

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

RSA No.3037 of 2013
Date of decision : 15.03.2018

Rajinder Pal Singh

...Appellant

Versus

Municipal Corporation, Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Chetan Slathia, Advocate for the appellant.

Ms. Deepali Puri, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

In the considered opinion of this Court, the following substantial questions of law arise for determination:-

1. Whether both the Courts have mis-directed themselves while adjudicating the suit?
2. Whether the respondent can be allowed to capitalize on their own mistake/fault?

It would be relevant to note the certain facts. The plaintiff-appellant was successful in Draw of Lots held by the Notified Area Committee and was allotted site No.284. The plaintiff had paid certain

amount and he was required to pay in total 25% of the total sale consideration. The amount was to be deposited upto 15.02.1986, whereas the amount was deposited on 17.02.1986. The draft through which the amount was sought to be deposited was not accepted as there was a delay. The plaintiff-appellant filed an appeal before the Deputy Commissioner, the Appellate Authority, who vide order dated 23.06.1988 condoned the delay, if any and permitted the plaintiff-appellant to deposit the amount. The plaintiff, once again, got prepared the draft and submitted an application to the Notified Area Committee requesting that the amount be accepted. However, the Notified Area Committee rather on accepting the amount, as ordered by the Appellate Authority, refused to accept the amount and returned the draft vide communication dated 20.04.1989. It will be useful to reproduce the communication, which reads as under:-

“From

The Secretary,

Notified Area Committee,

Manimajra (U.T. Chandigarh),

To

Sh. Rajinder Pal Singh,

M/s Kohli Motor Co.,

S.C.F. No.427, Motor Market Complex,

Manimajra.

Memo No.NAC-89/1421

Manimajra, the:- 20.04.89

Subject:- Payment in respect of residential site No.284, in the 61.21 Acres Dev. Scheme, Manimajra.

Reference your application dated 1.2.89 on the subject noted above.

2. Before the payment remitted by you is accepted, you

are requested to get the award of the Arbitrator made Rule of the Court. Bank Draft No.839253/26/86 dt. 17.2.86 amounting to Rs.18,500/- is returned herewith.

DA/As above

Sd/- Secretary, 19/4

Notified Area Committee,

Manimajra (U.T. Chandigarh)”

The troubles of the plaintiff-appellant started. As directed by the Notified Area Committee, the plaintiff-appellant, once again filed an application to the Deputy Commissioner for passing an award in proper form. The Deputy Commissioner, taking into consideration his earlier order, passed an award on 13.07.1989. The plaintiff-appellant as directed filed an application before the Civil Court for making the award, the Rule of the Court. Unfortunately, the Civil Court dismissed the application on the ground that there was no reference before the Arbitrator and there was no arbitration agreement. The plaintiff-appellant even filed an appeal, which was dismissed on 28.04.2003. The plaintiff thereafter made several efforts to pay the amount, however, it was refused. The plaintiff forced by the circumstances filed the suit challenging the order passed by the Commissioner, Municipal Corporation dated 27.10.2003 refusing to accept the payment as per order of the Deputy Commissioner.

The defendant contested the suit and pleaded that the order passed by the Deputy Commissioner has merged into the award and since award has not been made the Rule of the Court, therefore, rights of the plaintiff stands forfeited.

Both the Courts fell into this apparent error and recorded a finding that since award passed by the Arbitrator on 13.07.1989 has merged

into the order of dismissal by the Court while rejecting the application for making the award of the Arbitrator Rule of the Court, therefore, the plaintiff has now no remedy.

Now the stage is set for considering the questions of law:-

1. Whether both the Courts have mis-directed themselves while adjudicating the suit?

It is apparent that both the Courts have totally mis-directed themselves while deciding the suit. The order dated 23.06.1988 was the original order (first order) passed by the Deputy Commissioner, accepting the appeal filed by the plaintiff. That order is still surviving. It is not in dispute that the plaintiff pursuant to the order dated 23.06.1988 got prepared the draft and submitted an application for deposit of the same, which was returned by the then Notified Area Committee, vide letter reproduced above. In fact, the direction was issued by the Notified Area Committee to get the award of the Arbitrator made the Rule of the Court. Although, the Deputy Commissioner had only exercised the powers as available to him under the Rules as an Appellate Authority, while passing the order on 23.06.1988. Although, on the top of the order, he has noted that he is exercising the powers of Appellate Authority but while signing, he somehow wrote the Arbitrator-cum-Deputy Commissioner which created the whole confusion. Once, the plaintiff has been offering to pay the amount and he had in fact offered to pay the amount on 17.02.1986 and thereafter when the order was passed by the Deputy Commissioner on 23.06.1988, the plaintiff was not at fault.

The order dated 23.06.1988 condoning the delay of two days in

deposit of the amount, has not been set aside by any authority or the Court. Thereafter, the plaintiff-appellant has been running from pillar to post to deposit the amount, however, due to various pecuniary objections, the amount has not been deposited.

In view of above, question as framed is answered in favour of the appellant.

2. Whether the respondent can be allowed to capitalize on their own mistake/fault?

The letter dated 20.04.1989 has been reproduced in the previous part of this judgment. It is clear that it was the Secretary, Notified Area Committee, who had directed the plaintiff to get the award of the Arbitrator made the Rule of the Court. It was the creation of the Notified Area Committee, which resulted into undue harassment to the appellant. First, appellant had to file an application before the Deputy Commissioner for converting the order into the award of the Arbitrator and thereafter had to file an application before the Court for making the award of the Arbitrator, the rule of the Court.

In the considered opinion of this Court, once it was on account of mistake committed by the Notified Area Committee that the plaintiff was driven towards converting the order of Deputy Commissioner into the award of the Arbitrator and thereafter proceedings for the Rule of the Court, the Notified Area Committee (Municipal Corporation), cannot be permitted to capitalize on its own mistake.

In view of the aforesaid discussions, both the questions of law are answered in favour of the appellant. The judgments of both the Courts

are set aside.

The plaintiff-appellant is directed to deposit the balance sale consideration alongwith interest at the rate of 9% p.a. within a period of two months from the date of receipt of certified copy of the order and comply the required formalities. Thereafter, the Municipal Corporation would issue the allotment letter to the plaintiff in accordance with the Rules.

Regular Second Appeal is allowed.

15.03.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No