

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

RSA No.101 of 2016 (O&M)

Date of Decision.02.09.2016

Jagjit Singh

.....Appellant

Vs.

Surinder Singh and another

.....Respondents

Present: Mr. S.R. Chaudhuri, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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?

-.-

AMIT RAWAL J. (ORAL)

C.M. No.329-C of 2016

For the reasons stated in the application, delay in making good the deficiency of court fee is condoned.

Application is allowed.

RSA No.101 of 2016

The appellant-defendant is aggrieved of the judgment and decree rendered by the lower Appellate Court whereby the plaintiff has been held entitled for recovery of ₹1 lac along with interest @6% instead of discretionary relief.

Mr. S.R. Chaudhri, learned counsel appearing for the appellant submits that the agreement to sell dated 23.12.2005 in respect of the disputed property i.e. industrial plot was entered into for a total sale consideration of ₹17,50,000/- and earnest money of ₹1,50,000/- was paid i.e. ₹50,000/- by way of draft and ₹1 lac by cash. The draft, according to

the averment in the plaint, had become uncashable owing to the lapse of the time and in lieu thereof, the plaintiff gave cheque of ₹50,000/- which was dishonoured. This earnest money should be forfeited. The trial Court dismissed the suit but the lower Appellate Court has only ordered for refund as noticed above. In support of his contention, he relies upon clause 9 of the agreement to sell to contend that both the parties had set their hands down for performing their part of agreement that in case of failure on the part of the purchaser, the earnest money shall be forfeited and if the failure is on the part of the defendant then the plaintiff is entitled to double amount. In support of his contention, learned counsel for the appellant relies upon judgment of Hon'ble Supreme Court in **Satish Batra V. Sudhir Rawal 2013 (1) SCC 345** to contend that once the plaintiff failed to perform his part of the agreement, earnest money of ₹1 lac should be forfeited, thus, urges this Court for setting aside the judgment and decree passed by the lower Appellate Court by formulating the substantial questions of law as drawn in the memorandum of appeal.

I have heard learned counsel for the appellant and appraised the paper book. The ratio decidendi culled out in **Satish Batra's case** (supra) is as per the contents of the agreement entered into between the parties. The agreement referred to in the aforementioned judgment revealed that over and above the earnest money, the respondent/plaintiff had to pay certain amount till the registration of the sale deed. The balance payment was not to be considered as earnest money towards the sale price of property. However, in the instant case, clause 9 is usual clause which binds the parties to seek performance of the contract. Assuming for the sake of arguments, though not admitted, that the defendant had defaulted in

not performing, it would be construed that the plaintiff would only be entitled to double the amount of earnest money as per the provisions of Section 23 of the Specific Relief Act, 1963. This is not the scope of the aforementioned provisions and this fact has been reiterated by the Hon'ble Supreme Court in *P D'souza Vs. Shondrilo Naidu (2004) 6 SCC 649*. In my view, the ratio decidendi culled out in *Satish Batra's case* (supra) does not apply to the facts of the present case as it is conceded position that an amount of ₹1 lac has been received by the defendant and it is the said amount which has been ordered to be refunded along with interest 6% interest.

For the foregoing reasons, I do not find any illegality and perversity in the judgment and decree passed by the lower Appellate Court as the same are based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. No ground for interference is made out.

The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 02, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No