

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

Regular Second Appeal No.1323 of 2011 (O&M)

Date of decision: 1.5.2015

Nath Ram

... Appellant

Versus

Nagar Council and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.P.K.Garg, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

The plaintiff was an auction purchaser of plot No.4 in abadi Lehragaga in a public auction conducted by Nagar Council, Lehragaga in 1993. He deposited 1/4th of the amount at the fall of hammer but did not pay the balance 3/4th price of the plot thereafter. Reminders were sent to him to deposit balance sale price in 1993, 1994, 1995 and 1996 but he failed to deposit the balance amount. The plot was cancelled in 1996 as recorded by learned ADJ, Sangrur in the judgment dated 2.2.2010 from which the second appeal arises. In fact, the plot was re-auctioned by the Nagar Council in 1999 and the same was purchased by one Ramesh Kumar. Learned Appellate Court drew this fact from a copy of the order dated 13.9.2001

passed by the District Consumer Disputes Redressal Forum, Sangrur

[Ex.P5].

The prayer in the suit was for mandatory injunction seeking a direction that since he purchased plot No.4 in an open auction and had deposited ₹ 13,375/- vide receipt No.73 dated 16.2.1993 representing 1/4th of the auction price, then the defendants may be directed to confirm the sale after getting deposited the balance amount from the plaintiff.

The 2nd prayer was for permanent injunction restraining the defendants from interfering with the peaceful possession of plot No.4 and for restraining the Executive Officer, Nagar Council, Lehragaga from dispossessing him. The suit and the appeal stand dismissed.

Learned lower appellate Court in para. 14 of the judgment has culled out the crux of the case and nothing more needs to be added by this Court in the second appeal. Para. 14 reads as follows : -

“14. From the admission of his signatures on the notices Ex.D1 to Ex.D3 by the appellant-plaintiff, it is made out that the said notices were duly served upon him. Even if the admissions made by PW-2 Ram Gopal, Clerk, Municipal Council be ignored as he is employee of Municipal Council, still the admissions made by the appellant-plaintiff are sufficient to prove that the defendants had been issuing notices to him time and again thereby calling upon him to deposit the balance sale price. But the appellant-plaintiff did not deposit the balance sale price from 1993 till 2003. Under these circumstances, the Id. Trial Court has rightly held that the appellant-plaintiff has not deposited the balance sale price, as such, his allotment was rightly canceled by the Municipal Council, Lehragaga vide resolution Ex.D9. The Id. Counsel for the appellant has raised an altogether new argument that infact firstly the sale was to be confirmed by the superior officers

of the department and only thereafter, the balance sale price could be claimed from the appellant-plaintiff. In this regard, he has referred to the auction notice/pamphlet Ex.D8 issued by the Municipal Council, Lehragaga. As per the said notice, the balance sale price was to be deposited after confirmation of auction by the superior officers. He has argued that the said auction was never confirmed by any superior officer, as such, the defendants could not have claimed the balance sale price from him. However, this contention of the Id. Counsel for the appellant-plaintiff has got no force. When the defendants Municipal Council served the notices on the appellant-plaintiff calling upon him to deposit the balance sale price in the years 1993, 1994, 1995 and 1996, the appellant-plaintiff never raised the question regarding confirmation of auction. No such plea was raised in the plaint. When no such plea was raised in the pleadings or in the court on the first instance, the Id. Counsel for the appellant cannot be allowed to raise this argument in the appeal. Even no such ground has been raised in the grounds of appeal. Therefore, this contention of Id. Counsel for the appellant-plaintiff to deposit the balance sale price, it has to be assumed that on deposit of balance sale price, they would have executed the necessary documents conferring the title regarding the property in question on the appellant-plaintiff. In this case, the appellant-plaintiff failed to deposit the balance sale price despite service of notices on him and his allotment was cancelled in 1996 and infact the plot was re-auction by the defendants-respondents in 1999 and the same was purchased by one Ramesh Kumar. This fact is evident from the copy of order dated 13.9.2001 passed by District Consumer Forum, Sangrur Ex.P5. However, the instant suit was filed by the appellant-plaintiff in 2003. Therefore, this litigation is abuse the process of law. After the expiry of period of ten years, the appellant-plaintiff can not be permitted to deposit the balance sale price, particularly when his allotment has already been cancelled by the defendants-respondents. The findings by the Id. Trial Court

in this regard do not call any interference.”

Learned appellate Court has rightly held that a new plea is not permissible in first appeal on tedious argument that the sale was not confirmed by a superior officer of the department in terms of the auction notice and therefore the plaintiff's right remained a continuing one.

This argument discounts the assertion of the defendants that they had called upon the plaintiff to deposit the balance amount for 4 consecutive years upto 1996 when they cancelled the allotment when left with no alternative. The suit was filed in the year 2003 but the order of cancellation passed in 1996 was not challenged nor was the subsequent auction held in 1999 covering suit property to a third party and, therefore, the lower appellate Court was right in recording that the suit was in abuse of the process of law.

I have no doubt that the suit was filed in abuse of the process of law and much time has been wasted before the trial Court on a lost cause.

Since I am dismissing this appeal in limine, I restrain myself from imposing costs.

The appeal stands dismissed.

(RAJIV NARAIN RAINA)
JUDGE

May 1, 2015
Paritosh Kumar