

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

**RSA No.4791 of 2004 (O&M)
Date of Decision:18.09.2018**

Randhir Singh

...Appellant

Versus

Rohtash

...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pritam Saini, Advocate for the appellant.
Mr. Deepak Thapar, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the regular second appeal against the judgment passed by the learned first appellate court, reversing that of the learned trial court, resulting into dismissal of the suit for specific performance of the agreement to sell dated 27.3.1995.

Learned counsel for the appellant has pointed out that the learned first appellate court has wrongly translated the pleadings which were in 'Devnagari' language (Hindi). He pointed out that there is no admission of the plaintiff in the replication that there was a loan transaction between the plaintiff and the defendant.

This Court with the help of learned counsel for the parties have gone through the pleadings. Argument of learned counsel for the appellant is correct. However, when one reads the cross-examination of the plaintiff, he categorically and specifically admit that in 1994, loan of Rs.30,000/- was taken but he does not remember that who was scribe of the aforesaid writing. However, in his next sentence, he states that there

was an agreement to sell written. He further goes on to say that in 1994 what was the rate of interest agreed upon, he does not remember. However, subsequently he admits that in lieu of the earlier agreement to sell, there was further new agreement executed on 27.3.1995, which was further resulted into a fresh agreement in the year 1996. He further goes on to say that out of the loan advanced no amount has been refunded.

Keeping in view the aforesaid facts, it is apparent that the finding of the learned first appellate court that the agreement to sell was in fact a security for ensuring refund of the amount is correct. Although, learned counsel for the appellant, while reading the statement of the defendant, wanted to impress upon the Court to the effect that the defendant has admitted receipt of Rs.1 lac and had also admitted his signatures on the document, however, keeping in view the admission of the plaintiff and other evidence produced by the defendant, it is apparent that these transactions were only the loan transactions and the property owned by the defendant was never intended to be sold.

Learned counsel for the appellant further submitted that the learned first appellate court has wrongly refused to grant relief of refund of the amount even if it is admitted that there was a loan transaction, still plaintiff would be entitled to refund of the amount. He pointed out that the learned first appellate court has erred in again misreading the para 2 of the replication filed by the plaintiff. He submitted that from the reading of para 2 of the replication, it is apparent that the plaintiff has never admitted receipt of the amount in advance.

On the other hand, learned counsel for the respondent-defendant

pointed out that in the year 1995, agreement to sell was for a total consideration of Rs.1 lac out of which Rs.70,000/- was shown to have been paid as earnest money. Hence he submits that thereafter there could not be any further advancement of Rs.1 lac.

It is normal that if a person, who is under debt is unable to pay, in next agreement to sell the amount of accrued interest is added by depicting the amount already advanced along with interest as earnest money as would be clear from the statement of the plaintiff himself.

Keeping in view the aforesaid facts, the present appeal is partly allowed. The judgment and decree passed by the learned first appellate court is modified. The plaintiff is held entitled to refund of Rs.1 lac along with interest @6% per annum from the date of agreement to sell till repayment. Pending application(s), if any, shall also stand disposed of, in terms thereof.

18.09.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No