

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

RSA No.4789 of 2014 (O&M)

Date of decision : 17.08.2017

Dharambir and another

...Appellants

Versus

M/s Countrywide Promoters Pvt. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kul Bhushan Sharma, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

The defendants are in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiff had filed a suit for possession by way of specific performance of the agreement to sell dated 15.09.2006. It was pleaded case of the plaintiff that out of the total sale consideration of ₹17,87,500/-, ₹4,00,000/- was paid in advance. The date for execution and registration of sale deed was fixed as 14.03.2007. The representative of the plaintiff visited the office of the Sub Registrar alongwith balance sale consideration. However, defendants did not turn up.

Defendants-appellants filed their joint written statement. The factum of execution of the agreement to sell was admitted. However, it was pleaded by the defendants that in the surrounding area, land has been sold at the rate of ₹2,88,00,000/- per acre and, therefore, the defendants are entitled

to the same amount as provided in the agreement to sell. The defendants further pleaded that the plaintiff did not have sufficient money and, therefore, the plaintiff was not ready and willing to perform its part of contract.

Learned trial Court after appreciating the evidence available on the file, decreed the suit filed by the plaintiff.

The first appeal preferred by the defendants-appellants was also dismissed after re-appreciating the evidence available on the file.

Learned counsel for the appellants has submitted that there was a Clause in the agreement to sell which provided that if the purchaser company purchases some adjoining land in Village Kheri Kalan at a higher rate than the rate provided/agreed between the parties in the agreement to sell, the sellers would be entitled to the same higher rate which is being paid to other seller. He has further submitted that there is no evidence available on the file to prove that the plaintiff was ready and willing to perform their part of the contract.

I have considered the submission. The Clause in the agreement to sell if translated into English would be read as:-

“If the purchaser company besides land being purchased by this agreement, purchases the adjoining land of village Kheri Kala from anybody else at the higher rate than mentioned above, then the sale deed will be got registered at that very rate and on that very conditions.”

A reading of the Clause would show that if the purchaser company i.e. the plaintiff purchases some adjoining land in the same village from anyone else at a higher rate then the higher rate would be payable by the plaintiff to the defendants. The defendants have pleaded that one M/s

GE MEX Infrastructures Pvt. Ltd. has purchased the land from Ram Singh and others at the rate of ₹2.88 Crores per acre. Therefore, defendants are entitled to same price of the land.

M/s GE MEX Infrastructures Pvt. Ltd. has no concern with the plaintiff-company. The terms of the agreement were specific. There is no vagueness in the agreement. The agreement clearly provided that if the purchaser company purchases some adjoining land in the same village at a rate higher than the agreed rate in the agreement to sell, then the plaintiff company would be liable to pay higher price to the defendants. Merely because some other company has purchased the property in the same village at a higher rate, the defendants cannot enforce the aforesaid clause against the plaintiff-company.

Learned counsel for the appellants has further argued that there is no evidence of plaintiff being ready and willing to perform its part of contract. It is further argued that the plaintiff did not produce any demand draft in favour of the defendants to prove their readiness and willingness.

I have considered the submission. However, I am unable to agree with the same. It is admitted position on record that on the target date i.e. the date for execution of the sale deed, representative of the plaintiff company visited the office of Sub Registrar. He also got attested an affidavit in which it was specifically stated that he has got the money to get the sale deed executed. The defendants did not visit the office of Sub Registrar on the target date. Still further, the plaintiff while filing the suit specifically pleaded that plaintiff company was always ready and willing to perform their part of the contract and they have sufficient money available to them.

In view of overwhelming evidence available on the file, I do not find force in the arguments of learned counsel for the appellants.

For the reasons stated above, there is no ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

All pending miscellaneous application is disposed of, in terms of the abovesaid judgment.

17.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No