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

RSA-727-2011 (O&M)
Date of decision : 09.05.2016

H.R. Chopra

... Appellant

Versus

HUDA and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.K. Bansal, Advocate
for the appellant.

Mr. Jagdish Manchanda, Advocate and
Mr. Ravi Gakhar, Advocate
for the HUDA.

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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 judgment and decree rendered by the lower Appellate Court, whereby the suit has been dismissed as the appellant-plaintiff had pleaded that no notice prior to the passing of the resumption order was ever received.

Mr. A.K. Bansal, learned counsel appearing on behalf of the appellant-plaintiff submits that the plot for construction of booths was allotted in Sector 28, Faridabad and as per terms and conditions of the allotment letter, 25% of the premium had been paid. Since, there was a little default in payment of the installments, HUDA initiated the proceedings by sending the notices, but the notices were never received. In fact, it was found that notices have been sent at incorrect address and therefore, resumption order was passed on 20.10.1997. An appeal against the aforementioned order was filed before the Chief Administrator, but the same remained pending for a period of three years, having left with no other option, knocked the door of the Court under Section 9 of the CPC as the entire procedure adopted by the HUDA was without jurisdiction and therefore, the rigours of Section 50 (2) of the Haryana Urban Development Authority Act, 1977 (hereinafter called 'the 1977 Act'), would not be attracted. He further submits that during the pendency of the suit, certain amount had been paid. The suit was decreed, however, in appeal taken by HUDA, the suit has been dismissed on the ground that the factum of non-service of the notices had not been taken. He further submits that while issuing notice of motion, this Court, vide order dated 10.02.2011, directed that the alienation of the suit property shall remain stayed, subject to the condition of depositing simple interest calculated @ 18% per annum on the entire amount due calculated till 31.01.2011 within a period of seven days. He submits that the aforementioned order had been complied with and the amount had been deposited, which fact is evident from Annexures A-13, A-14 and A-15 annexed vide miscellaneous application bearing No.4287-88-C of 2012. He submits that in case, any outstanding amount is due or there is some error in the calculation, an appropriate direction be issued to the HUDA to settle the same, but the resumption order should not be resorted to, thus, urges this Court to formulate the following substantial questions of law:-

1. Whether the factum of non receipt of the notices disentitles the appellant-plaintiff to claim the relief as sought in the suit?
2. Whether pleadings as per Order 6 Rules 1 & 2 CPC have to be

consigned and proved and the evidence is to be required to be pleaded?

3. Whether the judgment and decree of the lower Appellate Court suffers from the illegality and perversity.

Mr. Jagdish Manchanda, Advocate and Ravi Gakhar, learned counsel appearing on behalf of the respondent-HUDA submits that the appellant-plaintiff fault/defaulted in payment of the instalments, HUDA having left no other option, had to resort to the resumption proceedings. Notices were sent at the furnished address and therefore, no fault could be found qua non-receipt of the alleged notices. In fact, the allottee willfully avoided the notices, rightly so, the resumption proceedings were initiated and order thereon was passed. As per the terms and conditions of the allotment letter, in case, the allottee do not deposit the amount, then the allottee is liable to pay compound interest @ 18%, thus, urges this Court for affirming the findings rendered by the lower Appellate Court.

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

It is a settled law that the resumption order should be last resort, but the fact remains that in pursuance to the order dated 10.02.2011, the appellant-plaintiff has already deposited the entire outstanding amount, as directed by this Court. For the sake of brevity, the said order reads thus:-

> *"The suit of the plaintiff appellant challenging the resumption order dated 20.10.1997 and the notice under Section 18 (2) of the Haryana Urban Development Authority Act (for short 'the HUDA Act') dated 03.06.2001 was decreed by the trial Court holding that the civil Court had jurisdiction and that the*

plaintiff-appellant was liable to pay penalty with simple interest @ 18 per cent per annum on the amount due towards the installments. The lower Appellate Court has held that civil Court does not have the jurisdiction especially when the plaintiff-appellant had availed the remedy of filing appeal against the resumption order before the competent authority. The lower Appellate Court had also held that the interest @ 18 per cent per annum can be recovered by the defendants-respondents.

It has been contended by the counsel for the appellant that as the relevant provisions under Section 17 of the HUDA Act, had not been complied with and no notice had been issued before ordering resumption, the Civil Court had jurisdiction on the ground that the statutory provisions had not been followed.

*Counsel for the appellant has further submitted that the entire principal amount due stands paid by the appellant and that pursuant to the directions of the trial Court, the respondent had not calculated the amount due from the plaintiff-appellant and taking interest @ 18 per cent per annum which is permissible as per the law laid down by Hon'ble the Supreme Court in **Ruchira Ceramics Vs. Haryana Urban Development Authority, 2001 PLJ 109 (SC).***

Notice of motion to the respondents for 27.05.2001.

The further alienation of the property in dispute will remain stayed subject to appellant depositing simple interest calculated @ 18 per cent per annum on the entire amount due, which appears to be more than ₹ 5 Lacs, as calculated till 31.01.2011 within a period of 7 days with the respondents without prejudice to the rights of the defendants-respondents."

The terms and conditions of the allotment letter agreed between the parties, specifically envisage the payment of interest @ 18% per annum, in case of any default in payment of the instalments, HUDA cannot be permitted to deviate from the same and charge compound interest. The whole purpose of selling the property is to develop the area. The right of the appellant, in such manner, cannot be taken away as it amounts to violation of the provisions of Article 19 of the Constitution of India.

It is a matter of record that the notices, preceding to the resumption order, were not received by the allottee, therefore, he was prevented from putting a cross defence. Certainly, in such circumstances, the Court would have jurisdiction to try and entertain the suit and wriggle of Section 50 (2) of the 1977 Act would not come into play, much less, attracted. The lower Appellate Court, in my view, not only rendered a fallacious, but perverse finding holding that the pleading has to be supported by the documentary evidence, whereas, it is contrary to the statutory provisions of the law i.e. provisions of Order 6 Rules 1 & 2 CPC.

In view of the foregoing reasons, the judgment and decree of the lower Appellate Court is hereby set aside and the appeal is disposed of by issuing an appropriate direction to the respondent-HUDA to decide the controversy with regard to the outstanding due, if any, by calling upon the appellant-plaintiff to appear and afford a fair opportunity and thereafter, necessary order thereof. The HUDA shall not unnecessarily harass the appellant-plaintiff and charge the compound interest strictly and adhere to the terms and conditions of the allotment letter. In case, it is found that the appellant-plaintiff had already paid excess amount, the HUDA shall return the same without any interest.

With the aforesaid observations, the appeal stands disposed of.

09.05.2016 **(AMIT RAWAL)**
yogesh **JUDGE**