

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

RSA No.70 of 1989

Date of Decision: 15.12.2018

Rajinder Kumar

... Appellant

versus

Ram Sarup

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Jagdish Manchanda, Advocate
for the appellant.

Mr. Nitin Sarin, Advocate,
for the respondent.

Amol Rattan Singh, J.

This is the second appeal filed by the defendant, in a suit instituted by the respondent herein (i.e. the plaintiff) seeking possession of the suit property upon issuance of a decree of specific performance, of an agreement entered into between the parties on 28.02.1978.

In the alternative, recovery of Rs.26,750/- was sought by the respondent-plaintiff (hereinafter to be referred to as the plaintiff), with 'future interest', till the date of realization of the amount.

2. The litigation has a slightly chequered history, inasmuch as earlier the suit was partly decreed by the trial court (Subordinate Judge Ist Class, Kaithal), on 15.10.1983.

An appeal having been filed against that judgment, before the learned Additional District Judge, it was found by that Court, at that stage, that the original testimony of the defendant (present appellant) was missing from the court file, with the matter therefore having been remanded to the trial

court for re-construction thereof, but with that re-construction also eventually not found to be in accordance with procedure, hence, on 17.09.1986, the case was again remitted by the first appellate court to the trial court, with a direction given that the statement of the defendant would be recorded afresh, with an opportunity of cross-examination to be naturally granted to the plaintiff and the judgment of the trial court to be 're-written' thereafter.

After such remand of the case, the defendant (appellant herein) not having recorded his statement, his evidence was eventually closed vide a very detailed order dated 17.08.1987, passed by the trial court.

3. Thereafter, the judgment as is presently impugned (alongwith the judgment of the learned first appellate court), came to be passed by the trial court (Additional Senior Sub-Judge, Kaithal), on 07.09.1987.

4. The case of the plaintiff was that an agreement had been entered into on 28.02.1978 between him and the appellant-defendant, for the purchase/sale of 32 kanals of land comprised in *khewat* no.347, *Rect.* no.110, *killa* (field) nos.6, 7, 14 and 15, situate in the revenue estate of village Pehowa, (then Tehsil Guhla), as recorded in the *jamabandi* (record of rights) for the year 1974-75.

The consideration to be paid was settled @ Rs.21,000/- per acre, with Rs.25,000/- having been received as part of the sale consideration, to be eventually adjusted in the sale price.

The sale deed was to be executed after the harvest of the wheat crop by 25.04.1978, and in case of any delay in such harvest, the parties were, as per the agreement, left free to mutually agree to another date for execution and registration of the sale deed.

5. As per the case of the plaintiff however, no such extension was

ever sought, and with him (plaintiff) always ready and willing to perform his part of the contract, which the defendant did not perform.

Consequently, the suit came to be instituted, seeking a decree of specific performance, or in the alternative, seeking refund of the Rs.25,000/- paid as advance, alongwith Rs.1750/- as interest thereupon.

6. Upon notice issued in the suit, the appellant-defendant filed a written statement admitting to the execution of the agreement of sale, but denying any default on his part, further contending that he was always ready and willing to execute the sale deed, but with it not having been executed (upon payment of consideration), the amount of Rs.25,000/- stood forfeited.

It was further contended by the appellant herein, in his written statement, that in fact the plaintiff had requested him to extend the time for execution of the sale deed beyond 25.04.1978, initially by only one day, to enable him to arrange for the balance sale price, but with him thereafter also not having obtained the money and instead having sought one extension after the other.

As would be obvious from a reading of the judgment of the trial court, such extensions were obviously sought before 26.04.1978, because the appellant-defendant is stated to have served a notice on the plaintiff on that date itself, asking him to get the sale deed registered on or before 10.05.1978. On that date, the appellant is stated to have waited for the plaintiff in the office of the Sub-Registrar but with the plaintiff never having turned up.

7. The aforesaid having been the preliminary objections taken in the written statement, on merits the appellants had stated that in fact the agricultural land as was mentioned in paragraph 1 of the plaint was never agreed to be sold, and it was actually some other land that was to have been

sold.

8. A replication having been filed by the plaintiff, the following issues were framed by the trial court:-

- “1. Whether the defendant agreed to sell agricultural land measuring 32 Kls. as detailed in para no.1 of the plaint to the plaintiff? OPP
2. Whether the plaintiff has always been ready and willing to perform his part of contract? OPP
3. Whether the plaintiff is entitled to specific performance of the agreement of sale? OPP
4. Whether in the alternative the plaintiff is entitled to recover a sum of Rs.25,000/- given as advance to the defendant? OPP
5. Whether the plaintiff is entitled to interest at the rate of 12 percent per annum from the defendant from 28.02.1978 till realisation of the amount? OPP
6. Relief.”

9. The parties having led their respective evidence, the trial court eventually came to the conclusion that in fact no specific *khasra* numbers were given at all in the agreement of sale and therefore it was not possible to determine as to which land exactly was to be sold by the appellant to the plaintiff.

Consequently, it was held that the agreement not being specific as regards the land agreed to be sold and in fact such land being indeterminable, no decree of specific performance for sale of any such land could be issued.

10. Before holding as above, the translated version of the agreement of sale was reproduced by the learned trial court in its judgment which is considered appropriate to be reproduced here too, which reads as follows:-

“AGREEMENT

“I, Rajinder Kumar son of Pt. Neel Kanth am resident of Pehowa (Kurukshetra). I have agreed to sell agricultural land measuring 4 *killas* to Shri Ram Sarup son of Lala Sardha Ram at the rate of Rs.21,000/- (Twenty one thousand) per *killa*. This land falls towards *Safeda Trees*. Now an amount of Rs.25,000/- (Twenty five thousand) half of which is Rs.12,500/- (Twelve thousand and five hundred) has been received by me as a certification of this fact. I shall get the sale deed registered after harvesting the wheat crop by 25th April, 1978. If there would be delay in harvesting the crop then with mutual consent of both the parties, the date of registration of the sale deed would be got extended. I shall provide *killa* numbers of the land afterwards after consulting the Partwari.

Sd/- Surain Pal	Sd/-	Sd/- Ramesh
witness	Rajinder Kumar	Chand witness”

11. On the issue of readiness and willingness of the plaintiff to purchase the suit property, that court found that the plaintiff actually had the money with him to fulfill the sale consideration, with the details thereof also given in the judgment.

Though it was found that the plaintiff had admitted that he had not gone to the office of the Sub-Registrar on 10.05.1978, his plea on that was that since he had already “been ditched” by the defendant on 25.04.1978, with the defendant not even having bothered to supply the details of the land to be actually sold. Consequently, that court come to the conclusion that it was the fault of the defendant, in not providing the exact field numbers, that led to the plaintiff not reaching the office of the Sub-Registrar, though he had always been otherwise ready to perform the contract.

12. Upon the aforesaid findings, it was held that though the plaintiff was ready and willing to perform the contract, the agreement itself being

vague in nature, not having described the suit land in detail, with its 'identity' therefore not determinable, hence, it was a contract that was inexecutable in terms of Section 29 of the Indian Contract Act, 1872 and was therefore void as regards the relief of specific performance sought by the plaintiff.

However, with the amount of Rs.25,000/- paid by the plaintiff not having been denied by the appellant herein, and the fault having found to be that of the appellant himself in not supplying the correct *khasra*/field numbers, the plaintiff was held entitled to the alternative relief sought, of recovery of the said amount, upon which interest @ 6% per annum was also awarded to him, running from the date of payment, i.e. 28.02.1978, till realization thereof.

13. The plaintiff not having appealed against that judgment, the present appellant-defendant however did appeal against it, with the learned first appellate court eventually having come to the same conclusion as had the trial court, and that appeal therefore having been dismissed.

14. Before this Court in this second appeal, notice of motion was issued on March 15, 1989, only on the issue of whether interest was payable by the appellant on the aforesaid amount of Rs.25,000/-, when there was no specific clause in the agreement for such interest to be paid, with learned counsel appearing at that stage for the appellant having cited a judgment of a Division Bench of the Karnataka High Court in **Manchalal and another v. Shah Manikchand and others** AIR 1988 Karnataka 221, in his favour.

15. Eventually, the appeal was admitted to regular hearing on May 17, 1989, with execution proceedings having been subsequently stayed initially, but with that order modified on 12.11.1991, to the extent that execution proceedings were allowed to continue as regards recovery of the

principal amount of Rs.25,000/-, but with the interest thereupon not to be realised from the appellant in the interim period.

16. When this case came up for hearing finally, Mr. Jagdish Manchanda, learned counsel for the appellant, other than relying upon the aforesaid judgment of the Karnataka High Court, also relied upon a judgment of a co-ordinate Bench of the Himachal Pradesh High Court in **Raj Kumar Gupta and others v. Des Raj and others** AIR 1995 HP 107, to reiterate that as there was no interest envisaged to be paid on the principal amount, in the agreement itself, the courts below had wholly erred in awarding such interest to the respondent-plaintiff.

17. *Per contra*, Mr. Sarin, learned counsel appearing for the respondent-plaintiff, first relied upon a judgment of the Supreme Court in **Deity Pattabhiramaswamy v. S. Hanymayya** AIR 1959 SC 57, to submit that this second appeal, with no substantial question of law framed in it as requires adjudication by this court, is not maintainable.

18. On the merits of the case, he cited various judgments on a vague contract not being enforceable, to which no reference is actually required, this appeal being one instituted not by the plaintiff seeking a decree of specific performance, but one instituted by the defendant, which was admitted only on the question of interest being payable or not, on the amount ordered to be refunded by the appellant to the respondent.

Of course, had the agreement, Ex.P1, been vague on the receipt of Rs.25,000/- also by the appellant from the plaintiff, that issue would also need to have been gone into by this court, but with that amount admitted to having been received by the appellant, there is no vagueness in the agreement on that issue at least and therefore, the judgments cited by Mr. Manchanda are

not being referred to, specific performance of the contract not being in issue in this appeal.

19. It is to be noticed again here, that the defendant had not filed any appeal against the judgment of the learned trial court even before the first appellate court, nor have even any cross-objections been filed by him in the present appeal, assailing the judgments of the courts below for having granted only the alternative relief of recovery of Rs.25,000/- instead of issuing a decree of specific performance.

Therefore, it may be said at this stage itself, that I am not at all inclined to go into the contention of Mr. Sarin that this court can still grant such relief to the respondent-plaintiff.

20. On the issue of interest being payable on the aforesaid amount, Mr. Sarin has relied upon two judgments of co-ordinate Benches of this court, in Manjit Kumar v. Ram Sawroop and others 2017 (1) RLR 200 and Mohan Singh and another v. Kulwinder Singh 2001-2 (PLR) 776, to submit that interest even if not stipulated to be paid in the agreement of sale, was still liable to be paid once the court had come to the conclusion that the agreement in question had actually been entered into.

21. Having considered the judgments of the learned courts below as also the arguments of learned counsel for the parties, obviously the question of law that is to be adjudicated upon by this court is as to whether interest is payable on the amount of Rs.25,000/- as was admitted to have been paid by the plaintiff, even as per the appellant himself, as part of the total sale consideration to have been paid upon execution of the sale deed.

Other than the judgments cited by Mr. Sarin, of co-ordinate Benches of this Court, it would be appropriate to refer to the judgment of the

Supreme Court in Sarita Dokania and another v. Krishna Dey and another 2013 (4) RCR (Civil) 7 wherein the Supreme Court held as follows:-

“This Court while issuing notice on 9.12.2011 restricted the same as to why the Appellants be not granted **interest** on the **earnest money** admittedly received by the Respondents. Faced **with** this situation, Mr. Mehta submits that the Appellants are entitled to receive **interest** from the date the Respondents received the amount till date. On the other hand, Mr. Neeraj Shekhar, learned counsel for the Respondents submits that the Appellants had been asked to receive back the **earnest money** on 27th July, 1999. Therefore, the Appellants cannot now, rightly, claim any **interest**.

6. We have considered the submissions made by the learned counsel for the parties. We are of the opinion that the claim made by the Appellants **with** regard to **interest** deserves to be accepted. It is not disputed that the Respondents had offered to pay back the **earnest money**. However, the offer was rejected by the Appellants and the necessary relief was sought by bringing the two Civil **Suits**. We are not inclined to accept the submission made by the learned counsel for the Respondents that as soon as the Respondents had made an offer to return the **earnest money**, the Appellants cannot claim **interest** on the amount of **earnest money**, which has still not been returned to the Appellants. Undoubtedly, the Respondents had shown their bona fide to return the **money**. However, since the refund was not accepted, the Respondents ought to have deposited the **earnest money** in the Trial Court, where the two **suits** were pending. There was no impediment in the Respondents adopting such a course to avoid the liabilities to pay interest. The net result is that the Respondents have utilised the **earnest money** ever since it had been received by them. Consequently, in our opinion, the Appellants would be entitled to **interest** on refund of the **earnest money**.”

22. Thus, even though the situation in the present case is not identical to the case before the Supreme Court, however, with it having been found as a matter of fact by both the courts below that it was the appellant-defendant who had actually not supplied the correct *khasra* numbers to the respondent-plaintiff, (thereby making it an inexecutable contract, with no decree for specific performance therefore being issuable, even in terms of Section 29 of the Contract Act), this would be an appropriate case, in my opinion, where the appellant is to be held bound to pay interest to the respondent-plaintiff, the agreement in any case never having been denied by the appellant and even payment of Rs.25,000/- by the plaintiff to him having been admitted by him.

Hence, the judgments of the Karnataka High Court and Himachal Pradesh High Court as have been relied upon by the learned counsel for the appellant, are found to be inapplicable, with the Himachal Pradesh High Court in fact even having held that where there is justification for payment of interest, even in the absence of any specific recital to that effect in an agreement, such interest would be payable.

This court having found, as had the learned courts below, that it was the appellant who was at fault in not supplying the *khasra* numbers of the land to be sold to the respondent-plaintiff, I find no ground to allow the appeal.

23. Consequently, finding no merit in it, it is dismissed with costs.

December 15, 2018
dinesh

(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?

Yes/No

2. Whether reportable?

Yes/No