

(2018) 11 P&H CK 0148

In the Punjab And Haryana At Chandigarh

Case No : Review Application In Writ Petition No. 373 Of 2018 In Civil Writ
Petition No. 18374 Of 2018 (O&M)

M/S Balaji Enterprises

APPELLANT

Vs

Haryana Financial Corporation & Another

RESPONDENT

Date of Decision : 30-11-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 114, Order 47 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 19, 226

Citation : (2018) 11 P&H CK 0148

Hon'ble Judges : Ajay Kumar Mittal, J; Avneesh Jhingan, J

Bench : Division Bench

Advocate : Shiv Kumar Sharma

Final Decision : Dismissed

Judgement

1. This is a review application filed under Section 114 and under Order XLVII Rule 1 of the Code of Civil Procedure (for short 'the Code') for reviewing the order dated 22.10.2018 passed by this Court in CWP No. 18374 of 2018.

2. On 22.10.2018, the writ petition was dismissed as withdrawn with liberty to the petitioner to take recourse to the alternative remedies available to it, in accordance with law.

3. Learned counsel for the applicant/petitioner contends that he had requested the Court for dismissal as withdrawn under the impression that the same is being dismissed with the liberty for filing fresh with better particulars. However, the same was dismissed as withdrawn on the statement of counsel with liberty to approach the learned Civil Court, which may not be an effective remedy for the applicant/petitioner.

4. In view of afore-said submission, the present application is allowed and order dated 22.10.2018 is recalled.

5. At the request of learned counsel for the petitioner, the main case is taken up

for hearing on merits today itself.

The present writ petition has been filed seeking directions to respondents No.1 and 2 to refund the entire amount paid by the petitioner alongwith expenses arising out of an agreement dated 30.07.2012

2. Haryana Financial Corporation through its Managing Director; Branch Manager, Haryana Financial Corporation, Gurgaon and Corporation Bank, Dharuhera through its Branch Manager have been arrayed as respondents No.1 to 3 respectively in the writ petition.

3. The petitioner is a sole proprietorship concern. Respondent No.1 issued an auction notice for sale of land measuring 7 kanals 18 marlas with building and machinery situated opposite Rao Tula Ram Stadium, Delhi Road, Rewari. The reserve price was kept as Rs.969.87 lakhs. The petitioner participated in the auction and was the highest bidder by making bid of Rs.10,95,00,000/-. An agreement to sell dated 30.07.2012 was entered between petitioner and respondent No.1. The petitioner paid Rs. 2,73,75,000/- as earnest money. The balance amount was to be paid alongwith interest in installments upto 01.06.2015. The physical possession of the property was handed over to the petitioner after payment of 25% of the total amount. The petitioner paid an amount of Rs. 6,73,00,000/- upto 17.09.2013. There was a default in payment of the balance amount. Respondents No.1 and 2 vide letter dated 12.09.2014, forfeited the entire amount deposited by the petitioner and initiated action to take back the possession of the property.

4. The petitioner filed a suit for declaration and permanent injunction before Civil Judge, Rewari alongwith an application under Order XXXIX Rule 2 of the Code seeking interim relief. Vide order dated 07.11.2014, the application for interim injunction was dismissed. The said order was assailed in appeal before the District Judge, Rewari. The appeal was accepted vide order dated 29.02.2016 and order dated 07.11.2014 was set aside. Respondents No.1 and 2 were directed not to alienate the suit property to the third party during the pendency of the suit. The order of District Judge, Rewari was challenged by respondents No.1 and 2 by filing a civil revision, the same is pending before this Court.

5. During the pendency of the suit petitioner came to know that there is short fall in the area auctioned by respondents No. 1 and 2. An application was moved before the Civil Court for appointment of Local Commissioner to ascertain the exact short fall of the land. Local Commissioner was appointed and submitted his report on 05.02.2016. As per the report, there is a short fall of 13 marlas in the suit property.

6. The respondents No.1 and 2 filed objections against report of local commissioner. The objections are pending for adjudication. In the meantime, the petitioner requested respondents No.1 and 2 to get the measurement of the land done at their end. The request was acceded to and report dated 07.12.2017 was prepared.

7. In pursuance of report dated 07.12.2017, petitioner made a proposal for amendment of the terms of earlier agreement. The said proposal was declined by the respondents. Thereafter, the petitioner moved a representation dated 02.06.2018 for the refund of entire amount. It would be pertinent to note here that the proposal made by the petitioner to respondents No.1 and 2 has not been produced. After making representation for the refund of money the present writ petition has been filed.

8. The petitioner is already availing a remedy by way of civil suit. During the pendency of civil suit, an application was moved for appointing local commissioner to measure the suit property. The prayer made in the representation is on the basis that there is a short fall in the suit property.

9. The relief claimed in the present petition is an offshoot of the civil suit, already pending before the civil court. Moreover, there are disputed questions of fact involved.

10. After perusing the paper book and hearing the learned counsel for the petitioner, we find that the petitioner is already availing a remedy by way of a civil suit. Even otherwise, certain disputed questions of fact have been raised, which cannot be adjudicated in the writ petition under Article 226 of the Constitution of India.

11. Examining the scope of writ jurisdiction under Article 226 of the Constitution of India where disputed questions of fact are involved, a Division Bench of this Court in *N.C.Mahendra v. Haryana State Electricity Board and others*, AIR 1984 Punjab 26 had laid down that ordinarily a writ would not issue in favour of a person where disputed questions of facts are raised. The relevant portion reads thus:-

"12. An identical legal position ensures within this country and High Courts have repeatedly held that the exercise of jurisdiction under Article 226 of the Constitution is discretionary and not obligatory without being exhaustive, it is settled law that the Court would not ordinarily issue a writ in favour of a person, who has (i) an adequate alternative remedy, (ii) who is guilty of delay which is unexplained, (iii) who is guilty of conduct disentitling him to relief, (iv) where the interest of justice do not require that relief should be granted, (v) where the petitioner raises a disputed question of fact, (vi) where the grant of writ would be futile, and (vii) where the impugned law has not come into force. It would follow from the above that the grant or refusal of a writ is within the judicial discretion of the Court and that indeed is the line which divides the extra ordinary remedy from the ordinary one by of a civil suit." (Emphasis supplied).

The Supreme Court in *State Cadre Authority and another v. K.S.Bajpal and others*, (1990) (Suppl.) SCC 713, *Bhagubhai Dhanabhai Khalasi and another v. The State of Gujarat and others*, (2007) 4 SCC 241 and *Mukesh Kumar Agrawal v. State of UP and others*, (2009) 13 SCC 693 has held that wherever disputed question of fact is raised in writ proceedings, the writ petition was not an

appropriate remedy. Reference may also be made to the judgment of the Apex Court in Dwarka Prasad Agarwal (D) by Lrs. and another vs. B.D.Agarwal and others, AIR 2003 SC 2686, wherein it was observed as under:-

"We may, however, hasten to add that as at present advised we do not intend to enter into the contention of the petitioners that their fundamental right under Article 19 of the Constitution of India had been infringed. This Court would have entered into the question, if the facts were undisputed or admitted. The question as regard infringement of fundamental right and that too under Article 19 of the Constitution of India cannot be gone into when the facts are disputed. Whether Dwarka Prasad Agarwal and consequently the substituted petitioners are owners of the newspapers and if so to what extent being disputed, it cannot be said, that by reason of the impugned order dated 3.9.1992 passed by the first respondent herein alone, the fundamental right of the petitioners under Article 19 had been infringed."

12. In view of the fact that petitioner is already availing remedy by way of Civil Suit and there is dispute on facts, we do not find any ground to entertain this petition in writ jurisdiction under Article 226 of the Constitution of India. Consequently, finding no merit in the writ petition, the same is hereby dismissed.