
(2017) 01 P&H CK 0166
In the Punjab And Haryana At Chandigarh
Case No : CR No.8577 of 2016

M/s Active Promoters Pvt. Ltd.

APPELLANT

Vs

Assotech Realty Private Limited

RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

Commercial Courts, Commercial Division And Commercial Appellate Division Of High Courts Act, 2015 — Section 8
Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 85
Registration Act, 1908 — Section 33

Citation : (2017) AIR(Punjab) 41 : (2017) 1 LawHerald 396

Hon'ble Judges : Mr. Rameshwar Singh Malik, J.

Bench : Single Bench

Advocate : Mr. Aashish Chopra, Advocate, for the Petitioner; Mr. Pankaj Jain, Advocate, for the Respondent No. 1

Final Decision : Dismissed

Judgement

Rameshwar Singh Malik, J. (Oral) - Present civil revision petition, under Article 227 of the Constitution of India, at the hands of defendant No.2 in the suit for specific performance of the sale agreement, filed by plaintiff-respondent No.1, is directed against the order dated 5.11.2016 (Annexure P-7), whereby an application moved by petitioner-defendant No.2 for impounding special power of attorney, it having been executed outside India, was dismissed by the learned trial Court.

2. Notice of motion was issued.

3. Heard learned counsel for the parties.

4. Learned counsel for petitioner submits that the learned trial Court-cum-Commercial Court misdirected itself, while passing the impugned order, dismissing the application of the petitioner. The power of attorney in question ought to have been impounded, it being impermissible in law. Neither the special

power of attorney was executed on stamp paper of appropriate value nor it was appropriately stamped, at the time of its execution outside India. Since the special power of attorney was produced in the Court in India, after expiry of three months from the date of its execution, it was liable to be impounded. Stamp duty and penalty was required to be deposited by the persons seeking production of said power of attorney in evidence. He also argued that the objection was raised on behalf of the petitioner on 20.7.2009 itself, when the said document was sought to be tendered in evidence, regarding the admissibility of special power of attorney, referred to herein above. It was next contended that once the objection regarding inadmissibility of a document was raised for want of affixation of stamp duty, the learned trial Court was under legal obligation to decide the same at the earliest. However, since the learned trial Court failed to appreciate the above-said relevant aspects of the matter, while passing the impugned order, the same is liable to be set aside. In support of his contentions, he places reliance on the following judgments:-

1. K.K. Ray (Private) Ltd. v. Calcutta, 1967 AIR (Calcutta) 636
2. Shalimar Chemical Works Limited v. Surendra Oil and Dal Mills (Refineries) and Others (2010) 8 Supreme Court Cases 423
3. Shalini Shyam Shetty and Another v. Rajendra Shankar Patil (2010) 8 Supreme Court Cases 329
4. Man Kaur (Dead) by LRs. v. Hartar Singh Sangha (2010) 10 Supreme Court Cases 512
5. Jugraj Singh and Another v. Jaswant Singh and Another 1971 AIR (SC) 761
6. Malaysian Airlines Systems Bhd v. M/s.Stic Travels (P) Ltd., 2001 (2) RCR (Civil) 45
7. Chanan Kaur alias Channo v. Pakhar Singh and others 2004 (1) RCR (Civil) 113
8. Sharomani Gurdwara Parbandhak Committee, Amritsar v. Ram Sarup 2004 (4) RCR (Civil) 541
9. REI Agro Ltd. v. UBS AG & Ors. 2015 SCC online Cal 2557
10. Salim Badsha v. Md. Naziruddin Sk. & Ors, 2016 SCC Online Cal 654.

He prays for allowing the present revision petition, by setting aside the impugned order.

5. Per contra, learned counsel for respondent No.1-plaintiff vehemently contended that the case of defendant No.2-petitioner was based on technicalities alone. Petitioner had been proceeding on a malafide approach right from day one with a view to delay the proceedings. Suit for specific performance of the sale agreement is pending between the parties for the last more than 11 years. Defendant-petitioner is trying to delay the suit proceedings on one or the other flimsy grounds, proceeding on a malafide approach. He refers to the application

moved by the petitioner as Annexure P-5 from pages 97 to 99 of the paper-book, to contend that the power of attorney Ex.PW5/1 was executed by Naresh Nagpal in favour of Ravinder Parkesh Seth on 2.7.2009, strictly in accordance with law. Said genuine and authenticated document was tendered in evidence on behalf of the plaintiff as early as on 20.7.2009 i.e. within a period of 20 days from its execution. The special power of attorney in question (Annexure P-4) is self-contained, authentic and genuine document. It was notarised by the Notary Public of State of Florida, strictly in accordance with law of America, which satisfies the requirement of law contained in Section 85 of the Indian Evidence Act as well as Section 33 of the Indian Registration Act. He also submits that the learned trial Court is yet to consider and appreciate the evidentiary value of this document. Learned counsel for respondent No.1 places reliance on Section 8 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 ("the Commercial Courts Act" for short) , to contend that the present revision petition is not maintainable, the impugned order, being interlocutory order passed by a Commercial Court. However, this contention was sought to be controverted by the learned counsel for the petitioner, contending that supervisory jurisdiction of this Court under Article 227 of the Constitution of India cannot be taken away by any statute and present revision petition would be very much maintainable. To buttress his arguments, learned counsel for respondent No.1 places reliance on the following judgments:-

1. Punjab National Bank v. O.C.Krishnan and Other, AIR 2001 Supreme Court 3208
2. Ajay Bansal v. Anup Mehta and Ors., AIR 2007 Supreme Court 909
3. Rajesh Wadhwa v. Sushma Govil, AIR 1989 Delhi 144
4. Abdul Jabbar and Others v. 2nd Additional District Judge, oral and other, AIR 1980 Allahabad 369
5. National and Grindlays Bank Ltd. v. M/s World Science News and Others, AIR 1976 Delhi 263
6. K.K. Ray (Private) Ltd. v. Calcutta, AIR 1967 Calcutta 636
7. Gutari v. Shiv Charan and others, 1980 HLR 273
8. Jugraj Singh and Another v. Jaswant Singh and Others, 1970(2) Supreme Court Cases 386
9. Chanan Kaur alias Channo v. Pakhar Singh and Others, 2004(1) R.C.R.(Civil) 113
10. Sharomani Gurdwara Prabandhak Committee, Amritsar v. Ram Sarup, 2004(4) R.C.R.(Civil) 541
11. M/s Northland Traders v. Bank of Baroda, 1995(3) R.R.R.655
12. Union Bank of India v. M/s Veejay Enterprises and Others, 2014(1) PLR 246

13. Malaysian Airlines Systems Bhd. v. M/s Stic Travels (P) Ltd. AIR 2001 Supreme Court 358
14. Javer Chand and Others v. Pukhraj Surana, 1961 AIR (SC) 1655
15. Shyamal Kumar Roy v. Sushil Kumar Agarwal, 2007 (1)R.C.R.(Civil)321
16. R.D.Upadhyay v. State of A.P. And Others, AIR 2006 Supreme Court 1946
17. Ballabhdas Mathurdas Lakhani and Others v. Municipal Committee, Malkapur, AIR1970 Supreme Court 1002
18. Anil Kumar Neotia and Others v. Union of India and Others, AIR 1988 Supreme Court 1353
19. Indian Oil Corporation Ltd. v. Municipal Corporation and another, AIR 1995 Supreme Court 1480
20. Jugraj Singh and another v. Jaswant Singh and others, 1970 (2) SCC 386.

He concluded by submitting that since the learned trial Court has rightly passed the impugned order, the instant revision petition is liable to be dismissed with costs.

6. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case in hand, the impugned order passed by the learned trial Court deserves to be upheld. The revision petition is liable to be dismissed. To say so, reasons are more than one, which are being recorded hereinafter.

7. So far as the facts of the case are concerned, these are hardly in dispute. Plaintiff-respondent No.1 filed a suit for specific performance of the sale agreement dated 2.2.2005. Defendant-petitioner agreed to sell his land described in the plaint in favour of plaintiff for an amount of Rs.2,40,50,000/-. A written sale agreement was executed between the parties on 2.2.2005. Defendant-petitioner received an amount of Rs.24,05,000/- vide cheque No.249535 dated 2.2.2015 drawn on Canara Bank of Sector-1, Noida, from the plaintiff as earnest money towards part sale consideration. When the defendant failed to execute the sale-deed, plaintiff-respondent No.1 filed Civil Suit No.258 of 2005, seeking specific performance of the agreement to sell dated 2.2.2005, which is pending consideration before the learned trial Court. Suit is at the stage of the plaintiff evidence. When the plaintiff sought to tender in his evidence a copy of special power of attorney (Annexure P-4) dated 2.7.2009 before the learned trial Court on 20.7.2009 as Ex.P5/1, no objection was raised by the petitioner. However, after expiry of a period of about three years, defendant No.2-petitioner moved the application Annexure P-5 for impounding the special power of attorney.

8. A bare reading of the special power of attorney (Annexure P-4) would make it crystal clear that neither any right was sought to be relinquished nor created through this document but this special power of attorney was limited to the extent that Ravinder Parkash Seth was appointed as a special power of attorney, to depose on behalf of Naresh Nagpal in the civil suits for specific performance. This special power of attorney was authenticated by the Notary Public of the State of Florida (USA), who duly attested the same. Further, a combined reading of the special power of attorney (Annexure P-4), application moved by the petitioner before the learned trial Court at Annexure P-5, reply filed by plaintiff at Annexure P-6 and also the impugned order (Annexure P-7) passed by the learned trial Court, would make it crystal clear that the plea raised on behalf of the petitioner is wholly misconceived and the impugned order deserves to be upheld.

9. As far as the judgments relied upon by the learned counsel for the petitioner are concerned, there is no dispute about the law laid down therein. However, close perusal of the cited judgments makes it clear that none of these judgments is of any help to the petitioner, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon''ble Supreme Court in *Padmasundara Rao (Dead) v. State of Tamil Nadu and others*, 2002 (3) SCC 533, *Union of India v. Amrit Lal Manchanda and others*, 2004 (3) SCC 75, *State of Orissa v. Md. Illiyas*, 2006 (1) SCC 275 and *State of Rajasthan v. Ganeshi Lal*, 2008 (2) SCC 533.

10. Section 8 of the Commercial Courts Act bars the revision petition against an interlocutory order. Section 8 of the Commercial Courts Act reads as under:-

"8. Bar against revision application or petition against an interlocutory order:- Notwithstanding anything contained in any other law for the time being in force, no civil revision or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court."

11. As the above-said Section 8 of the Commercial Courts Act starts with non obstante clause, the legislative intent becomes clear and this Court would have no hesitation to conclude that the provisions contained in Section 8 of the Commercial Courts Act are mandatory in nature. However, owing to the ambit and scope of supervisory jurisdiction of this Court under Article 227 of the Constitution of India, it was thought appropriate to decide the case on merits instead of maintainability.

12. An identical question fell for consideration before the Hon''ble Supreme Court in *Jugraj Singh's case* (supra). In para 8 of its judgment, the Hon''ble Supreme Court laid down the law as under:-

"The short question in this case is whether Mr. Chawla possessed such a power of attorney for executing the document and for presentation of it for registration. Now, if we were to take into account the first power of attorney which was executed in his favour on May 30, 1963, we would be forced to say that it did not comply with the requirements of the law and was ineffective to clothe Mr. Chawla with the authority to execute the sale deed or to present it for registration. That power of attorney was not authenticated as required by section 33 of the Indian Registration Act which in the case of an Indian residing abroad, requires that the document should be authenticated by a Notary Public. The document only bore the signature of a witness without anything to show that he was a Notary Public. In any event there was no authentication by the Notary Public (if he was one) in the manner which the law would consider adequate. The second power of attorney however does show that it was executed before a proper Notary Public who complied with the laws of California and authenticated the document as required by that law. We are satisfied that power of attorney is also duly authenticated in accordance with our laws. The only complaint is that the Notary Public did not say in his endorsement that Mr. Chotia had been identified to his satisfaction. But that flows from the fact that he endorsed on the document that it had been subscribed and sworn before him. There is a presumption of regularity of official acts and we are satisfied that he must have satisfied himself in the discharge of his duties that the person who was executing it was the proper person. This makes the second power of attorney valid and effective both under section 85 of the Indian Evidence Act and section 33 of the Indian Registration Act."

13. The laid down by the Hon"ble Supreme Court in Jugraj Singh's case (supra) has been consistently followed in the later judgments as well, which have been referred to herein above. It was also held by the Hon"ble Supreme Court in Shyamal Kumar Roy's case (supra) that once a document has been tendered in evidence and accepted by the court without objection by the opposite party, said opposite party cannot subsequently raise the objection, with regard to admissibility of such a document in evidence, on the ground of insufficiency of stamp duty. It is relevant to note here that Shyamal Kumar Roy's case (supra) was also a case for specific performance.

14. Similar question came up for consideration before this Court in Chanan Kaur's case (supra) and in Union Bank of India's (supra). It was consistently decided that such a document is admissible in evidence, because it would meet the requirement of law contained in Section 85 of the Indian Evidence Act and Section 32 of the Indian Registration Act. Having said that, this Court feels no hesitation to conclude that the learned trial Court committed no error of law, while passing the impugned order and the same deserves to be upheld.

15. It is also pertinent to note here that the learned trial Court has not commented upon the evidentiary value of the document in question so far and rightly so, as that stage is yet to come. It also goes without saying that the

parties would be at liberty to raise their plea about the evidentiary value of any exhibited document, at the appropriate stage of the litigation, however, in accordance with law. The main plank of the petitioner, at this stage, seems only to delay the suit proceedings for one or the other reason, raising unwarranted, belated as well as technical grounds, without there being any substance in it. Further, since the learned trial Court has examined, considered and appreciated all the relevant aspects of the matter in the correct perspective, while passing the impugned order, which has not been found suffering from any patent illegality or perversity, the same deserves to be upheld, for this reason also.

16. No other argument was raised.

17. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the learned trial Court was well within its jurisdiction to pass the impugned order. Accordingly, the impugned order is upheld. The instant revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out

18. Resultantly, with the above-said observations made, the present revision petition stands dismissed, however, with no order as to costs.