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

RSA-570-2012 (O&M)
Date of decision : 27.04.2016

Suchi Gogna and others
... Appellants

Versus

HUDA and another
... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.K. Singal, Advocate
for the appellants.

Mr. S.K. Mahajan, Advocate
for the respondents.

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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?

<u>AMIT RAWAL, J. (ORAL)</u>

The appellants-plaintiffs are aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit has been dismissed on the ground of jurisdiction of civil court while invoking the provisions of Section 50 of the Haryana Urban Development Authority, Act 1977 (hereinafter called 'the 1977 Act').

Mr. D.K. Singal, learned counsel appearing on behalf of the appellants-plaintiffs submits that against the resumption order dated 24.08.1998, the appellants-plaintiffs had filed an appeal before the appellate authority, the same was dismissed vide order dated 02.08.2001 and thereafter, filed the suit, thus, Section 50 of the 1977 Act, would not come into play as the appellants had two remedy either to file a writ or invoking the provisions of Section 9 of the Code of Civil Procedure. Thus, the lower Appellate Court has committed illegality and perversity in dismissing the suit. He submits that Booth No.52, Sector 10, Panchkula was purchased in a open auction and the auction was for a sum of ₹ 3,44,000/- and the 10% of the sale price was deposited. As per the terms and conditions of the allotment, 15% of the sale price amounting to ₹ 51,600/- was to be deposited within the period of 30 days which was deposited, but as per condition No.5 of the allotment, the balance amount was to be deposited in 10 half-yearly installments. There was no basic infrastructure facilities likely, roads, water-supply, street lights, drainage, sewerage etc. The appellants-plaintiffs also deposited ₹ 10,000/- on 16.12.1991 and ₹ 20,000/- on 11.12.1992. Had the suit been filed against the resumption orders perhaps the provisions of Section 50 of the 1977 Act, would have come in its way, but the lower Appellate Court completely remained oblivious of the factum that the resumption order was assailed by filing an appeal before the Appellate Court. He further submits that as per the interim order dated 10.02.2012 passed by this Court, the appellants-plaintiffs has been directed to deposit the outstanding dues within a period of two months along with interest @ 10% simple interest per annum from October 1991 and learned counsel for the appellants-plaintiffs has handed over a copy of the receipt bearing No.5108 dated 02.03.2012 amounting to ₹ 7,19,300/-, which has been taken on record and appended at the end of the paper book.

He further submits that his client would be satisfied, in case, an appropriate direction is issued to the Authorities to charge the interest strictly as per the terms and conditions of the allotment letter and not beyond that. He further submits that there is no default clause in the allotment letter and therefore, HUDA cannot charge excessive interest, than the amount mentioned in the allotment and thus, urges this Court to formulate the following substantial questions of law:-

1. Whether in the facts and circumstances of the present case, jurisdiction of the Civil Court would *ex facie* be barred or not?
2. Whether there is illegality and perversity in the findings rendered by the lower Appellate Court.

Mr. S.K. Mahajan, learned counsel appearing on behalf of the respondents submits that the suit has not only dismissed on the ground of jurisdiction, but on merits as well. Nothing prevented the appellants-plaintiffs to discharge his part of obligation about the balance amount in half-yearly installments. There is no *bona fide* act except depositing of defaulted amount of ₹ 10,000/- and ₹ 20,000/-, whereby each installment to the tune of ₹ 25,800/- was required to be paid. No evidence has been brought on record whether there was infrastructure facilities were there or not, whereas on the contrary, it has been proved on record that basic infrastructure was available. It was a intentional act of the plaintiffs of not depositing the balance amount as they did not have the sufficient fund, 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 and of the view that opinion expressed by the lower Appellate Court viz-a-viz jurisdiction of the Civil Court, suffers from illegality and perversity and tantamounts to misreading of the provisions of Section 50 of the 1977 Act. For the sake of brevity, the Section 50 of the 1977 Act reads thus:-

> *"50. Finality of orders and bar of jurisdiction of Civil Court.*
> *a. Save as otherwise expressly provided in the Act, every order passed or direction issued by the State Government or direction issued by the State Government or order passed or notice issued by the Authority or its officer under this Act shall be final and shall not be questioned in any suit or other legal proceedings.*
> *b. No Civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter the cognizance of which can be taken and disposed of by any authority empowered by this Act or the rules or regulation made thereunder."*

It is a matter of record, as noticed above, that the appellants-plaintiffs had assailed the order of resumption by filing an appeal and thereby, chosen to file the suit. The remedy with the plaintiff was either to file a writ or a suit. In my view, chosen of a remedy to file a suit is better remedy as the party is given a chance by proving on the record through oral and documentary evidence, the alleged jurisdictional error on the part of the HUDA, whereas in the writ Court, relief for declaration cannot be looked into, owing disputed question of fact and law involved, thus, in my view, the finding rendered by the lower Appellate Court qua the Civil Court having no jurisdiction to entertain and try the *lis,* is wholly erroneous and the same is hereby set aside.

As regards the other findings viz-a-viz non-adherence to the terms and conditions of the allotment letter, I am of the view that during interregnum, the appellants-plaintiffs have deposited a sum of ₹ 7,19,300/- as ordered by this Court in the interim order dated 10.02.2012 which reads thus:-

> *"Present : Mr. D.K. Singal, Advocate*
> *for the appellants-applicants*

<u>CM No.1620-C-2012</u>

This is an application for exemption from filing certified copy of judgment and decree dated 28.08.2010.

Application is allowed, in view of the averments made in the application, which are duly supported by an affidavit.

<u>CM No.1622-C of 2012 in/and</u>

<u>RSA No.570 of 2012</u>

Counsel for the appellants contends that he has instructions to deposit the outstanding as per the judgment and decree of the trial Court wherein, it was held that the plaintiffs are liable to pay the outstanding dues in lump-sum within a period of 2 months along with 10% simple interest per annum from October, 1991.

Notice of motion for 09.05.2012.

The needful be done within a period of 2 months. However, this is a tentative direction since as per Sub-Clause (7A) of Regulation 5 of the Haryana Urban Development (Disposal of land & Buildings) Regulations, 1978, interest is to be at the rate as decided by the authority from time to time on delayed payments of installments. Accordingly, the appellants shall be liable to pay interest at the rate as was prevailing in the year 1991.

Dispossession of the appellants is stayed, however, it is made clear that if the said amount is not deposited within the time prescribed, the protection given by this Court shall not continue.

(G.S. Sandhawalia)

10.02.2012 *Judge"*

It also contains the element of interest @ 10%. I deem it appropriate to dispose of regular second appeal by issuance a direction to the respondents, to call upon the appellants-plaintiffs to deposit the installment, if any, along with interest and penalty, strictly as per the allotment letter and shall also consider the receipt of the aforementioned payment and thereafter shall pass an appropriate order. The whole purpose of selling the property in open auction is to get the maximum price and enable the party to run commercial activity and order of redemption should not be passed at the drop of a hat, but should be a last resort, otherwise, it amounts to violation of a fundamental right as enshrined under Article 19 of the Constitution of India.

With the aforesaid observations, the appeal stands disposed of in the aforementioned terms.

27.04.2016 **(AMIT RAWAL)**
yogesh **JUDGE**