

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

RSA No.4405 of 2010 (O&M)

Date of decision : 22.07.2016

Roshan Lal Verma

...Appellant

Versus

Sarla Devi Bhatia and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Harsh Kinra, Advocate for the appellant.

Mr. Alok Jain, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

CM No.13231-C of 2010

For the reasons stated in the application, which is duly supported by an affidavit, delay of 200 days in refiling the appeal is condoned.

Application stands allowed.

Main Case

The appellant-plaintiff is aggrieved of the condition imposed by the lower Appellate Court in appeal preferred by the defendant against the judgment and decree dated 21.05.2009 rendered by the trial Court, whereby

the suit for specific performance of the agreement to sell dated 19.08.2003 in respect of portion of the house No.389 measuring 281 square yards, has been decreed.

Mr. Harsh Kinra, learned counsel appearing on behalf of the appellant submits that condition imposed by the lower Appellate Court was neither part of the agreement to sell, much less, of the pleadings. Even no such issue was pressed. Assuming for the arguments sake, condition is required to be adhered to in view of the prevailing regulations but the entire role of obtaining the permission is on to the plaintiff, as it is owner who has to do correspondences or approach the HUDA authorities for obtaining No Objection Certificate. The aforementioned judgment and decree at the instance of owner i.e. Sarla Devi Bhatia and others were challenged in the Regular Second Appeal bearing No.755 of 2010 and the same very question of law was proposed to be raised but it has been dismissed by this Court vide order dated 10.05.2010. Copy of which has been annexed as Annexure A-1 along with miscellaneous application bearing No.5654-C of 2013 and thus urges this Court for formulation of the following substantial questions of law:-

- i) Whether the lower Appellate Court in the absence of rider in agreement or pleadings, can impose condition?
- ii) Whether the lower Appellate Court can impose condition upon appellant-plaintiff whereas Rules provide for obtaining NOC at the instance of the owner with the concurrence of the Vendee?
- iii) Whether the imposition of the condition, noticed above, judgment and decree of the lower Appellate Court suffers from

illegality or perversity?

Mr. Alok Jain, learned counsel appearing on behalf of respondents submits that Court cannot shut his eyes to the prevailing provisions. The arguments raised was purely legal and Court had taken cognizance in moulding or relief or imposition of condition. The plaintiff has not taken any steps for in complying with the condition and, therefore, the execution had been adjourned sine die. He further submits that no doubt the appeal at the instance of the respondent has been dismissed but there has to be adherence to Rules and Regulations and urges this Court for affirming of the condition imposed by the lower Appellate Court.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force in submission of Mr. Alok Jain, Advocate. For the sake of brevity, condition imposed reads thus:-

“15. A perusal of the Regulations of 1978 show that transfer of land and building under regulation 15 is not permitted and previous permission of the Estate Officer is required and while giving permission it can impose any condition which may be decided by the Chief Administrator. Thus, prior permission of the Estate Officer is necessary when any right in the land and building is transferred and this condition will have to be followed before the sale deed is executed. The plaintiff will have to obtain the necessary permission.”

Permission from the concerned office as directed cannot be obtained in the absence of participation of the respondent-defendant-Vendor. No doubt the Court can always take cognizance of the prevailing rules and regulations.

Mr. Kinra, at this stage relied upon the judgment of the Hon'ble Supreme Court in case *M/s Virgo Industries Pvt. Ltd. Vs. M/s Venturetech Solutions Pvt. Ltd.* 2012(4) RCR (Civil) 372, to contend that in suit for specific performance, even condition of no objection is not necessary. I am in agreement with the aforementioned judgment and decree. This Court had also rejected the question of law raised in the appeal preferred by the respondents-defendants. The relevant findings given by this Court in RSA *ibid*, reads thus:-

“The following questions have been proposed:-

- i) Whether the alleged document relied upon by the respondent was an agreement or only a security document?*
- ii) Whether the regulation of 1978 prohibits fragmentation of the land/buildings in dispute and against the statute as per Regulation 18 of the Haryana Urban development (Disposal of Land and Building) Regulations 1978?*
- iii) Whether the respondent has been able to prove on record that he is ready and willing to perform his part on the basis of the alleged agreement?*
- iv) Whether it is mandatory to serve notice upon the appellant to perform her part of the alleged contract before the filing of the suit by the respondent?*
- v) Whether there has been complete misreading of the pleadings as well as the evidence on the record by the courts below while deciding the suit of the respondent.*

It would be seen that questions No. (i), (iii) and (v) are pure questions of fact. As regards question No.(ii), no doubt fragmentation of property is not allowed but the learned Courts below rightly noticed that the appellant herself having purchased 281 square yards cannot say that

the sale was not permissible in law. Question No. (iv) has not been argued.

Consequently holding all the questions proposed against the appellant, this appeal as well as the application for stay are dismissed. No costs.”

The ratio decidendi culled out by the Hon'ble Supreme Court squarely applies to the facts and circumstances of the case. It is no longer necessity to obtain the NOC for the purpose of execution of the same.

In my view, condition imposed is totally aberrative and fallacious, therefore, cannot be allowed to sustain and hereby deleted from the impugned judgment and decree. Rest of the findings given while upholding the judgment is maintained whereas the condition imposed by the trial Court with regard to the deposit of the balance amount and execution of the sale deed is restored.

Appeal stands allowed in aforementioned terms.

22.07.2016

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**(AMIT RAWAL)
JUDGE**