

**RSA No. 474 of 2015 (O&M)**

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

**RSA No. 474 of 2015 (O&M)  
Date of Decision: 24.7.2017**

Jawahar Lal

.....Appellant

Vs.

Surender Kumar

.....Respondent

**CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

Present : Mr. Ram Darshan Yadav, Advocate  
for the appellant.

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**RAMESHWAR SINGH MALIK J. (ORAL)**

Feeling aggrieved against the impugned judgment and decree dated 16.12.2014 passed by the learned District Judge, whereby first appeal of the defendant was partly allowed, modifying the decree of the learned trial court to the extent that plaintiff shall be entitled for refund of the earnest money along with interest and not for the decree of specific performance, plaintiff has approached this Court by way of present regular second appeal.

Brief facts of the case, as recorded by the learned trial court in para 1 of its judgment, are that the defendant was owner in possession of the suit land described in para no.1 of the plaint measuring 251 kanal 17 marla to the extent of 800/5037 share i.e. 40 kanals situated in village Jaitpur

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Sheikhpur Tehsil and District Rewari as per the jamabandi for the year 2002-2003. Plaintiff pleaded that on 23.11.2004, defendant had entered into an agreement to sell for 5 acres of land for total sale consideration of ₹17,50,000/- at the rate of ₹3,50,000/- per acre. The agreement was effected in presence of the witnesses which was duly scribed at the instance of the defendant by deed writer Sunil Kumar. Plaintiff pleaded that at the time of agreement, ₹6,37,500/- were paid as earnest money in the presence of the witness and defendant had made an endorsement in that regard upon the agreement itself. Plaintiff pleaded that as per the terms and conditions of the agreement, the last date of execution of the sale deed was affixed as 22.10.2005 and so it was agreed that before that, the plaintiff will be entitled to get the sale deed registered and in case the defendant fails, the defendant will pay double amount of the earnest money and plaintiff will be at liberty to get the sale deed executed from the court.

It was pleaded that on 30.12.2004, the plaintiff had further paid ₹3,75,000/- to the defendant and another endorsement was made on the agreement itself of the receipt of this amount. Plaintiff pleaded that he was always ready and willing to perform his part of agreement and get the sale deed executed but the defendant failed to do the same. On 2.9.2005, defendant offered to settle the aforesaid agreement and offered to pay double amount of the earnest money i.e. ₹20,25,000/- and on that account, defendant issued cheque No.987762 dated 2.9.2005. It was pleaded that the defendant had promised that after clearance of the cheque, he will further pay ₹25000/- to the plaintiff and both the parties shall cancel or settle the agreement. Plaintiff pleaded that the aforesaid cheque was dishonoured for insufficient fund and thus the agreement was still enforceable.

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It was averred in the plaint that the proceedings under Section 138 of Negotiable Instruments Act 1881 ('the Act of 1881' for short), were also pending at the time of institution of the suit. Plaintiff pleaded that the defendant failed to honour the agreement dated 23.11.2004 and as per the agreement, plaintiff appeared before the office of Sub Registrar on the date fixed for getting the sale deed executed with balance sale consideration and registration charges but the defendant did not appear on the date fixed and finally on 24.7.2007, refused to execute the sale deed. On this cause of action, the suit was filed and a decree of specific performance of disputed agreement dated 23.11.2004, was sought. As a consequential relief, it was prayed that if the defendant failed to execute the sale deed as per the agreement to sell dated 23.11.2004, defendant be directed to pay double of earnest money i.e. ₹20,25,000/-.

Defendant was put to notice. He appeared and filed his contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether the defendant has entered into agreement on 23.11.2004 to sell the suit property and defendant has received ₹ 10,12,500/-as earnest money? OPP
2. Whether the plaintiff is always ready and willing to perform his part of agreement to sell? OPP
3. Whether the suit is not maintainable? OPD
4. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through

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the evidence brought on record, learned trial court came to the conclusion that so far as the agreement to sell dated 23.11.2004 and payment of earnest money of ₹6,37,500/- was concerned, the same has been proved by the plaintiff. Plaintiff was not found entitled for the primary relief of specific performance but the learned trial court partly decreed the suit of the plaintiff, directing the defendant to pay double the amount of earnest money to the plaintiff along with interest in terms of the compromise.

Against the abovesaid judgment and decree of the learned trial court, both the parties felt aggrieved. Two appeals came to be filed. Plaintiff filed his first appeal for decretal of suit in toto, whereas defendant filed his appeal against the direction for paying double the amount of earnest money. Learned first appellate court dismissed first appeal of the plaintiff whereas first appeal filed by defendant was partly allowed. Decree of the learned trial court was modified to the extent that plaintiff is entitled for earnest money along with interest @ 10% and not double the amount of earnest money. Both the appeal were disposed of by the learned District Judge, vide its impugned judgment and decree dated 16.12.2014. Hence this regular second appeal at the hands of dissatisfied defendant.

Heard learned counsel for the appellant.

As noticed hereinabove, so far as the agreement to sell (Ex.PW1/1) dated 23.11.2004 and payment of earnest money of ₹6,37,500/-, is concerned, it has been proved on record. Learned counsel for the appellant has fairly conceded before this Court that before filing present suit, plaintiff agreed to receive earnest money back and pursuant to this agreement between the parties, defendant issued cheque bearing No. 987762 dated 2.9.2005 in favour of the plaintiff, which came to be dishonoured. It

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has also come on record that plaintiff filed a complaint under Section 138 of the Act of 1881 against the defendant, vide Ex.PW4/2. Said criminal trial was going on between the parties.

One fact came to be proved that after moving the complaint under the Act of 1881, plaintiff, instead of putting his claim for decree of specific performance of the agreement to sell dated 23.11.2004, agreed to take his money back which was paid by him as earnest amount to the defendant. Having said that, this Court feels no hesitation to conclude that the learned trial court exceeded its jurisdiction while directing the defendant to pay double the amount of earnest money to the plaintiff along with interest, vide judgment and decree dated 17.7.2013.

In view of the abovesaid peculiar facts and circumstances of the case, learned first appellate court was well justified in partly allowing the appeal of the defendant and dismissing the first appeal of the plaintiff-appellant vide impugned judgment and decree dated 16.12.2014. It is so said, because once the plaintiff was no more ready and willing to perform his part of the contract and he agreed to receive back the amount of earnest money paid to the defendant, he was not entitled for double the amount of earnest money, as directed by the learned trial court. In such a situation, learned first appellate court committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld, for this reason also.

It is the settled proposition of law that plaintiff must have been ready and willing to perform his part of contract. However, in the case in hand, plaintiff-appellant agreed to receive the amount of earnest money back. In such a situation, he cannot be held entitled for receiving double the

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amount of earnest money, because the defendant cannot be made to suffer for none of his fault.

Before arriving at a judicious conclusion, the learned District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 20 to 22 of its impugned judgment, which deserve to be noticed here, read as under:-

*“Once it is proved that the evidence regarding second payment of ₹3,75,000/-was fabricated and manipulated, there is every reason to believe that the cheque was also obtained by manipulation. Dishonour of such cheque is of no consequence. In this scenario the finding of learned lower court that the cheque was issued pursuant to the offer to discharge the agreement is erroneous.*

*All said and done, the plaintiff has been able to prove the execution of the agreement Ex.P W1/1 and the payment of earnest money of ₹6,37,500/-. He is, however, failed to prove the second payment of ₹3,75,000/-and the offer of the defendant to discharge the agreement by paying double the earnest money by way of issuing cheque. The defendant may have failed to prove his contention that the agreement Ex.P W1/1 is a result of fraud and mis-representation. However, this, by itself, will not entitle the plaintiff to the relief of specific performance of the agreement in view of the fact that he has come to the court with unclean hands. He is guilty of fabricating and manipulating the endorsement Mark D on the agreement Ex.P W1/1. The court has no hesitation in holding that he has come to the court on false plea. It is settled law that the party who seeks to avail of the equitable jurisdiction of the court, and specific*

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*performance being equitable relief, must come to the court with clean hands. In other words, the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief. In **Lourdu Mari David Versus Louis Chinnaya Arogiasw amy, 1997(1) RCR (Civil) 286**, execution of the agreement to sell was proved. Though the respondents were found to have committed breach of agreement yet, the relief of specific performance was declined for the reason that the plaintiff was found to have made false allegations and hence, come to the court with unclean hands. The facts of the instant case are almost the same except for the fact that in that case the third respondent was found to be a bona fide purchaser without notice. Therefore, the findings of learned lower court that the plaintiff is not entitled to specific performance of the agreement are affirmed, albeit, for different reasons.*

*Learned lower court committed no error in passing the money decree but faltered in awarding double the earnest money. Once it was proved that the plaintiff had come to the court with unclean hands and; that he had fabricated and manipulated the evidence, there was no scope for rewarding him by passing the decree to the extent of double the earnest money. In the given circumstances, the proper course was to pass a decree in the sum of ₹6,37,500/- ( i.e. the amount actually paid) with interest and I deem that grant of interest at the rate of 10% per annum would have been proper to balance the equities”*

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the abovesaid findings recorded by the learned District Judge. He also could not refer to any question of law much less substantial question of law, which is sine qua

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non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

24.7.2017  
*Ak Sharma*

**(RAMESHWAR SINGH MALIK)**  
**JUDGE**

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