

RSA-4237-2015

Date of Decision : 07.07.2017

Amritsar Improvement Trust

.....Petitioner

versus

Paramjit Kaur

....Respondent

CORAM : HON'BLE MR. JUSTICE M.M.S. BEDI**Present:** Mr. Karanjit Singh, Advocate
for the appellant.**M.M.S. BEDI, JUDGE (ORAL)**

The Amritsar Improvement Trust, defendant before the trial Court, has filed the present appeal against the decree passed by the lower Appellate Court which reads as follows:-

“It is ordered that the learned lower Court has wrongly dismissed the suit and hence the impugned judgment and decree dated 10.01.2014 is hereby set aside and present suit of the plaintiff/appellant is decreed as prayed in the plaint. It is made clear that the plaintiff/appellant is also bound to pay installments in time and respondents are bound to provide parking and other amenities as per terms and conditions and if they are not providing the amenities, then they are not entitled to any penal interest on default of installments.”

The plaintiff/respondent had filed a suit for permanent injunction restraining the defendant/appellant and its official employees from cancelling the built up SCF 54, situated in Truck Stand Scheme,

G.T. Road, Amritsar and charging any penal interest. A decree for mandatory injunction was also sought to provide parking space without any hindrance along with other amenities proclaimed at the time of auction. Suit of the plaintiff/respondent was dismissed by the trial Court vide judgment dated 10.01.2014 *inter alia* on the ground that she had not approached the Court with clean hands and had failed to deposit the installments within time. The lower Appellate Court has considered the evidence of both the parties afresh and on appreciation of the evidence has arrived at a finding of fact that the plaintiff has been suffering inconvenience on account of certain illegal and unauthorized workshops.

Taking into consideration all the circumstances and following the principles of equity, the above said order has been passed by the first Appellate Court.

Learned counsel for the appellant has contended that the plaintiff/respondent has been given the benefit of withholding the installments and the right of the appellant Trust to recover the penal interest by the above said injunction, has been turned down.

I have heard learned counsel for the appellant and carefully perused the implication of the decree passed by the lower Appellate Court. The decree does not prohibit the appellant in any manner to recover the installments in time rather a mandate has been issued to the plaintiff/respondent to pay the installments at the same time. The appellant has been required to provide amenities as per the terms and conditions of the contract if these are not provided. At the same time

on the basis of the judgment of *K.K. Resorts Private Ltd. versus Chandigarh Administration 2007 (3) RCR Recent Civil Reports P.852*, it has been held that appellant Trust will not be entitled to any penal interest on the default of installments in case the amenities are not provided by the appellant. There does not appear to be any ambiguity in the order passed by the lower Appellate Court. The dispute regarding execution of the decree and existence of the conditions for execution of the decree, if arises at any stage, the same is required to be determined as per Section 47 of the Code of Civil Procedure.

I do not find any force in the contention of counsel for the appellant that the Court has exceeded jurisdiction in granting the injunction as Section 38 and 39 of Specific Relief Act vests the civil Court with jurisdiction to prevent the breach of an obligation or to compel the performance of certain acts arising out of the contractual obligations.

Since no such dispute appears to have arisen and no substantial question of law for interference in the order passed by the lower Appellate Court, arises, the appeal is dismissed.

(M.M.S. BEDI)
JUDGE

07.07.2017

Neha

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No