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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1482-2010 (O&M)
Date of decision : 12.08.2016

HUDA through its Administrator and others
... Appellant(s)

Versus

Avinash Sood and others
... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.D. Bawa, Advocate
for the appellant(s).

Mr. Gaurav Mohunta, Advocate and
Mr. Gaurav Gogna, Advocate
for the respondent(s).

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

AMIT RAWAL, J. (ORAL)

The appellant(s)-HUDA is aggrieved of the judgment and decree rendered by both the Court below, whereby the suit for declaration challenging the resumption order passed by the competent authority deciding the appeal and as well as the revision under Section 17(8) of the Haryana Urban Development Authority Act, 1977 (hereinafter called 'the 1977 Act') being illegal, null and void, has been decreed.

Mr. R.D. Bawa, learned counsel appearing on behalf of the appellant(s)-HUDA submits that the shop-cum-office bearing No.85 Sector-5, Panchkula was put to auction on 28.09.1989 for a price of ₹ 36,20,000/-. The respondent(s)-plaintiff(s) deposited 10% of the total amount i.e. ₹ 5,43,000/- and remaining 25% making a total of the bid amount i.e.

₹ 9,05,000/- and the balance payment of ₹ 27,15,000/- was payable in eight half-yearly instalments. The allotment letter was issued on 28.09.1989. The building was to be constructed within two years from the date of the possession. The respondent(s)-plaintiff(s) failed to pay the instalments. Though the letter of possession was issued in the year 1993 and having numerous notices regarding payment of the balance amount was sent, but the same was not adhered to. The HUDA in the month of October 1995 having left no other option, resumed the plot. No doubt that the aforementioned order has been set aside subject to the terms and conditions that the respondent-plaintiff had to clear the entire arrears by depositing the amount along with interest @ 10%, but the fact remains that the HUDA is entitled to charge interest @ 18%. In support of his contentions, he relies upon the judgment rendered by the Single Bench of this Court in ***RSA No.2317 of 2009*** titled as ***"The Estate Officer and another V/s Parveen Kumar"*** decided on 17.09.2009.

Mr. Gaurav Mohunta and Mr. Gaurav Gogna, learned counsel appearing on behalf of the respondent(s)-plaintiff(s) submits that the appeal at the behest of HUDA claiming interest @ 18% is against the ratio decidendi culled out by the Hon'ble Supreme Court in ***"Roochira Ceramics V/s HUDA and others" (2002) 9 Supreme Court Cases 599***, whereby, having confronted HUDA, it was unable to explain the charging of the interest in the absence of the provisions in the terms and conditions of the allotment, much less, Regulations or the provisions of the 1977 Act. The amount of ₹ 25,00,000/- was deposited under the Order of this Court which was assailed by the HUDA in the Hon'ble Supreme Court vide SLP (Civil)

No.4895-96 of 2012 and the same was dismissed vide order dated 24.01.2012. The order reads thus:-

> *"The petitions are directed against interlocutory order dated 14.01.2011 and 03.03.2011 passed by the learned Single Judge of the Punjab and Haryana High Court in RSA No.1482 of 2010. The petitioners have also filed an application for condonation of 137 days delay in filing and 81 days delay in refiling the special leave petitions.*
>
> *Although the explanation given by the petitioners is not fully satisfactory, we do not consider it proper to non-suit them only on the ground of delay because we are convinced that the impugned orders do not suffer from patent legal infirmity requiring interference under Article 136 of the Constitution.*
>
> *The Special Leave Petitions are accordingly dismissed. However, we make it clear that the observations contained in the impugned orders shall not influence the High Court in deciding the Regular Second Appeal and the petitioners shall be free to show to the High Court that they are entitled to charge interest at the rate of 18 per cent per annum in terms of the order dated 30.09.1997 passed by the Administrator, HUDA".*

He submits that no cause survives for the HUDA in assailing the appeal by invoking the provisions of Section 100 of the Code of Civil Procedure.

I have heard the learned counsel for the parties and appraised the paper book. For the sake of brevity, the ratio decidendi culled out by the Hon'ble Supreme Court in ***Roochira Ceramics's case*** (supra) reads thus:-

> *"....While placing reliance upon the aforesaid authority and in view of the submissions made by learned counsel on behalf of the plaintiff, I find that defendants can charge only 10%*

> *interest and not more than that. It is laid down in* ***Gian Inder Sharma v. HUDA, PLR 2003(1) (P&H) D.B****. by the Hon'ble Punjab and Haryana High Court that HUDA could not point out to any provisions of law, Act or Regulations of 1978 or any condition in the allotment letter which authorise the respondent to charge compound interest on delayed payments and directed to charge simple interest. In this case HUDA had gone in SLP, but the same was dismissed.*
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> *17. In view of the aforesaid discussion, the issue Nos.1, 2 and 3 are decided in favour of the plaintiff and against the defendants."*

In view of the aforementioned findings and particularly on query raised to Mr. R.D. Bawa whether HUDA can charge interest @ 18%, the answer was negative, as the terms and conditions only envisage the interest @ 10%. None of the provisions of the 1977 Act or Regulations framed therein had been pointed out enabling the HUDA to charge interest rate @ 18%. Once, the entire amount i.e. 10% of the total amount has been paid and accepted by the HUDA vide order dated 14.01.2011 and 03.03.2011 and the order has attained finality in view of the order of Hon'ble Supreme Court passed in ***HUDA's case (supra)***, I am of the view that no further cause survives for the HUDA to challenge the judgment and decree.

As per the ratio decidendi culled out in the judgment by the Single Bench of this Court in ***The Estate Officer and another's case (supra)***, is a judgment *per incuriam* as it depends upon the facts and circumstances of such case which could not be treated as judgment in *rem* as this Court is bound by the ratio decidendi culled out by the Hon'ble Supreme Court under Article 141 of the Constitution of India. I am of the view that the HUDA is unnecessarily indulging into a lot of litigation either on its own or the allottees are being constrained to approach the Court with regard to charging of higher interest, as the regulation or the Act do not envisage any provisions for charging the interest @ 18%. Henceforth, I am constrained to give the aforesaid observation and while sitting in roster as I have come across many cases where such type of cases have come up.

For the foregoing reasons, I do not finding any illegality and perversity in the judgment and decree rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and the appeal is, resultantly, dismissed with the cost of ₹ 10,000/- which shall paid to the respondent(s)-plaintiff(s) within a period of two months from the date of receipt of the certified copy of this order and in case of failure, the respondent(s)-plaintiff(s) shall be at liberty to move an appropriate application.

Appeal stands dismissed.

(AMIT RAWAL)
JUDGE

12.08.2016
yogesh

Whether speaking/reasoned **[✓ Yes]/ No**

Whether Reportable **Yes/ [✓ No]**