

CNR No.

CS/154/2016

Jagminder Singh Vs. Dalip Singh

Present: Sh.Vinod K.Chopra, Advocate for the plaintiff.
Sh.Gurpreet Singh Saini, Advocate for the defendant.

1. This order of mine shall dispose of an application filed by the defendants under order 37 rule 2(3) read with section 151 CPC for permission/leave to defend the suit unconditionally. It has been averred in the application that present suit, which has been filed under order 37 of CPC, is not maintainable because the parties have entered into agreement to sell and the respondent-plaintiff failed to perform his part of contract. It is further submitted that respondent/plaintiff did not supply the copy of the plaint and other documents relied upon by the respondent-plaintiff in the present suit along with the summons. The respondent-plaintiff has not followed the procedure as prescribed under order 37 of CPC. Hence the case was fixed for filing written statement by treating the suit as ordinary one. The applicants/defendants appeared in the above noted suit on 21.3.2016 and the case was fixed for written statement and thereafter the applicants/defendants filed an application for production of documents relied upon in the suit and then the applicants/defendants filed written statement/counter claim and then the respondent-plaintiff filed replication/written statement of counter claim. The above noted suit

filed by the respondent/plaintiff is false, frivolous and vexatious and the applicants/defendants want to defend the above noted suit by filing the written statement which is already on the case file. Moreover, the respondent/plaintiff has also filed the replication and written statement of the counter claim. The sale agreement of earnest money (Ikrarnama Sai Bai) dated 7.3.2013 is false, forged, fabricated and created one, as neither the defendant no.1 on his behalf and on behalf of defendant no.2 entered into the alleged sale agreement of earnest money (Ikrarnama Sai Bai) dated 7.3.2013 with the respondent-plaintiff nor received the alleged earnest money of Rs.5,00,000/- from the respondent/plaintiff nor contracted to sell the property in question for a consideration of Rs.75,00,000/- nor agreed to receive Rs.15,00,000/- on 11.03.2013 nor agreed to execute and get registered sale deed of the suit land in favour of respondent-plaintiff on or before 12.12.2013 nor agreed to deliver the possession of the suit land to the respondent-plaintiff on the date of execution and registration of the sale deed. The real facts are that vide agreement to sell dated 11.3.2013, the respondent/plaintiff agreed to purchase the land of the defendants for a total sale consideration of Rs.75,00,000/- and paid earnest money of Rs.22,00,000/- to applicants/defendants at the same time and agreed to get the sale deed

executed and registered from the applicants/defendants in his favour on 12.12.2013 after paying of balance sale consideration to the applicants/defendants. It was agreed in clause no.7 of the said agreement to sell in question that in case the respondent/plaintiff failed to get execute and register the sale deed from the applicants/defendants after paying the balance sale consideration, then the earnest money will be forfeited. The defendants came to know that the plaintiff has no balance sale consideration with him to execute and register sale deed from the applicants/defendants and as such the applicants/defendants through their counsel Sh.Gurpreet Singh Saini, Advocate, District Courts Fatehgarh Sahib sent a registered legal notice to the respondent/plaintiff on dated 22.11.2013 send on 25.11.2013 for informing the plaintiff to come present before the Sub Registrar, Fatehgarh Sahib for getting sale deed from applicants/defendants after paying balance sale consideration after informing the applicants/defendants, but the plaintiff did not turn up in the office of Sub Registrar, Fatehgarh Sahib for above said purpose and in this regard, the applicants/defendants remained present in the office of Sub Registrar, Fatehgarh Sahib on 12.12.2013; hence the earnest money paid by the respondent/plaintiff to the applicants/defendants stands forfeited. Thereafter, the respondent/plaintiff for returning the earnest

money from the applicants/defendants, with his clear mind in connivance with the alleged marginal witness forged and fabricated the alleged sale agreement of earnest money (Ikrarnama Sai Bai) dated 7.3.2013 i.e. in the back date for putting the pressure upon the applicants/defendants for returning the earnest money. So, in view of the facts and circumstances mentioned above, the respondent/plaintiff is not entitled to the relief claimed for in the plaint. It is further submitted that at the time of execution of agreement to sell dated 11.03.2013 it is specifically mentioned in clause No.12 that the applicants/defendants have sold the ownership to the respondent/plaintiff and the respondent/plaintiff will taken the possession himself. It is further submitted that value of the land in dispute is more than Rs.1,50,00,000/- but the applicants/defendants agreed to sell the land on less rate due to non possession of the property as mentioned in the agreement to sell. This fact was also well in the knowledge of the respondent/plaintiff. Moreover, the jamabandi also shows the real picture. In order to defend the suit, it is necessary to get the permission/leave from the Hon'ble court. The applicants/defendants have sufficient evidence in his favour to defend the above titled suit. If the present application is not allowed, then the applicants/defendants will suffer huge loss and irreparable injury which cannot be compensated in

any terms later on and his legal rights would be jeopardized. Due to inadvertence and above said reasons, the applicants/defendants could not file this application at the time of his appearance; hence necessary permission/leave to defend the above noted suit unconditionally is liable to be granted to the applicants/defendants. Lastly a prayer for acceptance of the application has been made by the applicants/defendants.

2. In reply to the said application, the plaintiff/respondent has denied all the material averments of the application and further contended that present suit filed under order 37 CPC is maintainable in the present form and the respondent/plaintiff has not failed to perform his part of the contract. The respondent/plaintiff supplied all the copies of the plaint and other documents relied upon by him in the present suit along with the summons at the time of service of the defendant/applicant. The suit filed by the respondent/plaintiff is neither false nor frivolous nor vexatious, as alleged. The agreement to sell dated 11.3.2013 was in continuation of Ikrarnama Sai Bai dated 7.3.2013 as fully described in the plaint. The amount of Rs.22 lacs was not paid by the respondent/plaintiff to the defendants on 11.3.2013, as alleged; rather, the plaintiff/respondent paid an amount of Rs.5 lacs to the defendants/applicants on 7.3.2013 vide Ikrarnama Sai Bai and Rs.17 Lacs on 11.3.2013 vide agreement to sell in

question. The alleged notice alleged to be dated 22.11.2013, alleged to have been sent on 25.11.2013, had not reached the plaintiff/respondent and the same shall be proved to be illegal, null, void and created one for the purpose of producing false evidence in their favour by the defendants/applicants. Due to mentioning of illegal term of possession and non-availability of a passage to the land in question, the plaintiff/respondent was not at all required to be present in the office of Sub Registrar, Fatehgarh Sahib on the fixed date, as it was incumbent upon the defendants/applicants to firstly deliver the possession of the suit land to the plaintiff/respondent and to provide a passage to the said land, but there was no passage to approach the suit land and the defendants got mentioned in the agreement that the possession of suit land will be taken by the plaintiff/respondent himself, as fully described in the plaint. The defendants/applicants, who are wrongdoers, have intentionally remained present in the said office in order to create false evidence in their favour and whereas, they were firstly of all required to comply with the above said mandatory and logical terms. Lastly, the plaintiff/respondent has prayed for dismissal of the application.

3. I have heard learned counsel for both the parties and have gone through the file very carefully.

4. By way of present application under order 37 rule 2 CPC, the applicant has sought leave to defend the suit unconditionally. It has been averred in the application that at the time of issuing the process to defendant, the prescribed procedure was not followed and from the very inception, suit was treated as ordinary one. Law is well established on the point that the court can treat a suit under order 37 CPC as an ordinary one and follow the procedure as followed for other suits. In the present case apparently the specific summons as required under order 37 CPC were not issued to the defendants, nor they were intimated in their notice that they have to put in appearance and seek permission/leave to defend within 10 days of their service. As such, to my mind the defendants did not have sufficient notice of the fact that the present suit has been filed under order 37 CPC. In such circumstances though there was no specific order for treating the suit as an ordinary one, however as the procedure followed for service of the defendants clearly depicts that the court had treated the suit as an ordinary one and not under order 37 CPC at its very inception at the time of issuing of process to the defendant. Therefore, the defendant has a right to file written statement and the suit would be pursued in an ordinary manner. I am fortified by the case law ***“Karam Singh (deceased) through LR Vs. Dalbir Singh @ Beera 2018(1)***

Law Herald (P&H) 935 Hon'ble Punjab & Haryana High Court"

wherein it has been held that where summons not issued within the requisite period and plaintiff failed to comply with the provisions under order 37 rule 3 and 4 CPC, consequently, the suit is deemed to be treated as a ordinary suit even if leave to defend was applied for and granted. The defendant has got the right to file written statement.

5. So far as the application for condonation of delay in filing the application for leave to defend the suit is concerned, as already observed, the suit is being treated as an ordinary one, moreover there is no provision for condonation of delay in filing of the application for leave to defend the suit under order 37 CPC. As such, the application under consideration stands disposed off.

6. Now to come up on 04.07.2018 for filing of written statement by the defendants.

Date of Order:14.5.2018
(Jatinder Kumar Sharma)
Next Date:04.07.2018
Purpose:_____

(Vipindeep Kaur)
Civil Judge(Senior Division),
Fatehgarh Sahib(UID No.PB0191)