3- case of recovery of amount of earnest money paid by the petitioner to the respondent in pursuant to the agreement to sell dated 10.03.2010, it would have been just and expedient for the trial court, to have directed the respondents to furnish the security qua the said amount so as to enable the petitioner to recover the decretal amount, in case the decree of recovery of amount in question is passed in its favour.

In case respondents are not directed to furnish security qua amount in question, it is possible that they may obstruct or delay the execution of the decree, if passed in favour of the petitioner.

Accordingly, this petition is allowed.

Impugned order dated 06.08.2012 is set aside.

Consequently, application filed by the petitioner under Order 38, Rule 5 CPC Annexure P-1 is allowed.

Respondents are directed to furnish security to the tune of ` 50,00,000/- before the trial court within a period of four weeks from today.

January 09, 2014 (SABINA) sarita JUDGE Rani Sarita 2014.01.14 11:03 I attest to the accuracy and integrity of this document Chandigarh

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