

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 908 of 2012

Date of Decision : 15.12.2016

Haryana Urban Development Authority, Faridabad & anr.Appellants

Versus

Mrs. Manu Gupta and anotherRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.S. Longia, Advocate
for the appellants.

Mr. Shiv Kumar, Advocate
for the respondents.

Surinder Gupta, J.

This is second appeal by Haryana Urban Development Authority (HUDA) against judgment and decree passed by Civil Judge (Junior Division), Faridabad, which was slightly modified by Ist Appellate Court regarding quantum of interest on balance allotment amount to which appellant is entitled.

2. Case of plaintiffs, in brief, is that a commercial booth no. 41, Sector 30, Faridabad was allotted to plaintiff-Naresh Kumar (since deceased now represented by his legal heirs) through public auction vide allotment letter dated 27.11.1997. Plaintiff paid ₹1,56,750/- being 25% of the total price within stipulated period. Balance amount was payable in installments with interest @ 15% per annum, which plaintiff could not deposit in time. Plaintiff approached the defendants to supply details of balance outstanding amount and was apprised that ₹8,71,940/- was due against the booth allotted to him. On enquiry, it came to notice of plaintiff that defendants have charged compounded interest. No notice was ever issued to plaintiff under

Section 17 of the HUDA Act and appellants-defendants threatened to dispossess plaintiff from suit property.

3. Defendants contested the claim of plaintiff *inter alia* pleading that jurisdiction of civil court is barred under Section 50 (2) of HUDA Act, 1977. The booth stood resumed vide order dated 16.01.2001 due to non-payment of due amount, which plaintiff had failed to deposit despite notice under Section 17 (1) (2) (3) (4) of HUDA Act, 1977. Appeal filed by plaintiff was also dismissed by Administrator, HUDA vide order dated 04.12.2001 and intimation to this effect was sent to plaintiff vide letter dated 08.01.2002. After resumption of booth, HUDA has every right to evict the plaintiff from booth in question.

4. Pleadings of parties led to framing of the issues as follows:-

- (1) Whether the resumption order dated 16.01.2001 issued by the defendant is illegal, null and void? OPP
- (2) Whether the plaintiff is entitled to a decree of permanent injunction, as prayed for? OPP
- (3) Whether the plaintiff has no cause of action to file the present suit? OPD
- (4) Whether the suit of the plaintiff is false, frivolous? OPD
- (5) Relief.

5. On issue no. (1), learned Civil Judge (Junior Division), Faridabad recorded a finding that order of resumption is bad in the eyes of law as no opportunity was given to plaintiff and the procedure as prescribed under Section 17 (2) of the HUDA Act was not followed. Reliance was placed on observations of Apex Court in case of *M/s Teri Oat Estates (P) Ltd. vs. U.T. Chandigarh, 2004 (1) RCR (Civil) 540*, wherein it was

observed that order of resumption is to be passed only as a last resort in rarest cases, where allottee has no intention at all to pay balance sale consideration. It was also held that civil court has jurisdiction in the matter and the order of resumption and the penalty imposed by the defendants was held as null and void. Plaintiff was allowed to pay balance allotment amount with interest @ 18% per annum from the day of default in payment of installment and @ 14% per annum on the amount of installment due thereafter. Defendants were restrained from re-allotting the booth to anybody else and from dispossessing plaintiff. Direction was also given to defendants to recalculate amount due from plaintiff by calculating the interest as allowed and raise demand from plaintiff within a period of one month and in the event of plaintiff failing to pay within stipulated period, his suit shall stand dismissed. Not satisfied, HUDA filed appeal, which was also dismissed by Ist Appellate Court. However, judgment of the trial Court was modified to the extent that plaintiffs are liable to pay interest on delayed payment at the agreed rate of interest @ 18% (simple interest) from the date of default till payment. A direction was issued to plaintiff to deposit ₹20 lacs by way of bank draft within two months from the date of passing of judgment by Ist Appellate Court and HUDA was also directed to give calculation to plaintiffs regarding balance amount within two months and in case balance amount exceeds ₹20 lacs, direction was given to plaintiffs to deposit the same within one month. It was further ordered that in case of default of making payment as indicated in judgment of Ist Appellate Court, appeal of HUDA shall stand admitted (accepted).

6. It is admitted case of parties that appellants failed to produce any evidence that the procedure as prescribed under Section 17 (2) of the

HUDA Act was followed before resumption of plot of plaintiff (now represented by his legal heirs). The resumption, as such, was not legally tenable.

7. Learned counsel for appellants has argued that despite having knowledge about the resumption, plaintiffs did not challenge the resumption order in the suit filed by them. The above contention of learned counsel for appellants has also no merit. There was a specific issue framed in this case regarding the validity of resumption order. The parties were allowed opportunity to lead evidence on this issue.

8. The matter in issue in this case is as to whether appellants could interfere in the possession of plaintiffs over the disputed booth. Appellants have come up with plea that they can evict plaintiffs as booth has been resumed but failed to prove that resumption was as per law. It has not been disputed that Apex Court in case of *M/s Teri Oat Estates (P) Ltd. (supra)* has held that resumption of plot is to be ordered in rarest cases. In this case, plaintiff and after his death his heirs have been pleading before appellants to accept the balance amount, but appellants have refused to accept the same. Though, there is lapse in payment of due installments in time, but for this lapse the appellants could charge interest/penal interest. Taking note of above facts, I find no reason to interfere with the concurrent findings of fact recorded by Courts below that order passed by appellants resuming booth is not sustainable in the eyes of law and appellants are entitled to recover balance amount with interest as allowed by Ist Appellate Court.

9. Before proceeding further, it will be relevant to take note of the fact that plaintiffs were ready and have been making attempts to deposit the balance amount, which have been resisted by HUDA. During pendency of

civil suit, plaintiffs moved an application to deposit ₹10 lacs and also submitted a demand draft of this amount, which was furnished in Court. However, HUDA opposed this application as a result of which their draft of ₹10 lacs was not accepted. After decision of first appeal and in order to comply with directions of Ist Appellate Court, plaintiffs again deposited a sum of ₹20 lacs with HUDA vide pay order no. 276384 dated 26.04.2011 within a period of two months. Learned counsel for plaintiffs-respondents has submitted that this draft was returned to plaintiff-Manju Gupta, legal heir of plaintiff-Naresh Kumar, after six months of deposit when she had gone to office of HUDA to enquire about their booth.

10. Learned counsel for appellants has not denied that plaintiffs tendered a demand draft of ₹10 lacs during pendency of civil suit vide application dated 04.10.2010. He has, however, submitted that demand draft was not accepted as the booth of plaintiffs had already been resumed. Regarding pay order of ₹20 lacs deposited by plaintiffs-respondents in compliance of judgment of Ist Appellate Court, he has submitted that the same was returned as this appeal was pending. However, he could not explain as to why HUDA returned the pay-order despite direction by Ist Appellate Court, which had not been stayed in the second appeal. My purpose of discussing above facts is to see the plight of plaintiff (now his legal heirs, who are respondents) as a petty sum of ₹5 lacs to ₹6 lacs due against them has now swelled more than ₹20 lacs. After filing of appeal, request of counsel for respondents was allowed and again a sum of ₹20 lacs was deposited with HUDA under order dated 14.07.2014.

11. I can understand the reasons advanced by learned counsel for appellants for not accepting the demand draft of ₹10 lacs during pendency

of suit as appellants had raised the plea that booth had already been resumed. Learned trial Court directed the appellants to prepare statement of balance amount and supply it to plaintiffs, who were directed to pay the same. However, in view of the appeal filed by HUDA before Ist Appellate Court, no statement of balance amount was supplied. There is no explanation, excuse or reason, as to why amount of ₹20 lacs tendered by plaintiffs-respondents to appellants after the judgment of Ist Appellate Court was not accepted. The return of pay-order submitted by plaintiffs after a long period of retention shows the defiant attitude of officials concerned of HUDA which certainly calls for initiating departmental action against them by the authority concerned. Admittedly, no interim order staying operation of judgment of Ist Appellate Court was passed in this appeal and appellants, under direction of Ist Appellate Court, were duty bound to accept the amount of ₹20 lacs. The return of amount of ₹20 lacs has burdened the plaintiffs-respondents with further interest as allowed by the Ist Appellate Court after filing of the appeal in the year 2012. Keeping in view the conduct of appellants, I am of the considered opinion that plaintiffs-respondents cannot be burdened with further interest as per order of Ist Appellate Court beyond the date i.e. 26.04.2011, when the pay order of ₹20 lacs was submitted by plaintiffs. Appellants will calculate amount due as per order of Court below as due upto 26.04.2011. Amount of ₹20 lacs shall be adjusted in that amount and for balance amount, if any, plaintiffs-respondents will be issued a notice alongwith calculation sheet which they will have the right to challenge, if not found in accordance with judgment of Courts below. While examining the above aspect, I am fully conscious that legal heirs of plaintiff are not in appeal. It is in the interest of justice that

the appellants be not allowed to take benefit of their own wrong and to burden the respondents with further payment toward interest, despite their making the payment under the order of Court, which the appellant deliberately avoided to accept.

12. In view of my above discussion, this appeal has no merit and the same is dismissed with direction to appellants to comply the direction as recorded in para 11 above.

December 15, 2016

jk

(SURINDER GUPTA)

JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No