

2020 C L C 1074

[Lahore]

Before Muhammad Sajid Mehmood Sethi, J

NIAGARA MILLS (PVT.) LTD.----Appellant

Versus

WISAL AHMED MONOO and another----Respondents

F.A.O. No.364 of 2016, decided on 2nd June, 2016.*

(a) Specific Relief Act (I of 1877)---

----Ss. 12 & 54---Civil Procedure Code (V of 1908), O. XXXIX, Rr. 1 & 2---Suit for specific performance and permanent injunction---Interim injunction, refusal of--
-Scope---Suit for possession through specific performance and permanent injunction alleged that the respondents had agreed to sell the suit property and that they had received the cheques of earnest money but had not honoured the transaction---Application for grant of interim injunction was dismissed by the trial court---Validity---Appellant had neither produced original copy of the alleged agreement to sell nor had produced the proof of encashment of cheques---Ingredients of the valid contract did not exist in the matter---Appellant had not been able to prove a prima facie/arguable case for grant of temporary injunction in its favour---No irreparable loss would be caused to appellant if the temporary relief was refused---Neither any agreement nor any correspondence was transformed into a valid contract nor any consideration amount was shown to be paid by appellant---Matter required deeper appreciation of evidence---Order passed by trial court was in accordance with law---Appeal, being devoid of merits, was dismissed.

(b) Civil Procedure Code (V of 1908)---

----O.XXXIX, Rr.1 & 2---Interim injunction---Equitable relief---Ingredients---Scope---Injunction being equitable relief can be granted in aid of justice, but not otherwise---No injunction can be issued unless all ingredients i.e. prima facie case, balance of convenience and irreparable loss to the aggrieved party co-exist.

Muhammad Amir Nawaz Bhatti for Appellant.

Muhammad Saqib Jillani for Respondents.

ORDER

MUHAMMAD SAJID MEHMOOD SETHI, J.---Through instant appeal, order dated 26.05.2016 passed by learned trial Court has been assailed whereby application for grant of injunction filed by appellant was dismissed.

2. Brief facts of the case are that appellant / plaintiff filed a suit for possession through specific performance and permanent injunction, alleging therein that

respondents / defendants had shown interest to sell a constructed house measuring 10-Kanals, 12-Marlas and 05-Sarsais, fully detailed in para No.1 of instant appeal, at the rate of Rs.20,79,000/- per Marla, in lieu of total consideration of Rs.44,20,47,375/-. It was agreed between the parties that earnest money to the tune of Rs.10,00,00,000/- would be paid to the respondents on the eve of execution / signing of agreement to sell and balance amount to the tune of Rs.34,20,47,375/- till 31.03.2016. Allegedly, appellant requested to respondent No.1 to send copies of CNICs, so that agreement to sell could be drafted, and in this regard, correspondence was carried out between the parties. Accordingly, as per assertions, final draft of agreement to sell was approved and cheques amounting to Rs.10,00,00,000/- were handed over to respondents, but thereafter, respondents did not honour the transaction. The suit was accompanied by an application for grant of interim injunction. The suit as well as stay application was resisted by respondents by filing written statement / written reply. After hearing the arguments, learned trial Court dismissed the said application vide order dated 26.05.2016. Through instant appeal, the aforesaid order has been assailed.

3. Learned counsel for appellant submits that exchange of revenue and other allied documents demonstrate dealing between the parties, which passed the litmus test based on the fundamental ingredients of a contract i.e. offer, proposal, acceptance and consideration. He adds that the impugned order is not, thus, sustainable in the eye of law.

4. With permission, Mr. Muhammad Saqib Jillani, Advocate, has entered appearance and submitted power of attorney on behalf of respondents, in order to address his arguments. He defends the impugned order and submits that appellant has failed to point out any illegality or legal infirmity in the impugned order.

5. Arguments heard. Available record perused.

6. The operative part of impugned order dated 26.05.2016 is reproduced hereunder:-

"6. The petitioner / plaintiff has alleged the execution of the alleged impugned agreement to sell in his favour but he has not produced the original copy of the alleged impugned agreement to sell. He has produced along with the plaint unattested photocopy of the alleged agreement to sell but perusal thereof reveals that the same has not been signed and thumb impressed by any of the parties and witnesses. The petitioner / plaintiff in paragraph No.10 of the plaint has alleged to have issued two cheques in the name of the respondents / defendants but he has not produced any record of encashment thereof by the respondents / defendants nor has he produced any record of transfer of funds / amount mentioned in the said alleged cheques to the respondents / defendants' bank account. Moreover, the petitioner / plaintiff has filed his suit for possession through specific performance of agreement to sell which means that the petitioner / plaintiff is not in possession of the suit property. So far as the alleged execution of the impugned alleged agreement to sell is concerned, the petitioner / plaintiff is yet required to produce his evidence to prove the offer and acceptance between the parties. He is also required to produce his evidence to prove the

delivery of the impugned alleged cheques to the respondents / defendants as alleged in paragraph No.10 of the plaint. Moreover, the petitioner / plaintiff has also based his case on the e-mail but he has not produced any authentic and material record thereof, procured from the concerned quarters.

7. In view the above, the petitioner / plaintiff has failed to make out an arguable case in his favour. Admittedly, the petitioner / plaintiff is not in possession of the suit property, the balance of inconvenience also does not lie in his favour and similarly, he is not likely to suffer irreparable loss. Consequently, the petition for temporary injunction is hereby rejected."

7. Perusal of the above reproduced operative part of impugned order shows that neither original copy of the alleged agreement to sell has been produced nor the proof of encashment of cheques has been submitted by the appellant, therefore, ingredients of a valid contract do not exist in the matter.

8. Appellant has not been able to prove a prima facie / arguable case for grant of temporary injunction, in its favour. Even otherwise, no irreparable loss would be caused to appellant at this stage, if temporary relief is refused. Neither any agreement nor any correspondence was transformed into a valid contract nor any consideration amount was shown to be paid by appellant. The matter requires deeper appreciation of evidence. At this stage, no case for grant of interim injunction is made out.

9. Injunction being equitable relief, could be granted in aid of justice, but not otherwise. Appellant has failed to prove the ingredients necessary for grant of temporary injunction as required under Order XXXIX, Rules 1 and 2, C.P.C. It is well-settled that no injunction could be issued unless all ingredients i.e. prima facie case, balance of convenience and irreparable loss to the aggrieved party were existed. The order passed by learned trial Court dismissing appellant's application for grant of temporary injunction, is in accordance with law. No irregularity or illegality in the said order was found, thus the same is not liable to be interfered with in the exercise of appellate jurisdiction of this Court.

10. Resultantly, instant appeal, being devoid of any merits, is hereby dismissed. No order as to costs.

SA/N-11/L Appeal dismissed.

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