

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

**Regular Second Appeal No.6142 of 2016 (O&M)
Date of Decision: November 30, 2016.**

Savita Bhanot

.....APPELLANT(s).

VERSUS

Kuljit Kaur

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajiv Kataria, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is second appeal filed by Savita Bhanot, defendant against the concurrent judgment and decree passed by the Courts below decreeing the suit of respondent-plaintiff for recovery of ₹5 lacs with interest.

2. It is admitted case of the parties that agreement to sell dated 29.07.2008 for sale of plot measuring 250 square yards situated at Jiwan Nagar, Ludhiana for a sale consideration of ₹60 lacs was executed by appellant-defendant in favour of respondent-plaintiff and ₹3 lacs was received by her as earnest money and another amount of ₹2 lacs on 26.08.2008. As per terms of agreement to sell, respondent-plaintiff was required to pay ₹8 lacs on or before 29.10.2008 but before receiving this amount, appellant-defendant was required to get no dues certificate from the bank, where the property was lying mortgaged. It is also admitted that the appellant did not get no dues certificate and as per terms of agreement,

respondent-plaintiff filed this suit, claiming recovery of double the amount paid by him to the appellant.

3. Learned Civil Judge (Junior Division), Ludhiana decreed the suit for recovery of ₹5 lacs instead of ₹10 lacs with the observation that the amount of ₹10 lacs seems higher. The plaintiff, however, appeared to have felt satisfied with the judgment and decree passed by learned Civil Judge but the defendant filed appeal, which was dismissed by the first Appellate Court.

4. Learned counsel for the appellant has not disputed the admitted facts. His star argument is that if appellant-defendant had committed default in performance on her part of agreement, the respondent-plaintiff had also committed default by not paying the amount of ₹8 lacs. As there was default on both the sides, the respondent-plaintiff is not entitled to seek return of the earnest money paid by her.

5. The above argument of learned counsel for the appellant does not appear sound or tenable. As agreed by the parties, amount of ₹8 lacs was payable only on production of no dues certificate obtained by the appellant-defendant from the bank after redemption of mortgage of suit land. The appellant-defendant never got the property redeemed, as such, the respondent-plaintiff was under no liability to offer or pay the amount of ₹8 lacs to her. The plaintiff would have incurred liability to pay amount of ₹8 lacs as per agreement dated 29.07.2008 only if the respondent-plaintiff had shown him the no dues certificate. The appellant had committed breach of the contract which give the plaintiff right to seek return of the earnest money along with damages as per the agreement. In view of the above

discussed facts, the submission of learned counsel for the appellant is discarded.

6. On perusal of the judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

7. No question of law what to talk of substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

November 30, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***