IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.2189 of 2012 (O&M)
Date of Decision: November 15, 2016

Ravinder Kumar

...Appellant

Versus

Haryana Urban Development Authority, Panchkula & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Ashwani Talwar, Advocate,
for the appellant.

Mr.Vishal Garg, Advocate,
for the respondents.

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AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the judgment and decree of the Lower Appellate Court, whereby the judgment and decree of the trial Court decreeing the suit granting declaration by setting-aside the order of resumption dated 4.4.2001/20.6.2001 and further proceedings regarding the outstanding dues against Booth Site No.26, Industrial Area, Ph-1, Panchkula, has been set-aside.

Mr.Ashwani Talwar, learned counsel for the appellant-plaintiff submits that the aforementioned Booth was allotted to the appellant in the open auction vide allotment letter dated 5.10.1987. Since the appellant had defaulted in making the payment, the respondent-HUDA starting issuing notices containing element of interest @ 18% branded it to be penal interest. Though the appellant had intention to pay the money, but since the HUDA was not accepting the amount without 18% interest, appellant approached the Appellate Authority under the Haryana Urban Development Authority Act, 1977 in the year 1991 challenging the demand of interest @ 18%, but the same was rejected vide order dated 12.1.1993 (Ex.P8), which entailed passing of the resumption order dated 4.4.2001/20.6.2001. The appellant had challenged the action of the HUDA by adopting the remedy under the Consumer Protection Act, but the authorities relegated the appellant to seek vindication of his grievance in the Civil Court. It is in this backdrop of the matter, Civil Suit No.358-RBT of 2003 was filed. The Trial Court decreed the suit, but the Lower Appellate Court, while relying upon the judgment rendered by this Court in **Regular Second Appeal No.2317 of 2009 (The Estate Officer and another Versus Parveen Kumar),** decided on 17.9.2009**,** has dismissed the suit allowing the appeal of the HUDA on the premise that where the allottees have been perpetuate defaulter after making the payment of 25%, the HUDA is entitled to charge interest @ 18%.

He further submits that the entire amount of instalments including the element of 10% interest has been deposited. His client is willing to pay all other usual charges, i.e., restoration, any penalty if permissible. The ratio decidendi culled out in **Parveen Kumar's case (supra)**, would not apply as the judgment is not judgment in rem. It is only on the basis of the facts and circumstances of the case.

Mr.Vishal Garg, learned counsel representing the respondent-HUDA submits that the action of the HUDA is perfectly legal and justified. There is tendency amongst the allottees, who after purchasing the property in open auction by depositing 25%, intentionally committed default by leaving HUDA in lurch to recover the amount. It is in this backdrop of the matter, the notice containing the element of interest @ 18% was issued, but the plaintiff miserably failed to discharge the liability. He was a defaulter for almost four years and the amount was to be paid in half yearly equal instalments, including interest @ 10% and the judgment rendered by the Lower Appellate Court dismissing the suit is perfectly justified and legal and in consonance with the ratio decidendi culled out in **Parveen Kumar's case (supra).**

Regarding the deposit of the outstanding amount other than element of 18% interest, he is unable to rebut the same in the absence of any assistance from the office of the HUDA. He also submits that the jurisdiction of the Civil Court as per the provisions of Section 50 of the 1977 Act is expressly barred. It is the conceded position on record that the appellant-plaintiff has not availed the remedy of appeal as envisaged under Section 17 (7) of 1977 Act.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the ratio decidendi culled out in **Parveen Kumar's case (supra)** would not be considered as a judgment in rem as it was in peculiar facts and circumstances of the case, for, this Court realising that allottee, therein, was a perpetual defaulter for eight years in discharging the liability in depositing the amount by way of half yearly instalments after initial deposit of 25%. However, in the instant case, after four years, the appellant had approached the Appellate Authority for vindication of his grievance qua the action of the HUDA in charging interest @ 18% on the balance outstanding dues and instalments, which ultimately did not find favour. The Hon'ble Supreme Court in **Roochira Ceramics Versus H.U.D.A. And others, (2002) 9 Supreme Court Cases 599** had an occasion to deliberate upon the charging of interest @ 18% by the HUDA and has held that in the absence of any terms and conditions in the allotment letter, HUDA cannot charge interest @ 18%. Mr.Talwar, during the course of the hearing of the present appeal after obtaining instructions from his client, submits that the entire outstanding amount along with interest @ 10% has been deposited and has also undertaken to deposit any further permissible charges, i.e., penalty, restoration charges etc. in case the order of resumption is set-aside.

No doubt, there is some force in the submission of Mr.Garg regarding the maintainability of the suit, but keeping in view the peculiar facts and circumstances of the present case and in order to put the litigation to end, it would be a too hypertechnical and farcical exercise in relegating the appellant to avail the remedy as already both the parties are at loggerheads since quite long and, thus, I am of the view that the demand of the HUDA in charging interest @ 18% qua the outstanding amount was not sustainable in view of the ratio decidendi culled out in **Roochira Ceramics's case (supra).** The same is hereby set-aside.

In case any amount is found due towards the appellant other than already deposited with the HUDA in accordance with the allotment letter and as per the provisions of the Act, the HUDA shall raise the demand to the appellant, who shall, within the time granted, shall deposit the entire amount.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in ***Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213,*** wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in ***Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others,*** ***2001(4) SCC 262*** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

> *"Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of* ***Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]*** *cannot be sustained and is thus overruled." [at paras 27 – 29]"*

> *"27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government*

of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force."

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

For the reasons aforementioned, the judgment and decree of Lower Appellate Court is set aside and that of the trial Court is restored.

Resultantly, the Regular Second Appeal stands allowed.

November 15, 2016 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**