

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

RSA No.707 of 2010 (O&M)

Date of decision : 10.05.2016

Sanjay Bhambri and another

...Appellants

Versus

HUDA and another

...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 ? YES
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Manoj Bajaj, Advocate for the appellants.

Mr. Saurabh Goel, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellants-plaintiffs are aggrieved of the dismissal of the suit seeking declaration qua setting aside of the resumption order dated 10.07.2000 and the order passed by the Appellate Authority i.e. Chief Administrator.

Mr. Manoj Bajaj, learned counsel appearing on behalf of appellants-plaintiffs submits that shop-cum-flat bearing No.69, situated in Sector-16, Part-II, Faridabad was allotted to the appellant-plaintiff vide allotment letter dated 11.01.1996. As per the terms and conditions of the same, after receipt of 25%, the balance amount was required to be deposited within 60 days or in 10 half yearly installments containing the element of interest at the rate of 10% p.a. The HUDA initiated the resumption proceedings. Notice

of the resumption proceeding was never received by the appellant, resulting into passing of the ex parte resumption order dated 10.07.2000. Appeal was filed against the same (Ex.D10) enclosing the draft of ₹10,00,000/- but same was also dismissed. Having left with no other option, invoked the jurisdiction of the trial Court under Section 9 of the Code of Civil Procedure on 20.11.2000. Along with suit, moved an application under Order 39 Rules 1 and 2 CPC for ad-interim seeking restraint, much less, creating of third party right. During the course of hearing, it was agreed that the plaintiff shall offer an amount of ₹10,00,000/- and ultimately it was increased to ₹30,00,000/-. The draft was sent but returned back. On this HUDA changed the counsel. Both the Courts below have not addressed the issue with regard to the charging of the simple interest at the rate of 18% p.a. or compound interest. He further submits that resumption order should be last resort and it should not be passed mere drop of hat and thus urges this Court for formulation of following substantial questions of law:-

1. Whether the suit in view of aforementioned facts and circumstances by invoking the jurisdiction of Section 9 of the Code of Civil Procedure would be maintainable and rigours of the sub-Section 2 of Section 50 of 1970 Act would not be attracted?
2. Whether the judgment and decree of both the Courts below suffers from illegality and perversity?

Mr. Saurabh Goel, learned counsel appearing on behalf of respondent-defendant submits that allotment letter envisages the imposition of penalty in case of default. After depositing of 25% amount, allottee/plaintiff did not adhere to the terms and conditions of the allotment letter. HUDA having left with no other option had to resort to the resumption proceedings.

Suit has been held to be not maintainable in view of the provision of Sub-Section 2 of Section 50 of HUDA Act. Jurisdiction of the Civil Court was expressly barred and thus urges this Court for affirmation of the findings rendered by both the Courts below.

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

Shorn of the facts as noticed above are that undisputedly the order of resumption has been challenged by filing the appeal before the Chief Administrator. After passing of the order, the effected party/allottee had two option, either to file the writ under Article 226 of the Constitution of India or to file the suit under Section 9 of CPC. In the instant case, as noticed above, suit has been filed as disputed questions of facts and law were involved which can not be adjudicated under proceedings under Article 226. Both the Courts below have failed to address the issue with regard to the charging of the compound interest which is totally alien to the terms and conditions of the letter of allotment as it only envisages imposition of interest at the rate of 18% p.a. in case of default and whole purpose of the allotment is to develop the area/sector by providing the facility of shops to the residents of the area. It is settled proposition of law that resumption proceedings should not be resorted but should be a last resort. Once the appellants-plaintiffs have offered to pay the balance amount along with interest at the rate of 18% p.a., in my view HUDA should not be hesitant in accepting the same. Rather adopting contumacious approach would result into mental harassment and prolongation of litigation expenses.

In my view, once litigant approaches allottee/HUDA authorities to pay entire outstanding amount along with interest at the rate of 18% p.a.,

HUDA people should not be act as shylock forcing the allottee to resort into litigation expenses and such an act of HUDA is depreciated.

I have come across so many cases in pursuance to adverse or resumption order where litigant are compelled to approach Civil Court. However as an abundant direction, I deem it appropriate to issue direction to the HUDA to consider the cases sympathetically and henceforth deal with such situation instead of embroiling allottees into litigation. Having noticed aforementioned fact, I am of the view that judgment and decree of both the Courts below are not sustainable.

Accordingly, substantial questions of law as noticed above are answered in favour of appellant-plaintiffs. Since there disputed question of facts are involved, particularly when the appellant-plaintiffs have been compelled to pay the entire outstanding amount, I deem it appropriate to issue direction to HUDA to call upon the appellant to make the payments strictly as per the terms and conditions of the allotment, which does not envisages charging of the compound interest, within specified period. On receipt of such demand, appellant shall clear all the entire outstanding amount and thereafter order of resumption would pales into insignificance, in essence, allotment shall restored.

This Court is sanguine that HUDA would endeavour to take appropriate steps in deciding the matter as expeditiously as possible preferably within a period of two months from the date of receipt of certified copy of this order.

With the aforementioned directions, appeal stands disposed of.

10.05.2016

pawan

**(AMIT RAWAL)
JUDGE**