

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 4383 of 2011

Date of Decision: 22.12.2015

Rajinder Kumar and Another

... Appellants

Versus

Jagdish Kumar

... Respondent

CORAM: Hon'ble Mr. Justice Amit Rawal.

Present: Mr. Gaurav Mohunta, Advocate
for the appellants.

Mr. Sanjiv Gupta, Advocate
for the respondents.

Amit Rawal, J.(Oral)

Appellants/plaintiffs, are in regular second appeal against the concurrent findings of fact of both the Courts below, whereby the suit seeking relief of possession by way of specific performance of contract dated 19.2.2003 had been declined and the plaintiffs have been held entitled to refund of earnest money of ₹ 1,83,000/- along with interest at the rate of 18% per annum.

Mr. Gaurav Mohunta, learned counsel appearing for the appellants submits that the agreement to sell dated 19.2.2003 aforementioned, has been proved through the testimony of the attesting witnesses of the said agreement, much less even the payment

of earnest money of ₹ 1,83,000/- has been proved. He further submits that the plea of defendant/respondent of having obtained the loan of ₹ 25,000/- did not have any foundation, therefore, both the Courts below have committed illegality and perversity in exercising their discretionary powers under Section 20 of the Specific Relief Act, 1963 (hereinafter referred to as "the Act"). The alleged complaint and agreement entered into pertained to the firm of M/s Lala Ram Jiwan Ram. The Lower Appellate Court has enhanced the interest from 6% to 18% per annum.

Mr. Sanjiv Gupta, learned counsel appearing for the respondent submits that many complaints, much less similar contracts/agreements have been proved on record to show that Lala Ram was, none else, but the father of the appellant/plaintiffs. Though the Lower Appellate Court has enhanced the rate of interest from 6% to 18% per annum, but the respondent/defendant had not filed any appeal. A specific plea viz-a-viz the defendants taking the loan of ₹ 25,000/- from the firm M/s Lala Ram Jiwan Ram was taken in the written statement.

I have heard learned counsel for the parties and perused the record.

In my view, the trial Court has rightly exercised the discretion as envisaged under Section 20 of the Act. The findings recorded by the learned trial Court read thus:-

"This suit for specific performance has been filed on 2.7.2003 after the defendant has not appeared for

performance of the contract. There are several documents before this Court which reveal that plaintiffs and their family members are involved in several litigations. DW3 and DW 4 both the witnesses have deposed that father of the plaintiffs is having a firm of M/s Lala Ram Jiwan Ram and he used to obtain their signatures on blank papers as they were having commission agency with him and subsequently those were misused. Besides this, there are several other litigation brought to the notice of the Court and the documents against the plaintiffs and their family members as one complaint Mark-B was filed by Gian Parkash against Lala Ram father of the plaintiffs, Meera Devi mother of the plaintiffs and Jiwan Ram and Hans Raj both brothers of the plaintiffs wherein allegations are same that the signatures were obtained on blank documents which were subsequently misused. There is one another complaint filed against Lala Ram mark-D with the same allegations that the signatures were obtained on blank documents which were misused. One Santosh had filed a complaint against Lala Ram she was assaulted and Lala Ram had outraged her modesty. Ex.DC is an agreement executed by Ram Sahab in favour of Meera Devi wife of Lala Ram which is also challenged in a civil suit copy of which is produced on record as Mark-C. Ex.DF is a mortgage deed executed by Mainpal in favour of Jiwan

Ram by virtue of which his land was mortgaged with the family of the plaintiffs and Jiwan Ram has filed a civil suit Ex.DC against Meera wife of Lala Ram mother of the plaintiffs. Ex.DA is a general power of attorney executed by Om Parkash in favour of Lala Ram father of the plaintiffs who then entered into an agreement on the basis thereof which is produced on record as Ex.DB. Mark-A is a civil suit filed by Hans Raj son of Lala Ram, brother of the plaintiffs against legal heirs of Om Parkash son of Surja Ram on the basis of pronote and receipt. All these litigations clearly reveal that the plaintiffs and their family members including their father, mother and other brothers are involved in several litigations with several persons and version of the defendant can be believed that they are habitual of obtaining signatures on blank documents or papers at the time of advancement of money which are being subsequently misused.

In view of the aforementioned facts and circumstances, this Court is of the view that family of the appellant/plaintiffs have been indulging into such activities by getting the signatures on the blank documents and subsequently misuse the same. In my view the appellant/plaintiffs have been compensated by the lower Appellate Court by enhancing the rate of interest on the earnest money from 6% to 18% per annum. Therefore, I do not intend to differ with the findings returned by the lower Appellate Court.

In view of above, the present appeal stands dismissed.

Mr. Gaurav Mohunta, Learned counsel appearing for the appellants submits that the deficiency in the Court fee shall be made good within a week. This order shall come into effect, the moment deficiency in court fees is made good, otherwise shall stand dismissed for want of same.

(Amit Rawal)
Judge

December 22, 2015
"DK"