

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

CR No.7371 of 2016

Date of Decision-04.10.2017

Ludhiana Improvement Trust, Ludhiana and another ... Petitioners

Versus

S.L. Jaggi

... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Kavita Arora, Advocate
for the petitioners.

Mr. Shobit Phutela, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 10.08.2016 passed by Civil Judge (Junior Division), Ludhiana vide which the objections filed by the judgment debtors in execution were dismissed.

[2]. Plaintiff/respondent filed a suit for permanent injunction, restraining the defendants from cancelling the allotment made by the defendants in favour of the plaintiff in respect of flat No.2-TF in 8.4 Acres Development-cum-Housing Accommodation Scheme on Pakhowal Road at Ludhiana. Restraint was sought against the defendants from re-allotting the said plot to any other person. A declaration was also sought that the order passed by the defendants as well as by the Punjab Government cancelling the allotment of the flat in favour of the plaintiff was illegal, void and

ineffective and the same was against the principles of natural justice. The relief of mandatory injunction was also sought directing the defendants to handover the vacant possession of the flat in favour of the plaintiff and to receive the balance sale consideration as per schedule of installments from the plaintiff after admitting the alleged order of cancellation to be void and non-est.

[3]. In the aforesaid civil suit, necessary issues were framed. Issues No.1 to 3 were corresponding to the prayers made by the plaintiff in the suit. Issues No.1 to 3 were to the following effect:-

“1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP

2. Whether the plaintiff is entitled to declaration as prayed for? OPP

3. Whether the plaintiff is entitled to mandatory injunction as prayed for? OPP”

[4]. Plaintiff led evidence and on the basis of evidence led by the plaintiff, the trial Court found that the arguments raised by the defendants/Trust were not trustworthy. The main argument raised by the defendants was that Parladh Singh, the then Chairman of the Trust had made wrong allotments. The trial Court disbelieved the stand of the defendants by referring to Ex.PW1/2 i.e. the order vide which the allotment in favour of the plaintiff was cancelled. According to the said order, the plaintiff did not deposit the earnest money and first installment, whereas the plaintiff had paid the first installment of Rs.50,000/- to the defendants and therefore, the plea

of defendants that the first installment was not paid by the plaintiff was wrong. The representation made by the plaintiff i.e. PW 1/5 to PW1/7 for non-acceptance of the installment by the defendants/Trust were adequately proved on record. The readiness and willingness on the part of the plaintiff to deposit the remaining installments with the defendants were also noticed by the trial Court and the claim set up by the defendants against the plaintiff was found to be unfounded. All the aforesaid issues were decided in favour of the plaintiff and it was held that the plaintiff was entitled to declaration that the order passed by the defendants, cancelling the allotment of the flat was illegal, void, ineffective and against the principles of natural justice and was not binding upon the plaintiff. Plaintiff was also held entitled to mandatory injunction and defendants were directed to handover the vacant possession of the flat in dispute to the plaintiff and to receive the balance sale consideration as per schedule of installments from the plaintiff. Permanent injunction was also granted whereby defendants were restrained from re-allotting the flat in question to any other person.

[5]. Trial Court decreed the suit vide judgment and decree dated 10.05.2006 which was upheld by the Lower Appellate Court vide judgment and decree dated 09.08.2008. Lower Appellate Court also found that merely because the plaintiff has failed to comply with the certain provisions of law that itself does not mean that the plaintiff should suffer for the same particularly when he had already

deposited the entire amount of Rs.50,000/- as per the allotment order. Even the cancellation order passed by the defendants was never conveyed to the plaintiff and the amount deposited by the plaintiff for the installment was not accepted and the cheques sent by him were returned on the ground that the some inquiries were pending against the allotment order. Plaintiff was always ready and willing to deposit the entire amount, though the same was not accepted by the defendants. Having recorded such findings in the judgment dated 09.08.2008, the Lower Appellate Court dismissed the appeal of the defendants/Trust.

[6]. In the execution filed by the decree holder/respondent, the objections were filed by the petitioners on the ground that the decree holder has not complied with the terms of the decree and has not deposited Rs.12,16,800/- towards balance sale consideration along with interest and Rs.43,600/- being increased price, therefore, total amount of Rs.12,60,400/- was calculated as due amount as on 31.12.2012. The objectors/judgment debtors also contended that the decree holder was informed vide memo No.8881 dated 21.12.2012 and despite that the decree holder has failed to execute the agreement to sell in this regard.

[7]. Decree holder/respondent contested the objections and submitted that the he has given a representation on 12.09.2012 by annexing the demand draft No.499399 dated 10.09.2012 in a sum of Rs.8600/-, demand draft No.499400 dated 10.09.2012 in a sum

of Rs.35,000/- and demand draft No.499401 in a sum of Rs.1,10,000/-, but the judgment debtors willfully returned the same on 31.12.2012 and therefore illegally demanded the aforesaid amount. Even earlier to that, a representation was filed by the decree holder on 27.01.2010 which was not considered by the judgment debtors. Decree holder had already deposited the demand drafts vide letter dated 23.07.2013 and also requested the judgment debtors to receive the amount by way of demand drafts, but the judgment debtors did not adhere to it.

[8]. Now dispute is with regard to exact amount payable as per schedule of the installments. According to the judgment debtors, the decree holder has not deposited the balance sale consideration, which has been assessed to be Rs.12,86,800/-, whereas according to the decree holder, the payable amount was only Rs.1,53,600/-. According to the calculations filed by the judgment debtors, an amount of Rs.12,86,800/- was calculated. It was shown that an amount of Rs.8000/- was imposed as penalty @ 20%. An amount of Rs.7440/- was imposed as interest @ 36% for the period of 15.09.1987 to 21.03.1988. Penalty of Rs.24,000/- was imposed for the period 23.03.1988 to 31.12.2012 and an amount of Rs.10,99,200/- was imposed towards interest for the above said period.

[9]. As per findings recorded by the trial Court as well as by the Lower Appellate Court, readiness and willingness on the part of

the decree holder to pay the amount in question were established. The Courts below concluded that the plaintiff had deposited the amount of Rs.50,000/- to the defendants, therefore the contention of the judgment debtors in respect of non-deposit of the aforesaid amount was factually wrong. Number of representations were made by the plaintiff highlighting the non-acceptance of the installments by the Improvement Trust. Readiness and willingness on the part of the decree holder were answered in favour of the decree holder and the order of cancellation of allotment was set aside. Plaintiff was not found to be at fault in not depositing the amount of installments by the Civil Court. The amount of penalty and interest on account of non-payment of installments, could have been imposed only after finding fault of the plaintiff by the Courts below. Since the plaintiff was not found to be at fault, therefore, calculation towards interest and penalty was not to apply in case of the plaintiff. The Courts below have also noticed that due to cancellation of allotment of the flat by the defendants, undue delay was caused and such delay was not attributed to the plaintiff by any stretch of imagination, rather the delay was attributed to the acts of defendants which would exempt the plaintiffs from paying any amount towards interest and penalty.

[10]. As per necessary calculations, remaining amount payable by the decree holder for the period 15.09.1987 to 21.03.1988 was Rs.40,000/-. The amount payable for the period 22.03.1988 to 31.12.2012 was Rs.1,20,000/-. The enhanced

amount of Rs.43,600/- was also payable. In this way, the total payable amount by the plaintiff was Rs.2,03,600/-. The Executing Court while dismissing the objections has rightly calculated the amount.

[11]. Learned counsel for the petitioners submitted that the payments were to be made as per schedule. Since the allottee failed to make payments as per schedule, therefore, interest on the delayed payments imposed by the judgment debtors was lawful. Learned counsel relied upon **Prashant Kumar Shahi Vs. Ghaziabad Development Authority, 2000(2) RCR (Civil) 717** and **Secretary, Bhubaneswar Development Authority Vs. Susanta Kumar Mishra, 2009(2) RCR (Civil) 423** in the aforesaid context.

[12]. The contention of the petitioners was that the installment was payable as per schedule, therefore, the amount offered by the decree holder was not in consonance with the schedule of payments and the interest applicable thereupon. Civil Court had already deliberated upon *bona fide* of the plaintiff and found that no fault was attributable to the plaintiff and the plaintiff was not liable to pay any penalty and interest. In view of the judgment and decree of the Civil Court, the Executing Court cannot go beyond the decree and no such interpretation can be made at the instance of the judgment debtors in the objections filed in the execution of the decree.

[13]. Having perused the material on record, I find that by virtue of findings recorded by the Courts below, the plaintiff was not at fault in making any delayed payment and he was not liable to pay any interest and penalty. Having deliberated upon the issue in the light of findings recorded by the Courts below in the substantive proceedings, I do not find any justification to interfere in the impugned order dated 10.08.2016 passed by Civil Judge (Junior Division), Ludhiana. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

04.10.2017
Prince

Whether reasoned/speaking	Yes/No
Whether Reportable	Yes/No