

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.829/2017**

% **26th September, 2017**

RAJESH KUMAR Appellant

Through: Mr. Manoj Singh, Advocate.

versus

MANMOHAN KUMAR & ANR. Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.35533/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No.829/2017 and C.M. No.35532/2017 (stay)

2. This Regular First Appeal is filed under Section 96 of Code of Civil Procedure, 1908 (CPC) by the defendant no.1 in the suit impugning the judgment of the Trial Court dated 30.5.2017 whereby trial court has decreed the suit of the respondent no.1/plaintiff for a sum of Rs.4.50 lacs along with interest at 9% per annum on account of the appellant/defendant no.1 having received an amount of Rs.4.50

lacs under an agreement to sell dated 30.9.2011 with respect to property G-1/127 & G-1/128, 1st Floor, Sector-15, Rohini, Delhi.

3. The case set up by the respondent no.1/plaintiff was that he paid a sum of Rs.4.50 lacs to the appellant/defendant no.1 under the agreement to sell dated 30.9.2011 but the appellant/defendant no.1 is guilty of not getting the sale deed completed and the sale deed executed. Admittedly the suit property was not owned by the appellant/defendant no.1 and he was only acting for and on behalf of the owner of the property but was otherwise fully competent to represent the owner as a vendor under the agreement to sell. The case of the respondent no.1/plaintiff was that he was ready with the balance amount and appeared before the Sub-Registrar on 30.12.2011 but the appellant/defendant no.1 failed to appear and complete the transaction by executing the sale deed.

4. Trial court has decided the issues in favour of the respondent no.1/plaintiff inasmuch as respondent no.1/plaintiff appeared in the witness box and proved his case. The relevant para of the impugned judgment of the trial court with respect to evidence led

by the respondent no.1/plaintiff is para 9, and which para 9 reads as under:-

“9. Onus was on the plaintiff to prove his entitlement qua the relief claimed. For this purpose, the plaintiff has examined himself as PW-1 and tendered his affidavit of examination-in-chief as Ex.PW-1. He also tendered different documents i.e. Election I-Card Ex.PW-1/1, Bayana agreement dated 30.09.2011 as Ex.PW-1/2, inspection cash receipt Ex.PW-1/3 and some photocopies mark A. He has been cross-examined in detail on behalf of the defendant. The plaintiff has examined another witness namely Sh. Jasbir Singh Saini, who has filed his affidavit Ex.PW-2/A and deposed on all the material facts/aspects of the case of the plaintiff. He has also been cross-examined in detail by Id. Counsel for defendants.”

5. The appellant/defendant no.1 however did not prove his case and did not lead any evidence because though the appellant/defendant no.1 though filed his affidavit by way of evidence, but he did not come into the witness box to stand the test of cross-examination. Therefore the present is a case where respondent no.1/plaintiff led evidence and appellant/defendant no.1 led no evidence. Once the appellant/defendant no.1 does not have the courage of conviction to step into the witness box and prove his case there is no reason why the Court should disbelieve the case of the respondent no.1/plaintiff more so in the facts of the present case where the agreement to sell is admitted and receipt of amount of Rs.4.50 lacs by the appellant/defendant no.1 is admitted.

6. I may also note that even if a buyer, and which would be the respondent no.1/plaintiff in this case, would be guilty of breach of an agreement to sell, yet, the seller cannot forfeit the earnest money unless he proves the loss caused to him in view of the Constitution Bench judgment of the Supreme Court in the case of *Fateh Chand Vs. Balkishan Das*, AIR 1963 SC 1405. In the present case, it is not even the case of the appellant/defendant no.1 as per his pleading that he has suffered loss. Even assuming that there is some pleading, no such loss is proved because the appellant/defendant no.1 has led no evidence.

7. In view of the above discussion, I do not find any merit in the appeal as there is no illegality in the judgment of the trial court decreeing the suit for a sum of Rs.4.50 lacs along with interest at 9% per annum. Dismissed.

SEPTEMBER 26, 2017

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VALMIKI J. MEHTA, J