

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 839 of 2015 (O&M)

Date of decision:- 11.03.2015

Market Committee Bhiwani and others

...Appellants

Versus

Sita Ram

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vaibhav Sharma, DAG, Punjab

RITU BAHRI J.

C.M. No. 438-C of 2015

For the reasons mentioned in the application,
delay of 476 days in filing the present appeal is condoned.

The application stands disposed of accordingly.

Main case

Municipal Corporation Bhiwani has come up in regular second appeal, which is against the judgment and decree dated 26.05.2011 passed by the learned Addl. Civil Judge (Sr. Divn.) Bhiwani whereby the suit of the respondent-plaintiff (herein after to be referred as 'the respondent') was decreed with costs and against the judgment and decree dated 25.07.2013 passed by learned Addl. District Judge, Bhiwani whereby the appeal filed by the appellants-defendants (herein after to be referred as 'the appellants') was dismissed.

The respondent purchased a plot/shop No. 224

measuring 20X85 feet situated at Additional New Grain and Fodder Market, Bhiwani in open auction held on 21.03.2006 for consideration of Rs.18,50,000/- and the appellants issued an allotment order dated 20.11.2006 in this respect in favour of the respondent. This letter was issued in response to the advertisement issued by the appellant, according to which all modern facilities will be provided in the Additional New Grain and Fodder Market, Bhiwani by the appellants. As per terms of the auction as well as the allotment letter, 25% of the sale consideration was to be deposited at the time of auction and remaining 75% price of the disputed plot was to be deposited within 30 days from the date of issuance of allotment letter or in six half yearly installments with 15% interest per annum. The said interest was to be calculated from the date of issuance of offer of possession. The respondent deposited 25% of sale price ie. Rs.4,62,500/- with appellant No. 1 vide receipt dated 21.03.2006 and the possession of the disputed plot had to be offered to the allottee within 30 days from the date of issuance of the allotment letter provided that minimum basic facilities such as water supply, sewerage lines, roads and electrification exist at the spot and if above said facilities do not exist then after providing said basic facilities on the spot. It was also stipulated in the allotment letter that the allottee shall have to construct the building on the plot as per the approved

design within a period of two years from the date of issuance of allotment letter. However, after issuance of letter, no development works in respect of water supply, sewerage lines have been carried out in the Additional New Grain/Fodder Market, Bhiwani, as the appellants have not connected the water or sewerage line of the said market from the main lines of water. Appellant No. 3 issued letter dated 20.11.2006 offering the possession of the disputed plot to the respondent without providing complete facilities of water and sewerage lines on the suite. The respondent deposited the first installment of Rs.3,35,312/- and second installment of Rs.3,23,004/- and third installment of Rs.3,0,625/- with the appellants but they have wrongly charged interest on the above said installments of the dispute plot as they had not completed the work of basic amenities of water and sewerage till date and the respondent was entitled to receive back the amount of interest along with interest @18% per annum. Despite repeated requests, the appellants did not provide the basic amenities and were pressurizing hard for depositing the installments up to date with interest and penal interest.

The appellants contested the suit and submitted that instead of making the payment, the respondent had taken a false plea that basic amenities had not been provided by the appellants. The respondent is bound by the

terms and condition of the letter dated 20.11.2006. The respondent has not raised construction of any shop over the disputed plot so allotted to him whereas all the amenities i.e four walls, main gate, common platform, individual platform as well as facility of electricity are available in the Additional New Grain/Fodder Market, Bhiwani and there also exists sewerage lines as well as water pipe lines at the spot.

The above said letter dated 20.11.2006 was examined by the learned trial Court, which had been offered to the respondent with the assurance that the plot allotted to the respondent was ready for possession from the date of issue of that letter Ex P1, all basic amenities mentioned in clause 7 of ExP1 had already been provided to the respondent vide letter Ex P3 dated 20.11.2006. As per deposition of DW1 Sahab Singh, Secretary, Market Committee, an estimate of Rs.39,60,000/- was submitted to the concerned department by Market Committee, Bhiwani for providing water supply in the allotted area of Additional New Grain/Fodder Market, Bhiwani regarding which process was still going on. Thus, till the examination of this witness i.e 29.03.2011, no water facility had been provided by the appellants in the Grain Market in question. No relevant person from the Public Health Department was summoned by the appellants to prove the fact that the Public Health amenities such as sewerage, pipe line etc had been provided

or not in the area in question. On the other hand, respondent has examined PW3 Sudhir, SDE in the department of Public Health who deposed about the estimated cost of sewerage line, which came to a total of Rs.39,60,000/- but that amount was not deposited by the department. As per record of 2011, the minimum basic amenities had not been provided by the appellants as per clause 7 of the allotment letter Ex P1 up to 2011 whereas offer of possession had been given in 2006. Thus, this letter had been issued in violation of clause 7 of allotment letter ExP1, which amounts to breach of contractual obligation by the appellants.

The trial Court set aside the impugned letter dated 20.11.2006 and the respondent was held entitled to refund/adjust the amount of interest which the appellants have charged on the principal amount of installments and the appellants are not entitled to any interest or penal interest on the installments of the disputed plot till they complete the development work in the Additional New Grain/Fodder Market, Bhiwani.

On appeal, the lower Appellate affirmed the findings of the trial Court but modified the relief clause to the effect that the suit of the respondent succeeds and the same is decreed with costs while declaring letter dated 20.11.2006 Ex P3 issued by appellant No. 3 as illegal being

not in consonance with the terms and conditions of allotment letter Ex P1. After providing the minimum basic facilities like roads, water supply, sewerage and electrification as per clause 7 of the allotment letter Ex P1, the appellants would be able to issue fresh letter of offer of possession to the allottee of plot No. 224 i.e respondent. Till, then they may continue their demand of payments of installments without interest from the respondent and may take appropriate legal action in accordance with law. The respondent was held entitled to get the amount already paid by him on principal amount of installment adjusted in future payment. Till basic facilities as per clause 7 are provided by the appellants, they would not claim interest or penal interest on the installment of the disputed plot.

The judgments passed by both the Courts below, calls for no interference, as the judgments does not suffer from any misreading of facts. No substantial question of law arises for adjudication by this Court.

Accordingly, regular second appeal is dismissed

March 11, 2015
G Arora

(RITU BAHRI)
JUDGE