IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2370 of 2009 (O&M)
Date of decision : 24.08.2015

Secretary Market Committee Ismailabad

...Appellant

Versus

Geeta Goel and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Raman B. Garg, Advocate for the appellant.

Mr. Ashish Pannu, Advocate for respondents.

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AMIT RAWAL, J. (Oral)

The appellant-defendant is in present appeal against impugned judgment and decree of Courts below, whereby suit of the respondents-plaintiffs was decreed and the appeal preferred against the same was dismissed by Lower Appellate Court.

Mr. Raman B. Garg, learned counsel appearing on behalf appellant-defendant submits that appeal has been dismissed on two counts one that Secretary of the Marketing Board did not have any authority to file the appeal and secondly the judgment rendered by Hon'ble Division Bench of this Court has been set aside by Hon'ble Supreme Court in *Municipal*

Corporation, Chandigarh & ors. Vs. Shantikunj Investment (P) Limited & ors. 2006(4) SCC 109. He further submits that identical claim was filed in trial Court and similar relief was granted to the plaintiffs and the matter was referred to this Court vide RSA No.2369 of 2009, decided on 11.02.2011. The Coordinate Bench of this Court has modified judgment and decree.

Mr. Ashish Pannu, learned counsel appearing on behalf of respondents-plaintiffs submits that judgment and decree of the trial Court is perfect, legal and justified. There is no illegality and perversity, much less, no substantial question of law arises for determination in the present appeal. He further submits that since Marketing Committee failed to hand over the possession, therefore relief of injunction granted by Civil Court is liable to be upheld.

I have heard learned counsel for the parties and appraised the paper book.

The trial Court while decreeing the suit granted following reliefs by injuncting the appellant Marketing Committee:-

i) Not to resume the plot in question.

ii) Not to enforce clause 12 of the allotment letter within two years from the date of delivery of possession.

iii) Not to charge penal interest from the allottee in respect of non-payment of installment on time or as per Schedule.

I have gone through the judgment rendered by this Court, in aforementioned, RSA and after noticing the contents of same, it is found that facts of the present case and that case are identical. The appeal of the appellant was also rejected on the ground that Secretary of the Marketing Board did not have the authority to file the appeal. But by relying upon the ratio decidendi culled out by Hon'ble Supreme Court in *United Bank of India Vs. Naresh Kumar and others 1997 AIR (SC) 3,* this Court found that said error can be always rectified at a subsequent stage and the appeal should not have been dismissed on the technicalities. Since Resolution authorizing the Secretary had also been brought on record in the present appeal, therefore, technical defect ought not to have come in the way of the appellant while deciding the appeal by the Lower Appellate Court. Consequently, defect if any falling in the appeal, is rectified.

Coming to the merits of the appeal, Marketing Committee, as per terms and conditions of the allotment letter, is liable to charge interest/penal interest, in case allottee fails to make payments of installments, as per the fixed schedule, therefore, findings rendered by the trial Court that Marketing Board is refrained from charging the penal interest, in my view is not correct. The terms and conditions of the allotment letter are sacrosanct between the parties to the allotment/contract. The trial Court, cannot, permanently injunct Marketing Committee from not resuming the plot. The plot can obviously be resumed, but in accordance with law, in case the allottee deviates from terms and conditions. The Marketing Committee can only initiate proceedings as contemplated in the allotment letter under Punjab Agricultural Produce Markets Act, 1961. The finding qua enforcement of clause 12 is upheld.

Admittedly, the possession of the plot has been handed over to the allottee, therefore, penal interest would commence from the date of handing of possession. In case there is default in the payment of installments, it would commence from the date of offer of possession.

In my view, the present appeal involves following substantial questions of law for determination:-

1. Whether the blank mandatory injunction directing the Marketing Committee not to resume the plot in the facts and circumstances of the case can be passed?
2. Whether the Marketing Committee can be prevented from charging the penal interest from the date of plot in possession, in case the allottee has defaulted in payment of installments?

For the reasons already recorded above, the abovementioned substantial questions of law is to be answered in favour of appellant-defendant to the extent indicated above and against the respondents-plaintiffs.

The appeal is accordingly partly allowed.

24.08.2015 **(AMIT RAWAL)**
pawan **JUDGE**