IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.977 of 2011 (O&M)
Date of Decision: November 03, 2016

Smt.Bassi & others

...Appellants

Versus

Isab (deceased) through L.Rs. & others

...Respondents

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

Present: Mr.Sudhir Aggarwal, Advocate,
for the appellants.

Mr.Ashish Gupta, Advocate,
for respondent Nos.1 & 2.

Mr.Rajender Kumar, Advocate for
Mr.M.S.Tewatia, Advocate,
for respondent No.4.

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AMIT RAWAL, J. (Oral)

The present appeal has been directed by the appellants by seeking leave of this Court which was granted vide order dated 19.8.2016 on the premise that they have been effected owing to the judgment and decree rendered by the Lower Appellate Court, whereby the suit for specific performance qua agreement to sell dated 14.7.2003, has been decreed.

Mr.Sudhir Aggarwal, learned counsel for the appellants submits that the vendor-defendant No.1 stated to have entered into agreement to sell, aforementioned for a total sale consideration of ₹1,70,000/-. As per the averments in the plaint, much less the agreement to sell, possession was also delivered. Time was not the essence of the agreement, but the vendee is stated to have served a legal notice upon the

Ramesh Kumar
2016.11.10 10:58
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vendor on 6.10.2003, whereas the suit had been filed on 28.10.2003. The alleged affidavit, Ex.P6, does not bear any attestation or date except the date of issuance of the stamp paper, in essence the respondent-plaintiffs have not been able to prove the ingredients of Section 20 of the Specific Relief Act. Appellants had purchased the aforementioned land vide sale deed dated 4.4.2007 and, therefore, a valuable right has occurred in their favour and the respondent-plaintiffs have not been able to prove the possession stated to have been delivered. The trial Court granted the decree for recovery of ₹1,70,000/- along with interest @ 6% per annum, but the Lower Appellate Court has granted discretion and in this manner, the appeal has been filed thus, urges this Court that in the absence of the readiness and willingness, the Court ought not to have exercised the discretion and, therefore, prays for setting-aside the judgment and decree of the Lower Appellate Court.

Per-contra, Mr.Ashish Gupta Advocate and Mr.Rajender Kumar Advocate for Mr.M.S.Tewatia, learned counsel for the respondents submit that the legal notice dated 6.10.2003 was addressed to the widow as the vendor had died on 24.9.2003. Filing of the suit on 28.10.2003 itself is a pointer/indicator qua readiness and willingness. Both the attesting witnesses have also spoken/suffered the statement qua the aforementioned fact. The exercise of discretion is in accordance with law, much less preponderance of the evidence and, thus, submit that there is no illegality and perversity in the impugned judgment and decree and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submission of

Ramesh Kumar
2016.11.10 10:58
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Mr.Aggarwal, as the affidavit Ex.P6 does not bear the date, much less any attestation. In fact, it does not reflect expression "always ready and willing" under Section 16-C of 1963 Act. Even if the suit had been filed in October, 2003, the requirement of law has not been met with. Almost nine years period has elapsed from the date of sale deed in favour of the appellants. In my view, while exercising the discretion, the aforementioned fact ought to have been examined.

There is another aspect of the matter. Even no notice was sent to the vendor or his L.Rs. This was also one of the reasons where the appellants could not step into the shoes by defending the judgment and decree of the trial Court. No doubt, the trial Court had taken care of the element of interest by awarding @ 6%, but keeping in view the peculiar facts and circumstances of the case, I deem it appropriate that the interest @ 6% awarded on the principal amount ordered to be refunded by the trial Court, should have not only 6% but at least commensurate with the bank rates, therefore, I increase the rate of interest to 10% instead of 6%.

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

Ramesh Kumar
2016.11.10 10:58
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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*

Ramesh Kumar
2016.11.10 10:58
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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.

The judgment and decree of the Lower Appellate Court qua exercise of discretion is hereby set-aside and that of the trial Court is restored with the modification that instead of 6% interest, the same shall be @ 10%.

Appeal stands disposed of.

November 03, 2016 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**

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2016.11.10 10:58
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