

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

Date of Decision: November 18th, 2015

1. R.S.A.No.845 of 2015 (O&M)

Sanjiv Goyal

...Appellant

Versus

Vipin Kumar Jain & others

...Respondents

2. R.S.A.No.1637 of 2015 (O&M)

Vipin Kumar Jain & another

...Appellants

Versus

Sanjiv Goyal & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

**Present: Mr.Mansur Ali, Advocate with
Mr.Atul Sood, Advocate,
for the appellant (in RSA No.845 of 2015) &
for respondent No.1 (in RSA No.1637 of 2015).**

**Mr.Vikas Bahl, Senior Advocate with
Mr.Nitin Jain, Advocate,
for the appellants (in RSA No.1637 of 2015) &
for respondent Nos.1 & 2 (in RSA No.845 of 2015).**

**Mr.Vipul Sharma, Advocate,
for HUDA-respondent Nos.3 & 4.**

AMIT RAWAL, J. (Oral)

**By this order, I intend to dispose of two Regular Second
Appeals, one filed by the vendee, i.e., RSA No.845 of 2015 (Sanjiv Goyal
Versus Vipin Kumar & others), whereby the relief vis-a-vis specific**

performance of agreement to sell dated 20.4.2005 has been declined and the defendants have been called upon to pay double the amount of the earnest money of ₹21.00 lacs and RSA No.1637 of 2015 (Vipin Kumar Jain & another Versus Sanjiv Goyal & others), whereby the defendants have impugned the findings rendered by the trial Court vis-a-vis return of double the amount of the earnest money.

Mr.Mansur Ali, Advocate with Mr.Atul Sood, Advocate appearing on behalf of the appellant in RSA No.845 of 2015 submits that the readiness and willingness on the part of the plaintiff was never missing, inasmuch as, that in pursuance to the agreement to sell dated 20.4.2005, the earnest money of ₹21.00 lacs against the total sale consideration of ₹2.11 crores in respect of SCO bearing No.P-7, Sector 5, Panchkula was paid. The stipulated date for execution and registration of the sale deed was 5.7.2005 or within fifteen days from the date when the defendants would obtain 'no objection' from the Estate Office. The stipulated date, with the mutual consent, was extended to 5.9.2005. Civil Writ Petition No.12856 of 2005 was filed by the defendants against the HUDA as there was a dispute with regard to the payment of outstanding dues, for the reason that vide order dated 1.3.2005, the site in dispute was restored with the condition that the HUDA would give a detailed chart of recalculation to the defendants. He further submits that the said writ petition was dismissed as withdrawn on 17.7.2006. For payment of the dues of the HUDA, the defendants had written a letter to the plaintiff to prepare a draft of ₹55.00 lacs, which was prepared, but since the writ petition was withdrawn, therefore, it was encashed, thus, the ingredients of Section 16-C of the Specific Relief Act have been complied with. Since the defendants failed to perform their part

of the agreement, this suit was filed on 29.8.2007. Both the Courts below have committed illegality in not quoting the fact that readiness and willingness was alive and, therefore, ought to have exercised the discretion under Section 20 of the Specific Relief Act. The defendants have intentionally not cleared the dues of the HUDA, so that the appellant-plaintiff is not able to seek specific performance of the agreement to sell. He, on instructions from his client, further submits that he is willing to pay the entire dues of the HUDA as on date along with interest, if any.

Mr.Vikas Bahl, learned Senior Counsel assisted by Mr.Nitin Jain, Advocate appearing for the appellants in RSA No.1637 of 2015 submits that once the defendants had not acquired the ownership in pursuance to the allotment letter of 1998, the terms and conditions of the agreement to sell cannot be adhered to. In support of his contention, he has relied upon the judgment of this Court in **Rajesh Kumar Versus Kusum Lata & anr., 2010(2) PLR 775 (paragraphs 12 & 13)**. He further submits that even after the restoration of the site in dispute, the HUDA has, till date, not given the exact calculation and the matter is subjudice vis-a-vis payment of the outstanding dues towards the SCO in question. The readiness and willingness on the part of the plaintiff was conspicuously absent as neither any legal notice or the plaintiff had appeared before the Sub Registrar for getting the sale deed executed, has been proved vis-a-vis placed on record, in essence, he did not appear before the office of Sub Registrar on the stipulated date, i.e., 5.9.2005. He further submits that Clause-7 of the agreement to sell envisages that the purchaser will pay another 10% advance, which comes to ₹21.00 lacs, but the same was not honoured and the readiness and willingness was conspicuously absent and, therefore,

discretion under Section 20 of the Act could not have been granted. Vis-a-vis grievance regarding the payment of double the amount of the earnest money, he submits that there is no prayer sought in the suit for claiming such amount, therefore, the Court had erroneously exercised the discretion in ordering the double the amount of the earnest money.

I have heard the learned counsel for the parties and appraised the paper book.

The ratio decidendi culled out by this Court in **Rajesh Kumar's case (supra)** is squarely applicable to the facts and circumstances of the case, in essence, the HUDA is still the owner of the plot as per the terms and conditions of the allotment letter. Until and unless the entire dues of the HUDA are paid, the vendee has not attained the ownership. The plaintiff has failed to honour the terms and conditions of the agreement to sell, particularly earnest money, much less, no explanation has come forth in not making the payment of ₹21.00 lacs. However, the matter did not end here. No act of seeking performance of the agreement to sell has been proved, much less, showed, in essence, the plaintiff has not appeared before the office of Sub Registrar with the balance sale consideration for execution and registration of the sale deed. The plea of Mr.Mansur Ali that the defendants are intentionally indulging into the protracted litigation with the HUDA, so that that the agreement to sell is effectively defeated, is not tenable for the reason that it is yet to be decided as to how much amount would be payable to the HUDA, vis-a-vis the rate of charging of interest from the date when all the enmities have been provided or not. In my view, the plaintiff is not entitled to discretionary relief as per Section 20 of the Specific Relief Act and rightly so, the trial Court has compensated him by

ordering the defendants to pay the double the amount of the earnest money.

It is settled law that even if there is no claim of the double of the amount of earnest money, yet the Court can always grant the relief keeping in view the facts and circumstances of the case.

There is another aspect of the matter. The writ petition was dismissed as withdrawn on 17.7.2006, whereas no explanation has come forth with regard to the readiness and willingness till filing of the suit as it was filed on 29.8.2007 as per the dictum laid down in **Sita Ram & Ors. Versus Radhey Shyam**, 2007(4) R.C.R. (Civil) 533, **I.S.Sikandar (D) By Lrs. Versus K.Subramani and others**, 2014(1) R.C.R.(Civil) 236 and **H.P. Pyarejan Versus Dasappa (dead) by L.Rs & Ors.**, 2006(1) R.C.R. (Civil) 646 that readiness and willingness has to be alive from the date of the execution of the agreement to sell, during its currency, till filing of the suit and till passing of the decree.

In my view, the plaintiff has been compensated by way of granting double the amount of the earnest money as he had showed his willingness to pay the outstanding dues of the site by preparing a draft of ₹55.00 lacs. I do not intend to differ with the findings rendered by both the Courts below, which are based on appreciation of the oral and documentary evidence, much less no substantial question of law arises for determination by this Court.

Accordingly, the appeals are dismissed.

November 18th, 2015
ramesh

(AMIT RAWAL)
JUDGE