

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

R.S.A.No.2771 of 2012 (O&M)

Date of Decision: April 08, 2016

M.L.Khanna

...Appellant

Versus

Haryana Urban Development Authority, Faridabad

...Respondent

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

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?

**Present: Mr.Rohit Ahuja, Advocate,
for the appellant.**

**Mr.Sourabh Goel, Advocate,
for the respondent.**

AMIT RAWAL, J. (Oral)

The appellant-plaintiff instituted a suit for mandatory injunction seeking relief against the Haryana Urban Development Authority, Faridabad (for short "HUDA") for providing the deficiency in the area as originally allotted in the allotment letter and the money received by the HUDA in respect of plot measuring 528 sq.meters. However, when the appellant moved an application for No Dues Certificate, came to know that the area of the plot has been reduced to 420 sq.meters. It is in these circumstances, the suit was filed, however, the trial Court, on the basis of the evidence, decreed the suit holding that the defendant shall provide a plot measuring 528 sq.meters instead of 420 sq.meters or shall refund the extension fees and the amount of reduced area with interest at the rate of 6%

per annum.

Dissatisfied with the aforementioned decree, HUDA filed an appeal and the appellant-plaintiff filed cross appeal for enhancement of the interest from 6% to 12% per annum. The Lower Appellate Court dismissed both the appeals, but modified/clarified the relief clause by holding that the defendant shall provide the plot measuring 528 sq.meters instead of 420 sq.meters to the plaintiff in Sector-46, Faridabad itself within a period of three months and if not possible, then the alternative relief granted by the trial Court shall become operative and the appeal filed by the appellant-plaintiff was dismissed.

Mr.Rohit Ahuja, learned counsel appearing on behalf of the appellant-plaintiff submits that alternative relief of refund of extension fee and the amount of reduced area along with interest is not acceptable as the appellant-plaintiff wanted to construct a house on plot measuring 528 sq.meters. It is with this intention, the plot was purchased from the original allottee. He further submits that alternative plots are available in Faridabad and, therefore, no harm would be caused in case appropriate direction is issued to the HUDA to allot alternative plot of 528 sq.meters. He submits that the Lower Appellate Court ought to have granted more interest. It is in these circumstances, the cross appeal was filed and, thus, urges this Court to formulate the substantial questions of law as culled out in the memorandum of appeal.

Mr.Sourabh Goel, learned counsel appearing on behalf of the respondent-HUDA submits that there is no possibility of increasing the size of the plot from 420 sq.meters to 528 sq.meters in the area where the plot is situated. Moreover, the plaintiff had not sought the relief of alternative plot and such prayer cannot be accepted, which is being raised for the first time

before this Court and, thus, prays for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force in the submissions of Mr.Ahuja. Once no relief had been sought for alternative plot, the appellant cannot be permitted to seek the said relief at this stage as no appeal has been filed under Section 100 CPC.

As regards the enhancement of interest, I am of the view that since there was no commercial transaction, the rate of interest granted is fair and sufficient. In my view, once the suit had already been decreed in favour of the appellant-plaintiff, no cause of action accrued to file the present appeal.

There is no merit in the appeal. The same is accordingly dismissed.

April 08, 2016
ramesh

(AMIT RAWAL)
JUDGE