



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR-5746-2025 (O&M)
Reserved on :-09.09.2025
Pronounced on : 16.09.2025**

Nidhi Dhawan

... Petitioner

Versus

Atul Garg and Another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Anil Shukla, Advocate
for the petitioner.

Mr. Kunal Dawar, Advocate (**through Video Conferencing**)
with Ms. Shruti Mandhotra, Advocate
for caveator/respondent No.1.

VIRINDER AGGARWAL, J.

1. The present revision petition has been filed under Article 227 of the Constitution of India by the petitioner, impugning the legality, propriety, and correctness of the order dated 02.08.2025 (Annexure P-5) passed by the learned Additional District Judge, Faridabad, as well as the order dated 08.07.2025 (Annexure P-3) passed by the learned Civil Judge (Junior Division), Faridabad, whereby the injunction application filed by the respondent/petitioner was allowed. The petitioner seeks to assail the concurrent orders of the Courts below on the grounds that they are erroneous, perverse, and unsustainable in law, thereby warranting interference under the supervisory jurisdiction vested in this Court under Article 227 of the Constitution.



2. Brief facts of the case are that the respondent No.1/plaintiff filed a suit for specific performance of a contract dated 29.11.2021 for the sale of a plot measuring 1,000 square yards, bearing No.40 in Sector 21-A, Faridabad, for a total consideration of ₹4,55,00,000/-. It is pleaded that the plaintiff had paid an amount of ₹40,00,000/- through cheque No.00371 dated 29.11.2021 and an additional sum of ₹5,00,000/- in cash, while the balance of the sale consideration was to be discharged on or before 01.03.2022 at the time of execution of the sale deed/GPA in favour of the plaintiff.

2.1 It is further averred that in December 2021, the petitioner sent a WhatsApp message to the respondent No.1, intimating that a suit had been filed by one Kali Parshad Jha, claiming tenancy rights in the property. Defendant sent a WhatsApp message that balance sale consideration can be paid upto 15.04.2022. The petitioner transferred an amount of ₹45,00,000/- into the account of the respondent No.1/plaintiff on 05.03.2022. Consequently, the plaintiff filed the suit for specific performance and, in conjunction therewith, moved an application under Order 39 Rules 1 and 2 read with Section 151 CPC seeking to restrain the petitioner/defendant from selling, alienating, or otherwise dealing with the suit property in favour of any third party.

3. The petitioner/respondent contested both the suit and the injunction application by filing a written statement and reply, raising preliminary objections *inter alia* that the plaintiff had concealed material facts. It was contended that the plaintiff had full knowledge of the pending litigation, as evidenced by the receipt dated 19.09.2021, which indicated that the land was in illegal occupation, and vide the WhatsApp messages dated



20.09.2021 and 21.09.2021, wherein the petitioner provided complete details of the pending litigation.

3.1 It was further asserted that the respondent/plaintiff was neither ready nor willing to perform his obligations under the contract, having failed to demonstrate the necessary financial capacity. The last date for execution of the sale deed was 01.03.2022, and upon the expiry of that date, the petitioner returned the entire amount received from the plaintiff and communicated the same via WhatsApp on 05.03.2022.

3.2 Upon hearing the submissions, the learned Civil Judge allowed the injunction application, restraining the petitioner from alienating, transferring, or creating any third-party interest in the suit property. Aggrieved, the petitioner filed an appeal, which was dismissed, the appellate court observing that there was no perversity or illegality in the impugned order. Dissatisfied with the appellate order, the petitioner has now filed the present revision petition.

4. The respondent was present through his counsel, as he had previously filed a caveat application in the matter, thereby ensuring his right to be heard.

5. I have heard learned counsel for the respective parties at length and have carefully perused the record and all relevant documents, including the pleadings, Annexures, and evidence on record, with due diligence, before considering the merits of the revision petition.

6. Learned counsel for the petitioner contended that the impugned order is wholly unsustainable in law, as the Courts below have failed to properly exercise the jurisdiction vested in them. It was submitted that the learned Additional District Judge ought to have exercised his supervisory



jurisdiction to interfere with the order of the learned Trial Court granting injunction, as both the Courts below had misinterpreted the nature of the controversy.

7.1 It was further argued that there is no case made out by the respondent that the title of the petitioner was defective or that the sale deed could not have been executed. The Courts below were allegedly misled by the plaintiff, who contended that the appellant-defendant had extended the date for performance of the contract up to 15.04.2022 by sending a WhatsApp message to the respondent-plaintiff. This assertion was categorically denied in the written statement by the appellant-defendant. Subsequently, however, the respondent-plaintiff deposed that it was he who had sent the message regarding the extension of time, and not the appellant-defendant.

7.2. In view of this admission, there is no material on record to demonstrate that the respondent-plaintiff remained ready and willing to perform his obligations under the contract or that he was prepared to do so on the stipulated date of 01.03.2022. Consequently, the foundation of the injunction granted by the Courts below is legally and factually unsustainable.

8. Learned counsel for the respondent-plaintiff contended that the trial of the case has reached an advanced stage, and the plaintiff has almost concluded his evidence. It was further submitted that, given the progress of the proceedings, the matter ought to be decided in a time-bound manner without any further delays. Relying on these submissions, the counsel urged that the appeal filed by the petitioner be dismissed, as there exists no legal or factual infirmity in the orders passed by the Courts below.



9. The learned Civil Judge, while allowing the injunction application, observed that a combined reading of Clause 9 of the agreement and the WhatsApp messages exchanged between Defendant No.1 and the Plaintiff on 21.09.2021 *prima-facie* indicates that the responsibility for clearing the alleged illegal possession rested with Defendant No.1. It was further noted that, from the pleadings and documents placed on record, both parties had concealed certain material facts from the Court. Nevertheless, the Court emphasized that it is its primary duty to adjudicate the matter on merits and to decide the case to its finality. The relevant extract from the judgment of the learned Court below is reproduced as under:-

“12. Defendant no.1 returned the entire amount of Rs.45,00,000/- alongwith a whatsapp text and also sent a letter to the plaintiff. She also placed on file a photocopy of the screen shot to show this fact. However, she also pleaded that the plaintiff sent her 'thumbs up' emoticon, which she claimed that the plaintiff accepted it as token of acceptance. The perusal of the screen shot shows that she had written a long message at 8.45 pm. Within 40 minutes, the plaintiff called her. Call was missed at 8.59 pm. 5 minutes later, the plaintiff sent her 'thumbs up' emoticon. But this 'thumbs up' emoticon is different from the 'happy thumbs up' emoticon sent earlier. If the plaintiff had received the amount then what was the need for him to give defendant no.1 a missed call? Whether the plaintiff had given a missed call or whether the defendant no.1 did not pick the call, becomes matter of discussion in the light of the letter sent by the plaintiff to the Manager requesting him to reverse the amount in the account of transfer (defendant no.1).



13. It is not only on 21.9.2021 that the plaintiff has not sent a 'happy thumbs up' emoticon but on some previous date also at 1.56 pm, the plaintiff had sent a "happy thumbs up" emoticon to the defendant no.1. Out of three 'thumbs up' emoticons, two were of happy 'thumbs up' emoticons and one is simple. It has to be seen through the evidence what did the plaintiff mean by the third simple 'thumbs up' emoticon as he has requested for the reversal of the amount sent to him in his account. At this stage, this court finds that the following questions need to be decided:-

- 1) which party has concealed what facts and upto what extent:
- 2) what was the difference in the 'thumbs up' emoticons and "happy thumbs up" emoticons? Or do they infer the same meaning?
- 3) if it is assumed that the plaintiff accepted the amount and sent a 'thumbs up' emoticon as a token of acceptance, then why he moved a request letter to the manager for reversal of the amount?
- 4) what was the meaning of the parties when they drafted clause 9 in the Agreement to Sell?
- 5) why did the parties not mention the reference of illegal occupier?
- 6) why did the defendant no.1 sent a forwarded message showing the stand of Hon'ble Apex Court qua illegal occupier;
- 7) whether the plaintiff is/was ready to perform the part of contract;
- 8) why did the defendant no.1 fail to get the suit land vacated from aforesaid Kali Prasad Jha; etc.

14. All the aforesaid questions can be decided only after leading the evidence.

15. Considering all these facts and for securing interest of justice, the defendant no.1 is restrained from alienating, transferring or creating third party interest till final disposal of the suit.”

10. The learned Additional District Judge, Faridabad, while dismissing the appeal, referred to Clauses 9 and 11 of the agreement in dispute and observed that the appellant-defendant had actively concealed the



material fact that a tenant was in possession of the suit property and that civil litigation was pending in respect thereof. The Court further noted that the WhatsApp messages relied upon by the respondent-plaintiff had yet to be proved during evidence. The claim that the date for execution of the sale deed and payment of the remaining sale consideration was extended by the appellant-defendant till 15.04.2022 was, therefore, disputed and required adjudication during trial.

10.1 The Court held that screen-shots of WhatsApp messages, being secondary electronic evidence, cannot be taken into consideration without proper proof. Whether the date of execution of the sale deed was extended, or the contract was validly terminated by the appellant-defendant, or the respondent-plaintiff was ready and willing to perform his obligations under the contract, are matters that require trial and evaluation of evidence.

10.2 Relying on the precedents of the Hon'ble Apex Court in **Wanter Ltd. vs. Antox India (P) Ltd., 1990 Supp. SCC 727** and **Skyline Education Institute (India) Pvt. Ltd. vs. S.L. Vaswani, 2010 (3) RCR (Civil) 436**, the learned First Appellate Court concluded that there was no illegality or perversity in the findings recorded by the Court below and, therefore, refused to interfere with the exercise of discretion by the learned Trial Court.

11. In the plaint, the respondent-plaintiff specifically averred that the date for execution of the sale deed and payment of the balance sale consideration under the agreement had been extended by Appellant-Defendant No.1 through a message. Both the Courts below took this averment into consideration. However, when the plaintiff appeared as a witness and submitted his affidavit by way of examination-in-chief, a copy



of which is on record, he specifically deposed in para No.7 that it was, in fact, the respondent-plaintiff himself (erroneously mentioned as Defendant No.1 in the plaint) who sent the message stating that the last date for payment of the balance consideration could, at most, be 15.04.2022.

11.1 This part of the examination-in-chief clearly demonstrates that the plaint and the injunction application were founded on a material misstatement of facts, which the respondent-plaintiff himself has admitted in his testimony. The question regarding the extension of the date under the agreement for specific performance is a material fact, as it is the version of the appellant-defendant that the respondent-plaintiff was not ready and willing to perform his obligations, having failed to appear before the Registering Authority on 01.03.2022 with the balance sale consideration and the amount necessary for registration of the sale deed.

11.2 While the plaintiff has contended that the property was in the possession of a tenant and that the appellant-defendant failed to apprise him of ongoing litigation with the tenant, the appellant-defendant produced on record WhatsApp messages sent to the respondent-plaintiff prior to the execution of the agreement to sell, evidencing that the plaintiff was informed of the dispute. The learned First Appellate Court, however, refused to consider these messages, holding that they were inadmissible for want of a certificate under Section 65-B of the Indian Evidence Act, 1872. In doing so, the learned Additional District Judge treated the matter as if conducting a trial and recording final findings, even though the parties had not yet led evidence to prove the documents relied upon.

11.3 The First Appellate Court failed to appreciate that it was deciding an appeal against an interim injunction order, where the limited



scope is to examine whether the plaintiff has a prima facie case, balance of convenience in his favor, and would suffer irreparable loss if the injunction is denied. Instead of considering the material on record for these purposes, the appellate court recorded findings on the admissibility of documents, which were yet to be proved through proper evidence.

11.4 Furthermore, the fact that the plaintiff's version is based upon a material mis-statement, whether inadvertent or intentional, is of critical importance. It is settled law that a party seeking discretionary relief must approach the Court with clean hands. Where a party has suppressed material facts or mis-stated material facts, the Court may withhold discretionary relief. Since the mis-statement admitted by the plaintiff directly affects the entitlement to the injunction, he is dis-entitled to the relief sought.

11.5 This material fact of mis-statement was not before the Courts below, but having come to the notice of this Court, it is just and proper, in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India, to interfere with the discretionary exercise of the Courts below. Accordingly, the present revision petition is allowed, and the orders passed by both the Courts below are set aside.

12. Since the principal matter has been adjudicated and the revision petition has been allowed, all pending miscellaneous applications, if any, connected with the main case, shall stand disposed of in view of the final decision.

16.09.2025
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking?
Whether reportable?

Yes / No
Yes / No