

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

RSA No.2474 of 2007 (O&M)
Date of decision : 22.08.2017

Charanjit Singh

...Appellant

Versus

Prem Lata Goyal

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.K. Walia, Advocate for the appellant.

Mr. Mukand Gupta, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts.

The plaintiff had filed a suit for specific performance of the agreement to sell dated 22.03.1993. Out of total sale consideration of ₹82,500/-, ₹10,000/- was paid as earnest money and thereafter another ₹5,000/- was also paid. As per the agreement to sell, the target date for execution and registration of the sale deed was 05.07.1993. According to the plaintiff, the date was extended to 30.09.1993. The plaintiff filed a suit on 17.07.1996.

Defendant admitted the execution of the agreement to sell, however, disputed that the plaintiff was not ready and willing to perform his part of the contract.

Learned trial court after appreciating the evidence available on the file granted the alternative relief to the plaintiff i.e. refund of the earnest money alongwith interest.

Appeal filed by the plaintiff was also dismissed.

Learned counsel for the appellant has submitted that the defendant had filed a suit challenging the agreement to sell which was dismissed on 01.02.1995. He has further submitted that the defendant filed an appeal and in the appeal, the suit itself was permitted to be withdrawn. He submits that First Appellate Court could not have permitted the suit itself to be withdrawn.

Learned counsel for the appellant has further submitted that the plaintiff was entitled to specific performance of the agreement to sell once the suit filed by the defendant challenging the agreement to sell had been dismissed. He submits that in the suit, a finding was recorded that the plaintiff was ready and willing to perform his part of the contract.

On the other hand, learned counsel for the respondent has brought to my notice that the plaintiff had issued a notice to the defendant calling upon her to refund the earnest money, dated 18.08.1993 Ex.D1 on the file. In reply, defendant called upon the plaintiff to come and execute the sale deed as she was ready and willing to perform her part of the contract. Thereafter, the plaintiff once again in response to the reply submitted by the defendant sent a notice dated 20.09.1993 Ex.D4 wherein

plaintiff once again demanded refund of the amount paid.

I have considered the submissions of learned counsel. No doubt, the defendant had filed a suit challenging the agreement to sell which was dismissed. However, in appeal, the suit itself was permitted to be withdrawn. Once, the suit itself was permitted to be withdrawn, the judgment of the trial Court cannot be used by the plaintiff. The plaintiff did not challenge the order passed by the First Appellate Court in the previous suit permitting the suit to be withdrawn. Therefore, order of First Appellate Court has become final and it is not possible to rely upon the judgment passed in suit which has already been withdrawn.

With regard to the second submission of learned counsel, the same is also bound to fail because the earlier judgment passed by the Court in the previous suit cannot be relied upon as earlier suit was permitted to be withdrawn.

In the present suit, it has come on the record that vide notice dated 18.08.1993, the plaintiff demanded refund of double of the earnest money. When the defendant replied that she is ready and willing to perform her part of the contract, plaintiff once again struck to his stand and asked for refund of the amount vide notice dated 20.09.1993.

Still further, in this case, target date was 30.09.1993. The plaintiff filed the suit on 17.07.1996 i.e. after a period of 34 months. In these circumstances, the Courts below have rightly held that the plaintiff is entitled to refund of the earnest money.

The specific performance of the contract is discretionary. The Courts have exercised their power and ordered refund of the amount

alongwith interest.

In view of the above, I do not find any good reason to interfere with the discretion exercised by the Courts.

Regular Second Appeal is dismissed.

22.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No