

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

RSA No.927 of 2013 (O&M)

Date of decision : 05.12.2015

Chander Mohan Mittal and another

...Appellants

Versus

Jagdish Kaur and another

...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. Hemant Bassi, Advocate for the appellants.

Mr. C.B. Goel, Advocate for respondents.

AMIT RAWAL, J. (Oral)

The appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby relief claiming specific performance of agreement to sell dated 13.08.2002 has been denied and plaintiffs have been held entitled to refund of the double the amount of earnest money i.e. ₹2.50 lacs + penalty amount of ₹2.50 lacs = ₹5.0 lacs in respect of land measuring 4 Kanal 2 Marlas.

Mr. Hemant Bassi, learned counsel appearing on behalf of appellants-plaintiffs submits, that both the Courts below have non-suited the plaintiffs on the ground that agreement to sell did not envisage, in case of

breach, the relief of specific performance through competent court of law. In support of his contention, he has relied upon judgment rendered by Hon'ble Supreme Court in *2004(6) SCC 649, P.D. Souza Vs. Shondrilo Naidu*, wherein it has been held that even if the agreement to sell does not envisage the relief of specific performance and only contained the element of compensation/damages, the relief of specific performance is inherent, thus, prays that appeal involves substantial questions of law to be determined by this Court.

Mr. C.B. Goel, learned counsel appearing on behalf of respondents-Vendor-defendants submits, that though in the absence of any cross objections yet by invoking the provision of Order 41 Rule 33 of the Code of Civil Procedure, the defendants cannot be precluded from raising the plea of readiness and willingness. According to him, the appellants-plaintiffs were not ready and willing to perform their part of the agreement but both the Courts below have erroneously rendered a finding vis-a-vis readiness and willingness against the defendants. As per recital in the agreement to sell, sale deed was required to be registered and executed the day when Haryana Government lifted the ban.

He further submits that ban was lifted in 2003. However, the suit was filed in 13.08.2005 therefore readiness and willingness was conspicuously absent and this aspect has not been noticed by the Courts below rather gave a finding that none of the parties to the lis had placed on record any documents to show that ban had actually lifted or was there any ban.

I have heard learned counsel for the parties and appraised the

paper book.

Vis-a-vis the findings rendered by the both the Courts below that in case the agreement to sell does not contain any recital giving the vendee to seek specific performance of the agreement to sell except for damages, I am of the view that findings rendered by both the Courts below is erroneous in view of ratio decidendi culled out by Hon'ble Supreme Court in P.D' Souza (Supra) and, therefore, findings are hereby set aside. Coming to the readiness and willingness, I am of the view that once there was a specific pleadings in the written statement vis-a-vis lifting of the ban in May 2003, the appellants-plaintiffs have not specifically denied the same and this fact has erroneously been not noticed by the Courts below in observing that none of the parties have been able to prove the readiness and willingness.

There is another aspect of the matter. The appellants-plaintiffs had also sent a registered notice dated 02.09.2002, whereby asked the refund of earnest money which show that the readiness and willingness had evaporated.

I am of the view that filing of the suit on 13.08.2005 would not reflect the readiness and willingness on the part of the appellants-plaintiffs. It is now settled law that as per the ratio decidendi culled out in *2007(4) RCR (Civil) 533, Sita Ram Vs. Radhey Shyam*, the vendee has to be ready and willing from the date of execution of the agreement to sell till the filing of the suit during the pendency of the suit till the decision of the suit. Thus, in view of such situation, finding rendered by Courts below vis-a-vis readiness and willingness in favour of appellants-plaintiffs is hereby set aside by exercising the power under Order 41 Rule 33 of Code of Civil

Procedure.

I am of the view that appellants-plaintiffs have been taken care of as they have been held entitled to refund to the double the amount of the earnest money, in essence, earnest money of ₹2.50 lacs was paid and compensated with another amount of ₹2.50 lacs total ₹5 lacs.

Mr. C.B. Goel, Advocate submits that aforementioned amount has been deposited. Be that as it may, vis-a-vis the findings rendered by the Courts below ordering refund of double the amount. I do not intend to differ with the reasoning given in the judgment and decree of Courts below

In view of what has been observed above, appeal is accordingly dismissed.

05.12.2015

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**(AMIT RAWAL)
JUDGE**