

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

R.S.A.No.1366 of 2016 (O&M)
Date of Decision: March 31st, 2016

Gurdeep Kaur & others

...Appellants

Versus

Sanjay Verma & others

...Respondents

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

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?

**Present: Mr.B.S.Bedi, Advocate,
for the appellants.**

AMIT RAWAL, J. (Oral)

The appellant-defendants are aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby the respondent-plaintiff has been held entitled to recover a sum of ₹3,38,000/- along with interest @ 6% per annum from the date of filing of the suit till the date of actual payment.

Mr.B.S.Bedi, learned counsel appearing on behalf of the appellant-defendants submits that the trial Court dismissed the suit in toto as the respondent-plaintiff was found not to be ready and willing to perform his part of the contract and the amount of earnest money, aforementioned, stood forfeited. The agreement to sell in respect of land measuring 4 kanals 1 marla was entered into on 10.3.2005. The total sale consideration of the property was fixed as ₹5.78 lacs against receipt of earnest money of ₹1,78,000/-. The target date was 15.7.2005, however, on 12.7.2005 the

alleged additional amount of ₹1,60,000/- was paid and the date was extended upto 29.7.2005. The respondent-plaintiff is stated to have paid further additional amount of ₹1,50,000/- through cheque, but the same has not been believed, whereas on the contrary, on 29.7.2005, the appellant-defendants appeared before the Sub Registrar, but the respondent-plaintiff did not appear and, therefore, the earnest money stood forfeited and the trial Court, while considering these facts, dismissed the suit. However, the Lower Appellate Court misread the findings qua readiness and willingness that the respondent-plaintiff was actually ready and willing to perform his part of the agreement. On the contrary, since the appellant-defendants were in need of money, they further sold the property vide sale deed dated 14.11.2005 for a consideration of ₹5.00 lacs, thus, there was loss of ₹78,000/-. He, thus, urges this Court to formulate the substantial questions of law as culled out in the grounds of appeal.

I have heard the learned counsel for the appellant-defendants and appraised the paper book and of the view that there is no merit in the appeal for the reason that the execution of the agreement and payment of the earnest money has been admitted.

Vis-a-vis the finding qua readiness and willingness, the Lower Appellate Court has found that the respondent-plaintiff proved the same through his own testimony and the independent witnesses. No doubt, the agreement to sell contained clause of forfeiture, but this fact has not been pleaded in the written statement and the argument raised contrary to the pleadings cannot be accepted. In the absence of the specific pleading, the Lower Appellate Court has come to a categoric finding that though the subsequent vendee is a bonafide purchaser, but the respondent-plaintiff

cannot be prevented to refund the earnest money and for this plea of the appellants for payment of ₹1,78,000/-, only a photocopy of the cheque was produced and the Lower Appellate Court held entitled the respondent-plaintiff to recover a sum of ₹3,38,000/- along with interest.

Learned counsel for the appellant-defendant has relied upon the judgment rendered by the Hon'ble Supreme Court in **V.Lakshmanan Versus B.R.Mangalagiri**, 1995(2) JT 105, but the fact remains that there is no plea in the written statement. Such plea cannot be taken into consideration, therefore, the ratio decidendi is not applicable.

There is no force in the contention of Mr.Bedi that in pursuance to the registration of the FIR at the instance of the respondent-plaintiff, while admitting bail, amount of ₹3,38,000/- was deposited and the same is lying in the criminal Court, though he has been acquitted. The appellant-defendant shall be at liberty to seek the refund of the same in accordance with law, but there can be deferment vis-a-vis the interest part.

I do not find any illegality and perversity in the appeal. The same is accordingly dismissed.

March 31st, 2016
ramesh

(AMIT RAWAL)
JUDGE