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

RSA-155-2010 (O&M)

Date of decision : 03.08.2016

Umrao

... Appellant

Versus

Lala and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rahul Sharma, Advocate
for the appellant.

Mr. Sunil Panwar, Advocate
for respondent Nos.2 and 3.

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?

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the partial decree viz-a-viz the refund of the earnest money along with interest @ 6 % in a suit seeking specific performance of agreement to sell dated 12.02.1993.

Mr. Rahul Sharma, learned counsel appearing on behalf of the appellant-plaintiff submits that in pursuance to the aforementioned agreement to sell, a sum of ₹ 50,000/- as earnest money against the total sale consideration of ₹ 1,00,000/- was paid. The stipulated date for registration and execution of the sale deed in respect of land measuring 6 kanals was 15.07.1993. Few days after the aforementioned agreement to sell, the vendor on 06.03.1993 entered into a consent decree with Lala Ram and thereafter, the brothers instituted a suit and consent decree was set aside on the premise that there was a prior agreement to sell dated 10.01.1990 in

their favour i.e. Defendant Nos.2 and 3. The aforementioned agreement to sell has not been proved, however, before the lower Appellate Court, an application under Order 41 Rule 27 CPC was filed to bring on record the copy of the order passed by this Court in revision petition, whereby the objection with regard to the impleadment of the appellant-plaintiff in a suit instituted at the instance of the defendant Nos.2 and 3 was kept open. In rebuttal, defendant Nos.2 and 3 sought to prove the agreement to sell and the factum of the evidence was also kept open by the lower Appellate Court. The lower Appellate Court have also non-suited the appellant-plaintiff on the ground of applicability of the provisions of Order 2 Rule 2 CPC as the appellant-plaintiff had filed a suit for permanent injunction on 28.06.1995 and before withdrawal of aforementioned suit, a suit for specific performance was filed on 12.02.1996 and therefore, ratio decidendi culled out by the Hon'ble Supreme Court in **"M/s Virgo Industries (Eng.) P. Ltd. V/s M/s Venturetech Solution P. Ltd." 2012 (4) RCR (Civil) 372**, would not apply rather the findings rendered by the Hon'ble Supreme Court in **"Inbasegaran and another V/s S. Natarajan (dead) through LRs" 2014 (4) RCR (Civil) 872** and **"Rathnavathi and another V/s Kavita Ganashamdas" 2014 (4) RCR (Civil) 904** would apply, thus, urges this Court for formulation of the substantial questions of law as drawn in the appeal.

Mr. Sunil Panwar, learned counsel appearing on behalf of the respondents-defendant Nos.2 and 3 submits that the appellant-plaintiff had not been ready and willing to perform their part of the agreement to sell, though the agreement to sell was denied. According to the appellant-plaintiff, the breach had already occurred in the year 1995, nothing

prevented him to seek the remedy of specific performance, yet he chose the remedy of injunction in essence, readiness and willingness was conspicuously absent, rightly so, the Courts below have applied the ratio culled out by the Hon'ble Supreme Court in *"M/s Virgo Industries (Eng.) P. Ltd.'s case"* (supra) and ratio decidendi culled out in *"Inbasegaran's case"* (supra) and *"Rathnavathi's case"* (supra) do not apply as the same are based upon different facts and circumstances. The lower Appellate Court did not interfere with the findings rendered by the trial Court viz-a-viz the refund of the earnest money in view of the fact the suit *ex facie* was barred by provisions of Order 2 Rule 2 CPC and there was no cross-appeal, thus, urges this Court for affirming the findings under challenge.

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

As regards the principle culled out by the Hon'ble Supreme Court in *M/s Virgo Industries (Eng.) P. Ltd.'s case* (supra) is a case where the breach has already occurred, thus, the vendee had a cause of action to seek the specific performance, but yet instituted a suit for injunction. In the instant case also, the stipulated date was 15.07.1993, whereas the suit for injunction had been filed almost after two years i.e. 28.06.1995 and the suit for specific performance was filed on 12.02.1996. The decision of the application seeking impleadment is of 1998. Nothing prevented the appellant-plaintiff to seek the specific performance owing to the breach. In *"Inbasegaran's case"* (supra) and *"Rathnavathi's case"* (supra), the Court had an occasion to ponder upon the facts of the case holding that the ratio of *M/s Virgo Industries (Eng.) P. Ltd.'s case* (supra) would not apply, for, as per the facts and circumstances of the case, in pursuance to the agreement to

sell, the vendor had entered into possession and the time was not essence. Since, there was a threat of forcible interference and dispossession, the appellant-plaintiff (therein) had filed a suit for injunction. It is, in this background of the matter, it was held that the provisions of Order 2 Rule 2 CPC would not apply. The facts of the case are not identical to the fact as culled out in "Inbasegaran's case" (supra) and "Rathnavathi's case" (supra), therefore, the aforementioned judgments would not apply. The cardinal principle for seeking a discretion under Section 20 of the Specific Relief Act, 1963 is the appellant-plaintiff has to be always ready and willing throughout from the date of the agreement to sell till filing of the suit and even passing of the decree.

Keeping in view the facts and circumstances of the case as noticed above, in my view, the appellant-plaintiff had not been ready and willing to perform his part to seek the specific performance and rightly so, has been ordered to be held to be entitled to refund of ₹ 50,000/- though apparently the suit was barred by the provisions of Order 2 Rule 2 CPC.

For the foregoing reasons, I do not intend to differ with the findings 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.

Resultantly, the appeal is dismissed.

03.08.2016

yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No