

(2022-1)205 PLR 060

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice G.S. Sandhawalia.

M/S. SAINIK TEXTILE MILLS (P) LTD. – Petitioner,

versus

M/S. PRESTIGE DEVELOPERS and others – Respondents,

Civil Revision No.1556 of 2021 (O&M)

**Civil Procedure Code, 1908 (V of 1908) Order 39, Rules 1, 2 – Multi storey apartments were being raised on demised land – Admittedly the application under Order 39 Rule 1 & 2 CPC is still pending consideration, since the written statement had not been filed by the parties disclosing their true stand – In such circumstances, this Court is of the opinion that interim protection which has been granted shall be liable to be continued, though the present revision petition is being disposed of – On completion of the pleadings shall decide the application under Order 39 Rule 1 & 2 C.P.C.**

*Mr. Akshay Bhan, Senior Advocate with Mr. Amandeep Singh Talwar, for the petitioner. Mr. Narinder Hooda, Senior Advocate with Mr. Mukul Aggarwal and Mr. Karanvir Hooda, for respondent No.1. Mr. Ashok Aggarwal, Senior Advocate and Mr. Ashish Aggarwal, Senior Advocate with Ms. Meenu Goel, and Mr. Vaibhav Mittal, for respondent No.2 to 5.(The proceedings have been conducted through video conferencing, as per instructions.)*

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**G.S. Sandhawalia , J. (Oral) – (6<sup>th</sup> September, 2021) – Application for withdrawal of application filed under Section 8 of the Arbitration & Conciliation Act, 1996 An application for withdrawal of the application filed under Section 8 of the Arbitration & Conciliation Act, 1996, has been filed in the Court today. The same is duly supported by affidavit of Kartik Budhiraja Director of respondent No.2. Office shall number the same.**

Keeping in view the above, hearing of the main revision petition is preponed from 23.09.2021 to today and all the applications filed including the one for preponement of the date are disposed of accordingly.

Reply filed to the application by counsel for the petitioner is also taken on record. Photocopy of the record which was summoned vide order dated 01.09.2021 has also been received.

CMs stand disposed of.

CM-8063-CII-2021

Application to place on record Annexures P-10 to P-14 is allowed. The same are taken on record. Office to append the same at the appropriate place.

CM stands disposed of.

*Main case (O&M)*

2. The challenge in the present revision petition filed under Article 227 of the Constitution of India is to the order dated 27.07.2021 (Annexure P-8) passed by the Learned Civil Judge (Jr. Division), Dera Bassi in the suit titled as '*M/s Sainik Textile Mills (P) Ltd. v. M/s Prestige Developers & others*'. Vide the said order the Trial Court has allowed the application under Section 8 of the Act and suit was disposed of in view of the allowing of the application, on account of the arbitration clause inter se petitioner and respondents No.2 to 5, as per the Joint Development Agreement (JDA) dated 20.06.2017. Though an affidavit has now been filed before this Court for withdrawal of the application, but one loose sight of the fact that on account of the documents placed on record by the parties themselves, it has come to the notice of this Court that an alleged Memorandum of Understanding (MOU) dated 02.02.2021 was executed inter se all the three contesting parties i.e. the plaintiff, the initial developer M/s Vera Developers (P) Ltd. and subsequent developer M/s Prestige Developers Ltd. The relevant clauses of the MOU reads as under:-

"7. That the Joint Development Agreement dated 20 June 2017 and all previous commitments and future payment commitments/issued cheques against the Joint Development Agreement shall stand cancelled and null and void after signing this memorandum of understanding.

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12. That all the previous documentations receipts/agreements/JDA/Cheques or any other document executed between any/all parties in regard to above stated land shall stand cancelled and null and void.

13. This MOU supersedes all previous agreements/documents/commitments between all the parties and their successors are bound on all above mutually agreed terms and conditions as mentioned in Para 1 to Para 13.

3. Thus, it is apparent that though the said document is objected to and disputed by the petitioner's counsel but the respondents themselves cancelled the original JDA and in spite of the fact that there was no clause for arbitration, the application for appointment of arbitrator was still pressed before the Trial Court, leading to the passing of the impugned order dated 27.07.2021.

4. It is, thus, apparent that valuable judicial time has been wasted while dealing with this matter, both at the trial level and in the supervisory jurisdiction of this Court. However, keeping in view the fact that the applicant respondents No.2 to 5 themselves have now sought withdrawal of the application, there could be no dispute as such that the order dated 27.07.2021 necessarily will have to be set aside, which anyway is also not being

objected by the petitioner-plaintiff. It is also to be noticed that this Court while summarising the dispute as such had passed the order regarding the stay on alienation of land in any manner and non-creation of third party rights. The order dated 16.08.2021 reads as under:-

"Inter-alia contends that Joint Development Agreement dated 20.06.2017 (Annexure P-1) of 5.66 acres was entered into with respondents No.2 to 5 and the petitioner was to receive Rs.69 crores being 29% of the agreed amount and power of attorney dated 20.06.2017 (Annexure P-2) registered on 03.10.2017 was also executed. It is submitted that there was no such right of absolute sale as per the terms of the said power of attorney and development of the land and to issue the allotment letters, to receive sale consideration on the agreed terms was permitted. The said respondents sold the land to respondent No.1 on 15.02.2021 for Rs.5 crores leading to the filing of the suit challenging the said sale deed.

Vide the impugned order dated 27.07.2021 (Annexure P-8), the application under Section 8 of the Arbitration and Conciliation Act, 1996 referring the matter for arbitration has been allowed. It is, accordingly argued that respondent No.1 was not party to the Arbitration Agreement and therefore, the order suffers from infirmity. He also submits that once the sale deed, as such, has been challenged on the ground of fraud and reservation of right for registration of FIR has also been kept open, since the cheques issued by respondents No.2 to 5 have been dishonoured, the Civil Court has the jurisdiction.

Notice of motion.

Mr. Mukul Aggarwal, Advocate accepts notice on behalf of respondent No.1 and prays for time to file reply.

To come up for service of respondents No.2 to 5 for 23.09.2021.

In the meantime, the respondents shall maintain status quo regarding alienation of land in any manner and will not create 3rd party rights."

5. Thus, this Court is of the opinion that once the order is set aside, the matter has to go back to the Civil Court for necessary adjudication

6. A perusal of the zimni orders would also go on to show that the suit had been filed in summer vacations and short dates had been given in as much as matter was adjourned repeatedly in the month of June itself. Apparently, the reason for the short date was that counsel for the petitioner was also pressing on the stay application, which would be clear from order dated 21.06.2021 also and since multi storey apartments were being raised. Admittedly the application under Order 39 Rule 1 & 2 CPC is still pending consideration, since the written statement had not been filed by the parties disclosing their true stand. In such circumstances, this Court is of the opinion that interim protection which has been granted shall be liable to be continued, though the present revision petition is being disposed of.

7. Resultantly, directions are issued that the defendants shall file their written statements by 13.09.2021. The plaintiff-petitioner shall file replication to the same by 17.09.2021 and,

thereafter the Court on completion of the pleadings shall decide the application under Order 39 Rule 1 & 2 CPC. Accordingly, the Trial Court is requested to decide the application by 23.09.2021 and till then order passed by this Court shall remain in operation. In case proceedings cannot be decided by the 23.09.2021, it will be open to the Trial Court to pass an interim order for stay for another period of one week. However, the said application is to be positively decided by 30.09.2021.

8. Keeping in view of the above, this Court is of the opinion that defendants/respondents shall pay a sum of Rs.5 lakhs by way of donation to the PGI Poor Patient Funds and produce the receipt before the Trial Court. Only on proof of the deposit, the Trial Court shall thereafter proceed as per above directions.

9. The present revision petition stands disposed of in the above said terms.

R.M.S.

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*Petition disposed of.*