

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

R.S.A. No.2188 of 2013 (O&M)

Date of decision: 05.04.2016

Harnek Singh and another

..Appellants

Versus

Avtar Singh and another

..Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. PKS Phoolka, Advocate
for the appellant.

Mr. Rakesh Gupta, Advocate
for the respondents.

Jitendra Chauhan, J.

CM No.1915-C of 2015

CM is allowed and Annexures R-1 to R-3 are taken
on record, subject to all just exceptions.

Main Case

This regular second appeal is directed against the
judgment and decree dated 31.01.2013, passed by learned Additional
District Judge (Fast Track Court), Bathinda, (for short, the 'first
Appellate Court') whereby, the appeal filed by the defendant-
appellants, against the judgment and decree dated 10.05.2010, passed

by learned Civil Judge, (Jr. Divn.), Talwandi Sabo, (for short, the 'trial Court') decreeing the suit of the plaintiff-respondents for recovery of Rs.15,00,000/- for refund of earnest money along with interest, has been dismissed.

It is contended that as the plaintiff-respondents have failed to perform their part of the agreement to sell, therefore, the respondents are not entitled to the recovery of the earnest money i.e. Rs.15,00,000/-. Further as per the panchayat compromise Mark D1, the respondents had not come present on 13/14.03.2007 for the execution and registration of the sale deed, as the respondents had no sufficient funds to perform their part of contract. Thus, the learned Courts below have erroneously passed the impugned judgments and decrees for recovery of the earnest money along with interest.

On the other hand, the learned counsel for the respondents urged that the suit land was lying mortgaged with the bank and the appellants had to clear the loan before the execution of the sale deed. The respondents are still ready and willing to perform their part of the agreement, but the appellants have not cleared the loan over the suit property which was lying mortgaged.

I have heard the learned counsel for the parties and carefully perused the entire record.

The execution of the agreement to sell, Ex.P2, and payment of the earnest money i.e. Rs.15,00,000/- are admitted facts. The revenue records, Ex.P4 to Ex.P8, established the fact that the suit land was mortgaged with the bank, which was also supported by PW2, Jagtar Singh, Patwari. Vide Panchayat Nama, Mark D-1, fresh date 13/14.03.2007 was agreed for the execution and registration of the sale deed and the appellants had also undertaken to clear the loan by calling upon the bank manager by the stipulated date. This panchayat nama shows that the respondents were and are still ready and willing to perform their part of the contract on the clearance of the loan by the appellants. In the said agreement, it is clearly mentioned that in case property was lying encumbered with any government or non-government institution, then the appellants were to be held liable for the same. Therefore, the appellants had made the breach of the terms and conditions of the agreement and panchayat nama as they have not cleared the loan over the suit property. In the considered view of this Court, the learned Courts below have rightly passed the impugned judgments and decrees.

On consideration, this Court finds that the contentions of the learned counsel for the appellants only relate to the appreciation of evidence. Neither any evidence is shown to have been ignored from consideration, nor there is any misreading of evidence. These

are pure findings of fact. No question of law, much less substantial question of law, arises in the present appeal. Hence, no interference is called for.

Dismissed.

05.04.2016

ashok

(JITENDRA CHAUHAN)
JUDGE