In the High Court of Punjab and Haryana at Chandigarh

R.S.A.No.961 of 2011 (O&M)
Date of decision: 2.12.2015

Haryana State Agriculture Marketing Board and another
......Appellants

Versus

Munshi Ram and another
.......Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Suvir Sehgal, Advocate,
for the appellant.

Mr. Vijay S.Kajla, Advocate
for respondent No.1.

Mr.Rishav Goel, Advocate for
Mr. Harkesh Manuja, Advocate
for respondent No.2.

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

Raj Mohan Singh, J.

1. Defendants are in regular second appeal against the concurrent findings of the Courts below.

2. Plaintiffs filed a suit for permanent injunction and mandatory injunction against the defendants pleading that plaintiffs are licence holders of old grain market, Karnal and are carrying on their business in the said market yard. Defendants offered to sell plots for shops under a scheme floated by the Government in new grain market, Karnal. The process was by

way of open auction. As per proclamation auction was to be held on 4.6.1998 at Karnal. The successful bidder was required to deposit 15% of the auction amount soon after the auction but the allotment letter and possession was to be delivered on 1.8.1998 as this Court had stayed the confirmation of auction till 31.7.1998. Rest of the amount was to be paid either in lump sum on delivery of possession or could have been paid in instalments along with interest as per norms. Plaintiffs were successful in the bid of plot No.326 for a consideration of ₹ 23,50,000/- in the open auction held on 4.6.1998. They deposited 15% of the auction amount i.e. 5,87,000/- but allotment letter was not issued on 1.8.1998, nor possession was offered to them. A representation was made on 25.8.1998 for the issuance of allotment letter and delivery of possession. Once, it was noticed that it was not possible for the defendants to do the needful, then in alternative plaintiffs sought refund of 15% amount so deposited by them. Defendants were never in position to issue allotment letter at the relevant time or to deliver possession to the successful bidder as the defendants were not successful in getting the stay order vacated on 31.7.1998 from this Court. The writ petition was dismissed by this Court but in SLP, Hon'ble Apex Court further stayed the issue, which was statedly pending. It was only on 19.4.2000, defendants offered to issue allotment letter without possession despite the fact that the contract already stood repudiated. Plaintiffs suffered loss on account of interest. No development work was carried out at the site as per terms of the auction. Basic amenities were not provided on the site. The *phar,* shed and plinth area of the *Mandi* was leased out on yearly basis to Food and Supply Department and Haryana Agro Corporation where they stocked their foodgrains. In March, 2000 defendants under new scheme offered remaining plots on reserve price to the licence holders of old Mandi as the old scheme has failed to attract buyers. The facility of purchasing plots on reserve price was not mentioned in the old scheme, otherwise the plaintiffs would have been eligible to purchase the plots on the reserve price. Discriminatory attitude has been alleged. Plaintiffs represented on 18.4.2000 within the time prescribed for the purchase on reserve price up to 20.4.2000, but their request was declined on 19.4.2000 and they were asked to deposit the instalments, failing which, the defendants threatened to resume the plots. Plaintiffs further alleged that they have been deprived of benefits of the new scheme. At the time of auction, it was made clear that existing Mandi would be de-notified and entire work would be conducted in new Anaj Mandi, but vide notification dated 22.6.1999, the defendants notified the existing old Mandi as sub market yard. In view of aforesaid, new Anaj Mandi could not have mushroomed as a person can not transact business at two places which are distant. The buyers turned up to purchase the plots even at reserve prices under the new scheme, though there were about 600 licence holders carrying on business in the old Anaj Mandi. The balance amount of instalments could not be deposited in view of aforesaid reasons and the defendants were out to resume the plot despite the assurance that benefit of new scheme would be extended to all. Plaintiffs alleged that the act of defendants was malafide and against the principles of natural justice. A prayer was made to grant a decree for permanent injunction restraining the defendants from resuming the plot or to forfeit the amount and further decree for mandatory injunction was prayed for to refund the amount of ₹ 5,87,000/- along with interest @ 18% per annum

3. Defendants contested the suit on all fronts. On merits, defendants claimed that the firm of the plaintiffs did not have any licence as commission agent in new Anaj Mandi. Both the plaintiffs were working in different places. Plaintiff No.1 was working in shop No.5, whereas, plaintiff No.2 was working in shop No.6 in new Anaj Mandi, Karnal. The auction of plots was held on 4.6.1998. The factum of plaintiffs being highest bidder and they deposited 25% of the auction amount qua plot No.326 has been admitted. It has been denied that defendants were bound to issue allotment letter on 1.8.1998. Plaintiffs were requested vide letters dated 15.10.1999 and 14.6.2000 for taking

possession of the site in question but they failed. Plaintiffs did not deposit any further instalment after depositing the initial amount. The claim of the plaintiffs was accordingly denied.

4. After filing replication, following issues were framed by the trial Court:-

> "1. Whether the plaintiff is entitled to a decree for permanent injunction as prayed for ? OPP
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> 2. Whether the suit is not maintainable? OPD
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> 3. Whether the plaintiff has not served mandatory notice under Section 31 of the Punjab Agricultural Produce Marketing Act, 1961 if so its effect ? OPD
>
> 4. Whether plaintiff is stopped to file the present suit by his own act and conduct ? OPD
>
> 5. Relief."

5. Parties led their respective evidence in support of their case on the aforesaid issues.

6. Trial Court on the basis of evidence on record decreed the suit with costs vide judgment and decree dated 12.2.2009. Since the plot No.326, new Anaj Mandi, was resumed, therefore, decree was passed for declaration that the allotment letter Ex.D-8 is illegal and fabricated and a mandatory injunction was also issued in favour of the plaintiffs, directing the defendants to issue allotment letter to the plaintiffs in respect of plot No.326, new Anaj Mandi containing the re-schedule of the

payment.

7. Appeal filed by the defendants against the aforesaid judgment and decree was also dismissed by the lower Appellate Court vide judgment and decree dated 11.8.2010. Hence, the present appeal by the defendants.

8. I have heard learned counsel for the parties.

9. In the present appeal, at the time of preliminary hearing, following order was passed on 24.2.2011, which was based on appreciation of material on record:-

> "Learned counsel for the appellants contended that allotment letter was sent to the plaintiffs vide memo dated 06.01.2000 under postal certificate. This plea of the defendants/appellants has been rightly rejected by the Courts below for various reasons. Allotment letters to other purchasers were sent by registered post, but allotment letter to plaintiffs . only was allegedly sent under postal certificate for which there is no explanation. On the contrary, it is the case of the defendants that initially the allotment letter was sent through peon and on refusal of the plaintiffs, it was sent under postal certificate. However, if the plaintiffs had refused to accept the allotment letter sent through peon, it was at the most necessary to send the allotment letter by

registered AD post instead of sending it under postal certificate. Moreover, complete address of the plaintiffs was not written when the allotment letter was allegedly sent under postal certificate and they were simply mentioned to be residents of Karnal which address obviously could not be sufficient to deliver the letter to the plaintiffs. On the contrary, in all other documents sent by the defendants, complete address of the plaintiffs i.e shop No.105, Anaj Mandi, Karnal was mentioned, but in the crucial allotment letter complete address of the plaintiffs was not mentioned. The peon, who had allegedly taken the allotment letter by hand to the plaintiffs, has also not been examined as witness by the defendants. Many other reasons have also been assigned by the Courts below for discarding the aforesaid version of the defendants. Finding of the Courts below in this regard, therefore, does not suffer from any infirmity.

Faced with the aforesaid situation, learned counsel for the appellants contended that the Courts below have granted relief of mandatory injunction directing the defendants to issue allotment letter of the disputed plot to the plaintifffs with rescheduling of payment of balance price thereof, but the plaintiffs had not even sought the said relief and had sought the relief of mandatory injunction directing the defendants to refund the amount of Rs.5,87,000/- deposited by the plaintiffs with the defendants.

Notice of motion to the aforesaid limited extent be issued to plaintiffs (respondents) for 20.05.2011.

Records of the Courts below be also requisitioned.

In the meanwhile, execution of the decrees of the Courts below shall remain stayed."

In the meanwhile, counsel for the appellants shall seek instructions if the appellants are ready to refund the aforesaid amount deposited by the plaintiffs along with interest at reasonable rate."

10. Apparently, notice of motion was issued to the limited extent when learned counsel for the appellants contended that the Courts below have granted relief of mandatory injunction directing the defendants to issue allotment letter of the disputed plot to the plaintiffs with re-scheduling of payment of balance price thereof, but the plaintiffs had not even sought the said relief and sought the relief of mandatory injunction for refund of the amount of ₹ 5,87,000/- so deposited by them. On a subsequent date i.e. 20.5.2011, learned counsel for the

appellants after seeking instructions from the appellants, stated before the Court that the appellants are not ready to refund the amount deposited by the respondents/ plaintiffs.

11. On 21.11.2011, the stay granted in favour of the appellant/ defendants was ordered to be vacated by recording following order:-

> “ Arguing counsel for the appellants Mr.Partap Singh is not available.
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> On 24.2.2011, counsel for the appellants was directed to seek instructions if the appellants were ready to refund the amount of ₹ 5,87,000/- as involved in the decree passed by the Courts below but the counsel has stated that the Board is unable to refund the amount.
>
> In these circumstances, stay granted on 24.2.2011 is hereby vacated.
>
> Adjourned to 30.1.2012.”

12. After vacation of stay order, Market Committee, Karnal had already rescheduled the payment schedule and issued allotment letter No.1587 dated 7.11.2014 to the plaintiffs-respondents with a recital that the allotment is subject to outcome of the decision of present RSA.

13. Learned counsel for the respondents stated that lump sum payment had already been paid to the defendants/

appellants and thereafter, the respondents had even constructed the shop in question and were operating from the same.

14. Learned counsel for the appellants, after admitting the aforesaid facts, has stated that the appellants are entitled to recover interest for the delayed payment of instalments and the delay caused on account of not providing basic amenities cannot be considered towards non payment of interest on delayed payments. On this premise, he cites judgment of this Court in **Kali Charan vs. State of Haryana and others** **2014 (4) RCR (Civil) 887**.

15. When the fault is attributable to the appellants themselves in not sending the allotment letter by proper mode, it cannot be presumed that the delay had occasioned on account of inaction on the part of the plaintiffs. The allotment letter was sent to the plaintiffs vide memo dated 6.1.2000 under postal certificate, which was not the prescribed mode for communication. The allotment letters were sent to others by registered post, but the case of the plaintiffs was singled out by sending the same under postal receipt. No reasons have forthcome on record for such an omission by the defendants/ appellants. On the contrary, the allotment letter was initially sent through peon and on refusal, it was sent through postal certificate. If the plaintiffs had refused to accept the allotment letter sent to them through peon, it was obligatory on the part of

the department to send the same by registered post instead of sending the same by postal certificate. Above all, the address of the plaintiffs was shown to be of residents of Karnal, which was not sufficient to deliver the letter at a particular address. All other communications were made by the defendants on correct address, but the aforesaid omission was so apparent that nothing could have been attributed to the plaintiffs once they failed to get crucial allotment letter on account of folly committed by the department in terms of not giving correct address on the allotment letter. Even the peon, who had allegedly taken the allotment letter to the plaintiffs, has not been examined by the defendants in the case.

16. Both the Courts have correctly discarded the stand of the defendants and in view of prayer made in the suit, offer of allotment has been rightly revived and the same has not been accepted and implemented also after vacation of stay by this Court. The entire payment stands accepted. The recital in the allotment letter that the allotment is subject to outcome of the appeal is only an informative mechanism. Since the delay was caused by the defendants and inaction was the subject matter of challenge before the Civil Court, therefore, no delay could have been attributed to the plaintiffs, nor the defendants can penalise the plaintiffs by charging interest on the delayed payment of instalments. Peculiar facts involved herin make this case

distinct and differentia is the conduct of the appellant-Board in adopting the mode of service that too unknown to common sense, which brings the case out of ambit of cited case.

17. Learned counsel for the appellants, while filing the present second appeal, has framed the following substantial questions of law:-

> "1. Whether the findings recorded by both the learned courts below are perverse and thus liable to be set aside ?
>
> 2. Whether the grave and manifest injustice has been caused to the appellant ?
>
> 3. Whether the notice under Section 31 of the Punjab Agricultural Produce Marketing Act 1961 is necessary before filing the suit ?
>
> 4. Whether both the Courts below have considered condition No.19 of the allotment letter ?
>
> 5. Whether the suit filed by the plaintiff is maintainable in the present form."

18. In view of material on record, no perversity has been noticed in the findings recorded by the Courts below. Therefore, question No.1 cannot be entertained. In view of findings recorded on the basis of evidence, there cannot be any manifest injustice to the defendants/ appellants. The findings have been recorded that issuance of notice under Section 31 of the Punjab

Agriculture Produce Act, 1961 is not necessary before filing the suit. Once the allotment letter was not sent to the plaintiffs by way of prescribed mode, the proceedings conducted at the back of the plaintiffs were nonest. In view of aforesaid, it is only the Civil Court, which has got jurisdiction under Section 9 of CPC. The Courts below have also considered the material on record including condition No.19 of the allotment letter. Once the allotment letter in itself has been issued to the plaintiffs, they cannot breath hot and cold on the same premise by relying upon the said condition.

19. In view of order passed by this Court and thereafter, issuance of allotment letter by the defendants themselves and acceptance of the total sale consideration in lump sum go in a long way to show that now it is a case of concluded contract. Plaintiffs cannot be made to suffer on account of any latch towards interest on the alleged delayed payment of instalments.

20. In view of aforesaid, no interference is called for in the present appeal and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

December 02, 2015
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