

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

**RSA-2168-2010 (O&M)
Date of decision : 24.10.2016**

Kuldeep Singh

... Appellant

Versus

HUDA and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Gorav Kathuria, Advocate
for the appellant.

Mr. Suvir Sehgal, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

CM-6595-C-2010

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the delay of 13 days in filing the appeal is condoned.

CM stands disposed of.

RSA-2168-2010

The appellant-plaintiff is aggrieved of the judgment and decree of the lower Appellate Court, whereby suit for declaration with consequent relief of permanent injunction has been dismissed, in essence, the judgment and decree of the trial Court has been set aside.

Mr. Gorav Kathuria, learned counsel appearing on behalf of the appellant-plaintiff submits that a booth shop bearing No.258 in Sector 7-B, Faridabad had been allotted to the appellant-plaintiff for a sum of

₹ 2,37,500/-, out of which ₹ 23,750/- being 10% was paid at the time of auction and ₹ 35,625/- in order to make 25% of the price was paid within 30 days of the issue of allotment letter. The appellant-plaintiff had paid a sum of ₹ 1,04,375/-, but thereafter, remaining installments could not be paid. He submits that the installments entail the interest @ 10%. HUDA started imposing interest @ 18% which is not permissible in view of 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**. It is, in this background of the matter, the suit, aforementioned, was filed as the action of the HUDA was without jurisdiction, therefore, bar as envisaged under Section 50 of the Haryana Urban Development Authority Act, 1977 (for short 'the 1977 Act') would not come into play, but the lower Appellate Court has non-suited the appellant-plaintiff on this ground alone, thus, urges this Court for setting aside the judgment and decree under challenge.

He further submit that during the pendency of the appeal, this Court called upon the HUDA to submit the calculations by way of an affidavit and he has drawn the attention of this Court to the affidavit dated 22.05.2012, whereby a sum of ₹ 6,46,946/- including the penalty was stated to be outstanding.

Learned counsel for the appellant-plaintiff, on instructions from his client, submits that his client is willing to pay the entire outstanding amount along with interest @ 10% including the penalty and other charges, in accordance with the terms and conditions of the allotment.

Per contra, Mr. Suvir Sehgal, learned counsel appearing on behalf of the respondent(s)-HUDA submits that there is no illegality and perversity in the judgment and decree of the lower Appellate Court and the suit has rightly been dismissed for want of jurisdiction by the Civil Court particularly in view of the provisions of Section 50 of the 1977 Act. The order of resumption is appealable under the 1977 Act, therefore, the aggrieved party could not have invoked the jurisdiction of the Civil Court, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that once learned counsel for the appellant-plaintiff, on instructions from his client, has suffered a statement to pay the entire outstanding amount, I am of the view that the matter can be resolved by invoking the provisions of Section 89 of the Code of Civil Procedure instead of relegating the appellant-plaintiff to avail the alternate remedy as submitted by Mr. Suvir Sehgal, it would be too late in a day as the suit, aforementioned, was filed way back in the year 2001 and the appeal is of the year 2010. It would be tantamount to putting the clock back which would not fall within the expressions of “In the Interest of Justice”.

The Hon'ble Supreme Court in “Roochira Ceramics' case (supra) has held that there is no provisions of law, Act and Regulations or any condition in the allotment letter which authorize the HUDA to charge the compound interest on the delayed payments and had directed to charge a simple interest.

Since the appellant-plaintiff had defaulted after payment of ₹ 1,04,374/-, I am of the view that the appellant-plaintiff should not get

away in not paying the penalty/restoration charges.

For the foregoing reasons, the judgment and decree of the lower Appellate Court is hereby set aside by issuing the following directions:-

- 1. HUDA is directed to intimate the outstanding amount including the interest @ 10% along with penalty/restoration charges, if any, to the appellant-plaintiff within a period of two months from the date of the receipt of the certified copy of the order.
- 2. On receipt of the aforementioned calculations, the appellant-plaintiff shall deposit the same within another period of two months.

Thereafter, the resumption order would deem to have been withdrawn and the allotment of the booth, aforementioned, shall deem to have been restored.

With the aforesaid observations, the appeal stands disposed of subject to the payment of cost of ₹ 25,000/- which shall be paid to the learned counsel for the respondent(s)-HUDA.

24.10.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No