IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 118 RSA-1081-2017 (O&M)

Decided on : 18.12.2017

M/s N.R.Industries ..... Appellant

VERSUS

HUDA, Gurgaon ..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Sandeep Jasuja, Advocate, for the appellant.

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DEEPAK SIBAL, J. (ORAL)

The appellant, who was the original plaintiff, had filed before the Trial Court a suit for declaration and permanent injunction. The case set up by the appellant was that it had applied for an industrial plot measuring 400 square yards in Pace City-II, Sector-37, Gurgaon. In pursuance to the draw of lots held on 23.11.2000, plot No.630 (for short "the plot in question") was allotted but no allotment letter was issued. The sole proprietor of the appellant wrote letters dated 09.03.2001 and 28.05.2001 seeking the issuance of the allotment letter but when these letters evoked no response, she personally visited the office of the respondent where she was assured that the allotment letter would be issued shortly. However, instead of receiving the allotment letter she was shocked to receive letter dated 10.05.2001 through which her allotment was cancelled. Thereafter, the appellant through its proprietor challenged the cancellation of the allotment of the plot in question through a revision petition filed before the Financial Commissioner-cum-Secretary to Government, Haryana Town and Country Planning Department, Chandigarh (for short the "Financial Commissioner"), in which through order dated 05.12.2003 her plot was restored on payment of the entire outstanding amount alongwith penalty of Rs.5,000/-. It was the appellant's case that even after passing of the above order, interest and surcharge were demanded from it when only the outstanding amount alongwith Rs.5,000/- could have been demanded. An application seeking clarification of the order dated 05.12.2003 was filed by the appellant before the Financial Commissioner which was dismissed being not maintainable and thereafter the appellant approached the District Consumer Disputes Redressal Forum, Gurgaon, through a complaint which was also dismissed on 13.04.2011 after holding that the appellant did not fall within the definition of the 'consumer' under Section 2(1)(d) of the Consumer Protection Act, 1986 (for short the 'Act').

On being put to notice, the respondent submitted that in pursuance to the draw of lots held on 23.11.2000, allotment letter dated 03.12.2000 was sent to the appellant according to which the balance payment for the plot was required to be made as per the schedule given therein and when no such amount was deposited by the appellant, the allotment was cancelled. Thereafter as per the order dated 05.12.2003, passed by the Financial Commissioner, the appellant was asked to deposit the outstanding amount alongwith penalty of Rs.5,000/- in three instalments of two months each which was also not done.

The Trial Court dismissed the appellant's suit and the appeal filed by the appellant against the judgment and decree passed by the Trial Court also met the same fate as its suit. It is in these circumstances that the appellant has knocked the doors of this Court through the present second appeal.

Learned counsel for the appellant submitted that the appellant had rightly disputed the demand raised by the respondent as the same was not in accordance with the order dated 05.12.2003, passed by the Financial Commissioner. According to him only the principal outstanding balance alongwith penalty of Rs.5,000/- could have been demanded without any interest or surcharge. In support of his argument, reliance was placed upon a Division Bench judgment of this Court in "*Kuldeep Singh vs. Haryana Urban Development Authority and Ors*", 2012 (45) RCR (Civil) 23.

The afore submissions have been considered but the same do not warrant a favourable consideration.

The record reveals that in pursuance to the draw of lots held on 23.11.2000 the appellant, through allotment letter dated 03.12.2000, was allotted the plot in question. As per the allotment letter 75% of the balance amount of the plot in question was required to be paid by the appellant as per the schedule given therein. Such payment schedule was not adhered to by the appellant leading to the cancellation of the plot in question through letter dated 15.10.2001. Against such cancellation the appellant preferred a revision petition before the Financial Commissioner which was disposed of through order dated 05.12.2003, the operative part of which reads as under: -

> "I have heard both the parties and gone through the record of the case. It is an admitted fact that the allottee failed to pay 15% price of the site in the given time. Allotment letter of the site was sent to the petitioner through courier. It was well in the knowledge of the petitioner that Industrial Plot No.630, Sec-37-II, Gurgaon has been allotted. 10% price of the site has already been deposited by her. If it is presumed that she did not receive the allotment letter issued on 07.12.2000, even then she should have deposited 15% price of the site in time. From the perusal of the record it is clear that she informed the Estate Officer on 09.03.2001 for the first time stating that she had not received the allotment letter till date. Statutory period of 30 days had already expired by that time. Moreover the allottee failed to deposit 15% price of the site till the order of cancellation of site was passed by the Estate Officer. From the letter received from courier agency dated 10.10.2002 by the Estate Officer, HUDA, Gurgaon, it is clear that all delivery record/undelivered letters had been submitted in Dec.2000 in the office of Estate Officer, HUDA, Gurgaon. It was verified by the office and payment was released thereafter to the agency. It was also informed that record of only preceding one year is retained by the agency and record of the earlier years are not available with them. In the given circumstances, it is presumed that the allotment letter was delivered to the petitioner. However she was unable to deposit 15% price of the site and other outstanding instalments in time. Hence she is not entitled for any relief. However, keeping in view the regular correspondence made by her and efforts for getting the plot back, I consider it a fit case where one more opportunity can be given to her to retain the plot. In the circumstances, I order restoration of the plot to the petitioner with the condition that all outstanding dues alongwith penalty of Rs.5,000/- are to be deposited by her in three instalments of two months each from the date so conveyed to her by the Estate Officer. The Estate Officer will convey the outstanding dues as per HUDA policy alongwith penalty of Rs.5,000/- within 15 days from the date of receipt of copy of this order. In case of failure of the petitioner to deposit the amount in the given time, the cancellation order passed by the Estate Officer would revive without any further notice to her."
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> (emphasis supplied)

A perusal of the afore-quoted extract from the order passed by the Financial Commissioner clearly reveals that the appellant was well aware with regard to the allotment of the plot in question and also that the appellant had not made the balance payments as per the payment schedule. However, the Financial Commissioner ordered the restoration of the plot in question on the condition that the appellant would now deposit all the outstanding dues as per applicable policies of HUDA alongwith a penalty of Rs.5,000/- in three instalments. In pursuance to the afore-quoted order, the appellant received memo No.605, dated 13.01.2004 through which alongwith balance cost of the plot, interest and surcharge, as per the applicable HUDA policies, were demanded. Such demand was required to be paid in three instalments of two months each. The appellant did not make any deposit. Rather, a challenge was made to such demand through an application filed before the Financial Commissioner which was dismissed as not maintainable. Proceedings were also initiated before the District Consumer Disputes Redressal Forum, Gurgaon, in which the District Forum after recording that the appellant had failed to make the deposit as per the afore-referred order of the Financial Commissioner dismissed the complaint on the ground that the appellant did not fall within the definition of a 'consumer' under Section 2(1)(d) of the Act.

The order passed by the Financial Commissioner was virtually in the form of a concession given to the appellant. A reading of the same clearly reveals that the restoration of the plot in question was directed by the Financial Commissioner on the condition that the appellant shall pay all outstanding dues as per the prevalent policies of HUDA alongwith a penalty of Rs.5,000/-. Nothing has been pointed out from the record nor has been even urged before this Court that the components of interest and surcharge which find mention in the memo No.605, dated 13.01.2004, were not as per the prevalent policies/Rules of HUDA. That being so, such demand is deemed to be in accordance with the prevalent policies of HUDA and thus in terms of the order dated 05.12.2003, passed by the Financial Commissioner which admittedly attained finality.

The Division Bench judgment of this Court in *Kuldeep Singh's* case (supra) does not help the appellant in any manner whatsoever as the facts of that case are found to be distinct. In that case the petitioner was allotted a residential plot which was cancelled on the ground that he failed to deposit the balance sale consideration. In that case the Division Bench returned a categoric finding that respondent-HUDA did not have the residential address of the petitioner therein and thus there was no question of conveying to him that the plot which had been allotted to him had been cancelled for non-deposit of the balance sale consideration, by holding as under: -

> 5. Be that as it may, the respondent-HUDA, in reply, denied the receipt of letter dated 15.12.2006 (Annexure P2). If that was so, it is very surprising as to how the Authorities came to know about the residential address of the petitioner where two letters dated 4.5.2007 and 10.12.2009 (cancellation order) were sent to him. Admittedly, in his application, his residential address is not given. For correspondence, only address of the bank was given. The above fact clearly demonstrates that letter dated 15.12.2006 (Annexure P2) was received by the HUDA Authorities and the plot was cancelled saying that a said letter was not received. Acceptance of letter dated 15.5.2007, which was written by the petitioner to the HUDA Authorities asking him to supply the documents has not been denied. If that was so, it was bounden duty of the HUDA Authorities to sent a letter of allotment to the petitioner at his residential address. Once the petitioner had paid the loan amount to the bank and intimation was sent to the HUDA Authorities through letter dated 15.12.2006 (Annexure P2), the bank was not under any duty to send letter of allotment further to the petitioner. It appears that without giving any opportunity to deposit the amount for a plot measuring 8 marls only, the allotment was cancelled. The appeal was dismissed by passing a non speaking order. None of the averments, so made by the petitioner, were taken into consideration and without application of mind, his claim was rejected. Under the circumstances, the HUDA Authorities had committed a mistake in not despatching/sending letter of allotment to the petitioner at his residential address which was known to them. The default committed by the petitioner in not depositing 15% of the sale consideration is condonable"

In the present case the Financial Commissioner, through afore-quoted order dated 05.12.2003, had given another opportunity to the appellant to make the deposit of the balance sale consideration in instalments which the appellant failed to avail of.

In view of the above, no question of law much less any substantial question of law arises in the present appeal warranting interference in the concurrent findings of fact returned by both the Trial Court as also the Appellate Court.

Dismissed.

18.12.2017
shamsher

[DEEPAK SIBAL]
JUDGE

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