

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3752 of 2015

Date of Decision.11.08.2015

Smt. Pawan Kumari

.....Appellant

Versus

Mrs. Navdeep Kaur

.....Respondent

Present: Mr. Dinesh Rawat, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? No
2. To be referred to the Reporters or not ? No
3. Whether the judgment should be reported in the Digest? No

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K. KANNAN J. (ORAL)

1. The second appeal is against the judgment of the appellate Court granting a relief of advance paid by the plaintiff with interest. The rights of parties came to be concluded through an agreement dated 24.02.2011 between the plaintiff and the defendant under which the defendant offered to sell the property. It was a vacant land of 100 sq. yards for consideration of ₹ 50 lacs. An earnest money of ₹ 6 lacs had been given and the date as stipulated in the agreement was that the plaintiff could pay the balance on 23.04.2011 and take a sale deed. The plaintiff issued a notice on 1.06.2011 stating that the plaintiff was present on the day when the document was submitted but the defendant was not present and therefore, the document could not be executed. The plaintiff was stipulating a date again for his presence at the Registrar's office and when the defendant responded to the notice by saying that he had rescinded the contract through the notice issued on 15.06.2011, the plaintiff followed it soon with institution of case on 20.07.2011. The Court

had originally dismissed it and in appeal, the Appellate Court reversed it holding (i) that on the evidence relating to the actual presence of the party on 23.04.2011, it was a case of oath against oath by one party saying that he was present and another party denying the same and it was, therefore, required to be considered only on the basis of subsequent developments; (ii) the Court found that notice had been issued by the plaintiff again giving a date and also made reference to the fact that it could not have been a situation where the plaintiff was not having requisite funds, the manner the trial Court had dealt with by the fact that the plaintiff had actually purchased yet another piece of land during the interim period for ₹ 75 lacs. The plaintiff had explained in evidence that he had gone for purchase of yet another property only because he was keen to immediately put up construction and since the defendant was dragging his feet and he sought to rescind the contract, he did not want to waste time and therefore, he had purchased yet another property and he had put up some construction. The Court, therefore, found that the plaintiff's readiness and willingness must be true and it could not be the situation of the plaintiff not having requisite funds to carry on with the transaction. The Court found that the plaintiff could not be guilty of any breach and allowed for refund of ₹ 6 lacs which was the earnest money with interest. There was a clause stipulated in the agreement that if the vendor was not ready and willing to secure specific performance, the vendee was entitled to obtain twice as much as the earnest money. The suit was for ₹ 12 lacs of money but the Court had only granted ₹ 6 lacs and did not allow for the double amount of what was stipulated in the document. The Court had, therefore, properly exercised its discretion not

to allow the benefit of refund of yet another sum equivalent to the sum of earnest money as it would have been in the nature of penalty against the defendant. In think the court below has properly considered the matter and has entered a decree which was reasonable and appropriate.

2. Learned counsel appearing for the appellant would refer to me judgment of the Supreme Court in Satish Batra Vs. Sudhir Rawal in Civil Appeal No.7588 of 2012 decided on 18.10.2012 where the Supreme Court was considering whether the plaintiff who had not shown that he was ready and willing to purchase should be forfeited of his advance. Here I have already pointed out to the fact that the plaintiff could not be seen in breach by the fact that he had requisite funds. If the plaintiff was not in breach, the provision for refund of the amount was justified and I will not find the decision in Satish Batra's case (supra) will be applicable to the factual situation which was brought out.

3. The contention also is that the plaintiff cannot have interest as granted by the Court below. The Court has not granted twice the amount of what was paid as earnest money as stipulated in the agreement. It was only providing for the principal amount with interest which was reasonable and there is no error for intervention in the second appeal.

4. There is no substantial questions of law arise for consideration in the second appeal. The second appeal is dismissed.

(K. KANNAN)
JUDGE

August 11, 2015
Pankaj*