

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

RSA No.6212 of 2017 (O&M)

Date of Order:21.12.2017

Hukam Singh

..Appellant

Versus

M/s Vikram Electric Equipment Pvt. Ltd.

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jagmohan Ghuman, Advocate,
for the appellant.

ANIL KSHETARPAL, J (Oral)

Defendant-appellant is in the regular second appeal against the judgment passed by the learned first appellate Court, directing refund of Rs.17,00,000/- to the plaintiff.

Plaintiff had filed a suit for recovery of Rs.30,72,778/- on the allegation that the plaintiff had entered into an agreement to sell dated 11.06.2005 and received earnest money of Rs.6,00,000/- It was further pleaded that the defendant was further paid a sum of Rs.17,00,000/-. Plaintiff further pleaded that the defendant had sold the suit property to one Smt. Sanesh Devi on 20.02.2006.

Defendant contested the suit and pleaded that in fact there was some dispute about total sale consideration. Defendant further pleaded that he had received a sum of Rs.4,00,000/- as earnest money and not Rs.6,00,000/- as mentioned in the agreement to sell.

Learned trial court after appreciating the evidence available on the file, decreed the suit to the extent of Rs.23,00,000/- along with interest @ Rs.6% per annum.

It may be mentioned here that in cross-examination, defendant

admitted that he had received Rs.6,00,000/- as earnest money.

Defendant-appellant filed an appeal. Learned first appellate Court has partly accepted the appeal and ordered refund of only the additional payment made by the plaintiff to the defendant i.e. Rs.17,00,000/- which was paid later on and not part of earnest money.

I have heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant has submitted that the plaintiff was not entitled to file a suit for recovery of the amount unless he had filed a suit for specific performance of the agreement to sell. Learned counsel for the appellant has relied upon Section 22 of the Specific Relief Act, 1963, which is extracted as under:-

22. Power to grant relief for possession, partition, refund of earnest money, etc.

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for-

- (a) possession, or partition and separate possession, of the property, in addition to such performance; or*
- (b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or 3[made by] him, in case his claim for specific performance is refused.*

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

PROVIDED *that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of*

the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.

I have considered the submission of learned counsel for the appellant, however, I do not find any substance therein.

Section 22 of the Specific Relief Act, 1963 dealing with a situation where suit for specific performance has been filed and the plaintiff is entitled to make a prayer for recovery of the amount paid as an alternative relief.

Learned counsel for the appellant could not bring to my notice any statutory bar, debarring the plaintiff to file a suit for recovery of the amount paid under the agreement to sell. It is well settled that the defendant is only entitled to forfeit the amount of earnest money. Learned first appellate Court has agreed with the defendant/appellant to that extent. The additional amount, which has been paid in addition to the earnest money, cannot be forfeited by the defendant. In this regard, a reference can be made to the judgment reported as **Satish Batra v. Sudhir Rawal, (2013) 1 SCC 345**

In view of what has been recorded hereinabove, this Court does not found any good ground to interfere with the judgment passed by the first appellate Court.

The regular second appeal is dismissed.

December 21, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No