

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

RSA No.3691 of 2015 (O&M)

Date of decision : 17.12.2015

Mohinder Singh and another

...Appellants

Versus

Lakhbir Singh

...Respondent

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. Arun Jain, Sr. Advocate with
Mr. Kushagra Mahajan, Advocate for appellants.

Mr. M.S. Bhatti, Advocate for the respondent/Caveator.

AMIT RAWAL, J. (Oral)

The appellants-defendants are in Regular Second Appeal against the judgment and decree of lower Appellate Court, whereby the suit for specific performance of agreement to sell dated 07.11.2008, has been decreed and appellant-defendant has been called upon to perform his part of the agreement to sell by executing and registering the sale deed on receipt of balance sale consideration of ₹6.90 lacs out of total sale consideration of ₹14,90,000/-.

Mr. Arun Jain, learned Senior Counsel assisted by Mr.

Kushagra Mahajan, Advocate for appellants submits, that the lower Appellate Court has committed illegality and perversity in rendering the findings on issue No.10 against the appellants-defendants, in essence, suit was not maintainable as the respondent-plaintiff had not sought any declaration vis-a-vis cancellation of the agreement and submits that stipulated date for agreement to sell aforementioned was 15.06.2009. The appellants-defendants served legal notice on 01.07.2009, whereby they cancelled the agreement and forfeited the earnest money. The aforementioned legal notice was duly replied by the letter dated 06.07.2009 wherein respondent-plaintiff had asked for liquidated damages. However while filing suit on 29.10.2009 only specific performance of agreement to sell has been sought. In support of contention, he has relied upon judgment of Hon'ble Supreme Court in *I.S. Sikander (D) by LRs Vs. K. Subramani and ors. 2014(1) RCR (Civil) 236* and thus submits that following substantial question of law arise for determination:-

1. Whether the simplicitor suit for specific performance in the absence of seeking declaration vis-a-vis cancellation/termination of the agreement to sell would be maintainable or not?

Mr. M.S. Bhatti, learned counsel appearing on behalf of respondent-plaintiff submits, that readiness and willingness on the part of respondent-plaintiff had been proved to the hilt by summoning the witness from the office of Sub Registrar as PW5 and the appellants-defendants had not been able to cause much dent in his cross-examination. The facts of the case in *I.S. Sikander (Supra)* are not the similar to the one in the present

case and, therefore, ratio decidendi culled out in the aforementioned judgment is not applicable. He further submits that ingredients of Section 16-C of the Specific Relief Act has been proved as the suit had been immediately filed on 29.10.2009 after receipt of the notice dated 01.07.2009. The findings of fact by the lower Appellate Court should not be interfered with while exercising power under Section 100 of the Code of Civil Procedure as no substantial question of law arises for determination.

I have heard learned counsel for parties and appraised the paper book as well as case law cited at Bar.

The Hon'ble Supreme Court in I.S. Sikandar (Supra) has culled out the principles that where a party to the agreement has cancelled the agreement to sell by sending legal notice for seeking specific performance of the agreement to sell, the vendee is required to challenge such cancellation by seeking declaration.

It would be apt to reproduce paragraph Nos.17 & 28 of the judgment in I.S. Sikandar's case (Supra) and same read thus:-

“17. Answer to Point No.1

The first point is answered in favour of the defendant No. 5 by assigning the following reasons:

It is an undisputed fact that there is an Agreement of Sale executed by defendant Nos. 1-4 dated 25.12.1983 in favour of the plaintiff agreeing to sell the schedule property in his favour for a sum of Rs. 45,000/- by receiving an advance sale consideration of Rs.5,000/- and the plaintiff had further agreed that the remaining sale consideration will be paid to them at the time of execution of the sale deed. As per Clause 6 of the Agreement of Sale, the time to get the

sale deed executed was specified as 5 months in favour of the plaintiff by the defendant Nos.1-4, after obtaining necessary permission from the competent authorities such as the Urban Land Ceiling Authority and Income Tax Department for execution and registration of the sale deed at the cost and expenses of the plaintiff. If there is any delay in obtaining necessary permission from the above authorities and the payment of layout charges, the time for due performance of agreement shall further be extended for a period of two months from the date of grant of such permission. In the instant case, permission from the above authorities was not obtained from defendant Nos. 1-4. The period of five months stipulated under clause 6 of the Agreement of Sale for execution and registration of the sale deed in favour of the plaintiff had expired. Despite the same, the defendant Nos. 1-4 got issued legal notice dated 06.03.1985 to the plaintiff pointing out that he has failed to perform his part of the contract in terms of the Agreement of Sale by not paying balance sale consideration to them and getting the sale deed executed in his favour and called upon him to pay the balance sale consideration and get the sale deed executed on or before 18.3.1985. The plaintiff had issued reply letter dated 16.3.1985 to the advocates of defendant Nos. 1-4, in which he had admitted his default in performing his part of contract and prayed time till 23.05.1985 to get the sale deed executed in his favour. Another legal notice dated 28.03.1985 was sent by the first defendant to the plaintiff extending time to the plaintiff asking him to pay the sale consideration amount and get the sale deed executed on or before 10.04.1985, and on failure to comply with the same, the Agreement of Sale dated 25.12.1983 would be terminated since the plaintiff did not avail the time extended to him by defendant Nos. 1-

4. Since the plaintiff did not perform his part of contract within the extended period in the legal notice referred to supra, the Agreement of Sale was terminated as per notice dated 28.03.1985 and thus, there is termination of the Agreement of Sale between the plaintiff and defendant Nos. 1-4 w.e.f. 10.04.1985. As could be seen from the prayer sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of Agreement of Sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit schedule property on the basis of Agreement of Sale and consequential relief of decree for permanent injunction is not maintainable in law. Therefore, we have to hold that the relief sought for by the plaintiff for grant of decree for specific performance of execution of sale deed in respect of the suit schedule property in his favour on the basis of non existing Agreement of Sale is wholly unsustainable in law. Accordingly, the point No. 1 is answered in favour of the defendant No.5.

28. The learned High Court Judge has gravely erred in reversing the findings of fact recorded on the issue Nos. 3, 4 and 5 by the trial court in favour of the defendants. He has also failed to take into consideration the very important aspect of the matter, namely, that the Agreement of Sale in favour of the plaintiff was terminated and he had not sought declaratory relief to declare that the termination of agreement in the original suit is bad in law and therefore the suit for specific performance is not maintainable. Even assuming for the sake of argument that agreement was subsisting, the suit for specific performance is not maintainable in law in view of the breach of the

terms and conditions of the agreement by the plaintiff. Keeping in view the purpose for which the Agreement of Sale was executed and the time stipulated in the agreement as per clause 6 of the agreement, the contract should have been complied with within seven months including the extended period and that has not been done by the plaintiff. The findings recorded by the trial court on issue Nos. 4 and 5 and with regard to the readiness and willingness on the part of the plaintiff, the appellate court should have exercised its discretionary power under sub-sections (1) and (2) of Section 20 of the Specific Relief Act, and for this reason also we hold that the grant of the decree for specific performance by the High Court in the impugned judgment is wholly unsustainable in law. The trial court has come to the right conclusions on the contentious issues framed by it and has held that even though Agreement of Sale is proved, the plaintiff is not entitled for the decree of specific performance in respect of the suit schedule property in view of the findings of fact and reasons recorded in the contentious issues by it in its judgment and we are in agreement with the same.”

Though issue in this regard had been raised but the lower Appellate Court failed to advert to the aforementioned legal propositions. The respondent-plaintiff had not sought relief of declaration vis-a-vis cancellation of the agreement sought vide legal notice dated 01.07.2009. I am of the view that simplicitor suit for specific performance was not maintainable. Since appellants-defendants vide legal notice dated 01.07.2009 forfeited the earnest money, therefore respondent-plaintiff also not entitled to refund of the earnest money, as in reply to the aforementioned legal notice sought liquidated damages.

Keeping in view the aforementioned facts, judgment and decree of lower Appellate Court is hereby set aside. Question of law noticed above is answered in favour of appellants-defendants and against the respondent-plaintiff. The suit of the respondent-plaintiff fails.

Appeal stands allowed.

17.12.2015

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**(AMIT RAWAL)
JUDGE**