

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.897 of 2011 (O&M)

Date of decision:14.07.2016

Haryana Urban Development Authority and another ... Appellants

Vs.

Mukesh 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:- Ms. Sunint Kaur, Advocate
for the appellants.

Mr. Adish Gupta, Advocate
for the respondents.

AMIT RAWAL J.

Appellants-HUDA are aggrieved of the concurrent findings of facts and law, whereby, suit at the instance of the respondent-plaintiffs claiming declaration with consequential relief of permanent injunction, has been decreed by both the Courts below.

Ms. Sunint Kaur, learned counsel appearing on behalf of the appellants-HUDA submits that both the Courts below have committed illegality and perversity in decreeing the suit as the respondent-plaintiffs had agreed to pay the outstanding dues along with interest and penalty as per HUDA policy, in essence, he was estopped to raise dispute seeking the declaration, aforementioned. The plaintiffs were allotted SCO No.100 Sector 16, Faridabad, vide allotment letter bearing no.2012 dated 11.11.1998 for a total sale consideration of ₹1,22,81,000/- after payment of

10% of the sale consideration. Another 15% was liable to be paid on 10.12.1998 and the balance 75% amount was payable either in lump sum or in ten yearly installments of ₹15,72,525/- each. The plaintiffs failed to pay the entire dues despite availing of the opportunities. Due amount of interest was essential fee liable to be recovered from the plaintiffs instead of offering of liability chose to file a suit. The suit was not maintainable. The plaintiffs did not deposit installments on time with calculated interest. Condition no.5 of the allotment letter (Ex.P1) envisaged that price of the plot was liable to be paid in lump sum without interest within a period of 60 days, failing which each installment would be recovered along with interest on the balance price @ 15% per annum. Accordingly, resumption order was passed. Though the resumption order was challenged by the plaintiffs by filing an appeal before the Administrator HUDA which was accepted, vide order dated 30.12.2002 but thereafter, he paid a sum of ₹ 24 lacs but again the plot was resumed on or after 15.03.2003. The Lower Appellate Court could not have issued the directions to the appellants-HUDA for calculating the amount due from the plaintiffs as per the terms and conditions of the allotment letter by calculating the amount due with simple interest, in essence, the aforementioned direction is against the terms and conditions of the allotment letter and thus, urges this Court to formulate the substantial questions of law as culled out in the memorandum of appeal.

Mr. Adish Gupta, learned counsel appearing on behalf of the respondent-plaintiffs submits that HUDA did not give the break up of alleged demand despite payment of substantial amount on behalf of the plaintiffs. On receipt of the memo bearing no.7405 dated 10.03.2003,

plaintiff No.1 was flabbergasted that he was called upon to deposit a sum of ₹86,16,466/- as dues along with ₹93,095/- as extension fee upto 15.3.2003.

It is the said letter which was challenged in the suit. Once a sum of ₹24 lacs on the assurance of the Administrator has been deposited, HUDA could not have raised the aforementioned demand. Both the Courts below after noticing the aforementioned facts have passed the most innocuous judgments and decrees which should not have been agitated/taken to the Court instead the defendants should have followed the directions as contained in the judgment and decree of the Lower Appellate Court and thus, urges this Court to affirm the findings rendered by both the Courts below as no substantial question of law arises for adjudication of the present appeal.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and of the view that there is no merit and force in the submissions of Ms. Sunint Kaur. The operative part of the judgment of the Lower Appellate Court reads thus:-

“In view of the aforesaid discussion, the demand made by the defendants for an amount of ₹86,16,466/- towards dues and ₹93,095/- towards extension fee by way of their letter bearing no.7405 dated 10.3.2003 (Mark A) is absolutely null, ill and void. Learned lower Court did not commit any error in deciding issues no.1 to 3 in favour of plaintiffs. However, at the same time, it may be added that defendants can still calculate the amount due from the plaintiffs strictly in accordance with terms and conditions of the allotment letter Ex.P1 and by

calculating the due amount with simple interest at the agreed rate. Only this modification is required in the finding of learned lower Court on issues no.1 to 3.”

Nothing prevented the appellants-HUDA to supply the calculations of the amount dues as per the directions contained in the judgment passed by the Lower Appellate Court. The HUDA has failed to examine any witness to reiterate that it had furnished the details and calculations to the plaintiffs regarding the demand raised in the memo, aforementioned. DW1- Shri Ram Kishan, Clerk did not utter a word regarding the details of furnishing. However, during the proceedings, he produced a statement of accounts, Ex.D1 to show that some amount was due on account of installment, interest and extension fee after adjustment of the payment made till 14.3.2003 but failed to give the break up of the aforementioned details. He was not aware that whether interest had been calculated on simple rate or on compound rate. Even during pendency of the suit, an application filed under Order 39 Rules 1 and 2 of the Code of Civil Procedure was disposed of, vide order dated 03.01.2007, whereby, appellant-defendants were directed to supply within 30 days statement of accounts with simple interest and the plaintiffs were directed to pay the same immediately and the resumption order was ordered to be held inoperative but the defendants did not comply with the aforementioned directions.

It is settled law that resumption of site should be adopted as a weapon of last resort. The whole idea of the developing agency is to collect the amount due as per the terms and conditions of the allotment letter. Once

the Administrator had set aside the resumption order in appeal subject to condition of depositing of ₹24 lacs, the impugned memo dated 10.03.2003 asking for deposit of ₹86,16,466/- and ₹93,095/- as extension fee was not supported by any break up. The developing agency cannot indulge into profiting, they are bound to disclose the break up of the aforementioned amount. In these circumstances, the directions, aforementioned came to be passed by the Lower Appellate Court. In my view, the HUDA has unnecessarily filed the appeal which is pending since 2011, had the directions been complied with, the matter would have been settled long time back.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees of the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

July 14, 2016
savita