

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

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RFA No.1696 of 2017(O & M)

Date of Decision:26.07.2017

Smt.Shanti Devi

....appellant

Versus

Smt.Meera and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

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

Mr.Johan Kumar, Advocate
for respondent No.1

ARUN PALLI, J. (ORAL):

CM No.4354-CI-2017

This is an application seeking condonation of delay of 68 days in filing the accompanying appeal.

Notice in the application was issued to respondent No.1. Mr.Johan Kumar, Advocate has caused appearance on behalf of respondent No.1. For the reasons set out in the application, that is duly supported by an affidavit, the same is allowed. Consequently, delay of 68 days in filing the appeal is condoned.

CM stands disposed of.

RFA No.1696 of 2017(O & M)

Claimant-landowner is in appeal against the award dated 05.11.2016, vide which, the claim of respondent No.1-Meera wife of Bishambar, under Section 30 of the Land Acquisition Act, 1894 (for short, 'the Act'), was accepted by the reference Court.

The facts that are required to be noticed are limited.

Undoubtedly, the appellant happened to be the owner of the land measuring 2K-12M. It is not disputed either that she executed an agreement to sell dated 05.05.2008 (Ex.P1) to sell the said land in favour of respondent No.1. A sum of ₹ 2,52,000/- were received by the appellant by way of earnest money, against receipt (Ex.P2). The total sale consideration was ₹ 6,50,000/-. The date fixed for execution and registration of the sale deed was 05.11.2008. But, in the meanwhile, a notification under Section 4 of the Act was issued by the State Government on 31.07.2006, vide which, the land in dispute along with another chunk was sought to be acquired for development of Industrial Model Township. Final declaration under Section 6 was published on 09.08.2007. For, the land in dispute stood acquired, vide award dated 29.07.2008, the contract between the parties stood frustrated, as, no sale deed was executed. In the given situation, respondent No.1 filed a petition under Section 30 of the Act and claimed the entire compensation on the basis of an agreement to sell.

In the written statement filed by the appellant, she maintained that since she had returned the earnest money i.e. ₹ 2,52,000/- to respondent No.1 and the agreement between the parties stood cancelled, the claim of respondent No.1 was liable to be rejected. Particularly, for, respondent No.1 was left with no right, title or interest in the land in dispute.

On a consideration of the matter in issue and the evidence on record, the reference Court conclusively concluded that the execution of the agreement to sell dated 05.05.2008 (Ex.P1) and receipt of the earnest money

(Ex.P2), was not disputed by the appellant. Once, the appellant had set out a plea that she had already returned the earnest money to respondent No.1, the onus lay upon her to substantiate her case. Concededly, nothing was brought on record to show that an amount of ₹ 2,52,000/- was indeed returned by the appellant to respondent No.1. The appellant had examined Mukesh (RW2) and Mahesh Kumar (RW3), in support of her case. Mukesh (RW2) happened to be the grandson of the appellant and Mahesh Kumar (RW3) happened to be her son. An analysis of the cross examination of Mukesh (RW2) reveals that he even failed to mention the date on which the earnest money was returned to respondent No.1. Although, he deposed that the total amount i.e. ₹ 2,52,000/- was returned to respondent No.1 on three different occasions i.e. ₹ 1,00,000/- each on two occasions and thereafter the balance ₹ 50,000/-. But, he conceded that no receipt was issued by respondent No.1 in this regard. So is the statement of Mahesh Kumar (RW3). Although, the appellant claimed to have cancelled the agreement and returned the earnest money, but the case set out by her was; that still respondent No.1 did not return the original agreement. If that was so, the appellant would have made a complaint against respondent No.1 or resorted to necessary measures in this regard. Not just that, the appellant in her cross examination conceded that she did not even remember the date, month or the year when the earnest money was returned by her to respondent No.1. Ex facie, the appellant failed to substantiate her case.

That being so, the only and the inevitable conclusion the reference Court could reach was; respondent No.1 was entitled to be refunded a sum of ₹ 2,52,000/-, which the appellant had obtained by way of earnest money. On being pointedly asked, learned counsel for the appellant

could not show as to how the conclusion arrived at by the reference Court, was either contrary to the record or suffered from any material illegality. No other argument was advanced.

In conspectus of the above, no ground is made out to interfere with the impugned award. The appeal being devoid of merit, is accordingly dismissed.

July 26, 2017
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(ARUN PALLI)
JUDGE

Whether speaking/reasoned	Yes/No.
Whether reportable-	Yes/No