

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

RSA No. 4752 of 2014 (O&M)
Date of decision 04.03. 2015.

Shallu Vij

..... Appellant.

versus

Vikrampal Bansal and others

..... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

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

Present : Mr. Jaswinder Singh, Advocate for the appellant.

K.C.PURI, J.

Plaintiff-appellant-Shallu Vij has directed the present appeal against the judgment and decree dated 15.04.2014 passed by Shri Ajaib Singh, learned Additional District Judge, Fatehgarh Sahib vide which the appeal against the judgment and decree dated 16.04.2013 passed by Ms. Gurpreet Kaur, learned Additional Civil Judge (Senior Division), Amloh was dismissed.

2. The facts of the present case in brief are that defendant No.1 had executed an agreement to sell dated 17.07.2008 in favour of the

plaintiffs whereby she agreed to sell her 1000sq. yards i.e., plot No. D-27 situated at Focal Point, Mandi Gobindgarh for a total sale consideration of Rs.45,11,000/- wherein she received Rs.6lacs as earnest money. The date for execution of sale deed was fixed as 24.10.2008 subject to the condition of payment of the remaining sale consideration by the plaintiff. The entire expenses for the transfer were to be borne by the plaintiffs themselves. It was further agreed upon between the parties that in case of any encumbrance on the plot, the defendant No.1 was bound to get the same cleared and in case of failure on the part of the defendant No.1, the plaintiff had a right to receive the double of the earnest money and in case of any failure on the part of the plaintiff, the earnest money was to be forfeited by the defendant No.1. The plaintiff further averred that the defendant No.1 assured her ownership and possession over the plot vide letter dated 9.3.1999 and only then the present plaintiff entered into an agreement to sell with defendant No.1. Plaintiff further averred that on being asked by the defendant No.1, he paid Rs.2lacs more to the defendant No.1 vide cheque No.488086 dated 21.07.2008 drawn at State Bank of Patiala, Mandi Gobindgarh. The plaintiff had always been ready and willing towards performance of his part of agreement by paying the remaining sale consideration for the execution of the sale deed in his favour but the defendant No.1 put off the matter on one reason or the another. Even a day prior to the stipulated date for the sale deed i.e., on 23.10.2008, the plaintiff got served a telegram upon defendant No.1 showing his readiness and willingness towards the execution of the sale deed, whereby he demanded

NOC from the defendant No.1 and asked her to execute the sale deed in favour of the plaintiff by receiving the remaining sale consideration of Rs.37,11,000/- but the defendant No.1 did not come present. Aman Kumar Bansal plaintiff No.2 even went to the office of Punjab Small Scale Industries and Export Corporation, Chandigarh for the transfer of plot in his favour but the defendant No.1 did not come present. Aman Kumar Bansal plaintiff No.2 got his presence marked by way of an affidavit from the Notary Public. Hence this suit.

3. On put to notice, defendant No.1 appeared and filed written statement taking preliminary objections of non-maintainability, hopelessly time barred not coming to the court with clean hands. On merits, though the answering defendant admitted being the original allottee of the plot in question No.D-27 measuring 1000sq yards situated at Focal Point, Mandi Gobindgarh regarding which she has entered into an agreement to sell with that of the plaintiffs but denied all other averments made in the plaint by stating that rather it is the defendant No.1, who had been ready and willing to perform her part of the agreement to sell on stipulated date i.e. 24.10.2008, but the said sale deed was not executed as the plaintiffs were not having sufficient funds for paying the remaining sale consideration towards the execution of sale deed. The defendant further averred that rather it is she who called upon the plaintiff on 23.10.2008 and averred that she has completed all the formalities required for transfer of the plot but it is the plaintiffs, who did not come to her with the remaining sale consideration. Defendant No.1 further averred that on 24.10.2008 she

remained present in the office of Sub Registrar, Sub Tehsil Mandi Gobindgarh from 9.00AM to 5.00PM but the plaintiffs did not come present with the full and final consideration towards the performance of sale deed as per agreement to sell dated 17.07.2008 and, therefore, the earnest money paid by the plaintiffs stood forfeited in favour of the answering defendant due to lapse on the part of the plaintiffs themselves. All other averments of the plaint were denied being wrong and incorrect.

4. Defendant No.2 appeared through counsel but later on proceeded against ex-parte.

5. Replication was filed, from the pleadings of the parties, following issues were framed :-

1. Whether plaintiff was ready and willing to perform his part of contract and during its subsistence and also till date ? OPP
2. Whether plaintiff is entitled for specific performance as prayed for ? OPP
- 2A If issue No.1 is not proved, whether plaintiff is entitled for alternative relief ? OPP
3. Whether plaintiff is entitled for mandatory injunction as prayed for ?OPP
4. Whether plaintiff is entitled for permanent injunction as prayed for ?OPP
5. Whether plaintiff has made breach of contract of agreement to sell ? OPD
6. Whether suit of the plaintiff is not maintainable and is barred under law ? OPD
7. Whether plaintiff has concealed the material facts from the court ? OPD
8. Relief.

6. The parties have led their respective evidence on the aforesaid issues. After appraisal of the same, the trial Court vide judgment and decree dated 16.04.2013 accepted the prayer of alternative relief for recovery of Rs.8,00,000/- alongwith interest @ 8% per annum from the date of agreement i.e., 17.7.2008 till its final execution. Since, the agreement was executed between plaintiff and defendant No.1, therefore, defendant No.1 was held liable to pay the decretal amount to the plaintiff.

7. Feeling dissatisfied with the aforesaid judgment and decree dated 16.04.2013, the defendant-appellant has directed the First Appeal, which was dismissed by learned Additional District Judge, Fatehgarh Sahib vide judgment and decree dated 15.04.2014 after re-appraisal of the evidence.

8. Still feeling dissatisfied with the judgment and decree dated 16.04.2013 and judgment and decree dated 15.04.2014, the present regular second appeal has been directed.

9. The appellant in paragraph No.12 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (i) Whether the seller/defendant/appellant was rightly entitled to forfeit to the earnest money paid by the plaintiff-respondent in the eventuality when plaintiff-respondent he did not come present to the office of sub registrar for getting the sale deed executed ?
- ii) Whether the evidence of DW-3 has been misread and has been left from consideration where he says that he is the marginal witness of the agreement to sell dated 17.07.2008 and on 24.10.2008 when the sale deed was to be executed, appellant was present in the office of Sub Registrar Mandi Gobindgarh ?

- iii) Whether the judgments and decrees passed by the courts below are erroneous perverse and liable to be interfered by this Hon'ble Court ?
- iv) Whether the judgment rendered by Hon'ble Supreme Court in case of Satish Batra Versus Sudhir Rawal and Shree Hanuman Cotton Mills and another Versus Tata Air Craft Ltd. have been erroneously ignore ?
- v) Any other point of law arising during the course of arguments be also considered in favour of the appellant?

10. The main stress laid down by the counsel for the appellants during the course of arguments is that plaintiff has failed to prove that he is ready and willing to get the sale deed executed in terms of agreement. So, it is submitted that since plaintiff is not ready and willing to perform his part of the contract and as such in view of authority **Shree Hanuman Cotton Mills and another vs. Tata Air Craft Ltd., reported in AIR 1970 Supreme Court 1986 (1) : Delhi Development Authority vs. Grihsthapana Co-operative Group Housing Society Ltd., reported in AIR 1995 Supreme Court 1176 ; Satish Batra vs. Sudhir Rawal reported in 2012 AIR SCW 5869** by Apex Court and authority **Darshan Singh vs Ram Singh reported in 2008 (4) R.C.R. (Civil) page 919,** decree for recovery cannot be passed as the amount of earnest money stands forfeited. It is submitted that trial Court has misread the evidence of Rajinder Pal Sood DW-3. This witness has categorically proved the fact that plaintiff was not ready and willing to perform his part of the contract. The judgments and decrees passed by both the Courts below are erroneous, perverse and liable to be set aside.

11. I have considered the submission and have gone through the records of the case.

12. The finding by the trial Court is that both the parties were not ready and willing to perform their part of contract. Since defendant-appellant himself was not ready and willing to perform his part of contract and as such he was legally and morally bound to return the money taken by him through agreement in question. The execution of agreement has not been disputed. There is nothing on the file that both the Courts below have misread the evidence on the file. The ratio of authorities **Shree Hanuman Cotton Mills and another's case (supra)** : **Delhi Development Authority's case (supra)** ; **Satish Batra's case (supra)** and **Darshan Singh's case (supra)** is that in case the plaintiff is not ready and willing to perform his part of the contract, in that case, earnest money can be allowed to be forfeited. These authorities are distinguishable to the facts of the present case as there is concurrent finding of fact that there is lapse on the part of the defendant/appellant also. A finding of fact cannot be interfered in the regular second appeal. The testimony of Rajinder Pal Sood DW-3 has been rightly appreciated and re-apprised by the lower Court and the Appellate Court respectively and as such it cannot be said that his evidence has been misinterpreted. None of the points raised by the defendant-appellant in paragraph No.12 exist and consequently I have no hesitation in holding that no question of law muchless the substantial question of law has arisen in the present case.

13. Otherwise also, according to the allegations Rs.6,00,000/- was

paid on the date of agreement i.e. 17.07.2008 and even thereafter Rs.2,00,000/- were paid by the plaintiff to defendant No.1 through cheque dated 21.07.2008. So, the said amount can be taken as advance money. Even in authority Satish Batra's case (supra) it has been held that advance money if paid as part of consideration cannot be forfeited.

14. So, in view of the above discussion, the appeal is without any merit and the same stands dismissed.

15. A copy of this judgment be sent to the trial Court for strict compliance.

(**K.C.PURI**)
JUDGE

March 04 , 2015

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