

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

111

RSA No.1350 of 2015 (O&M)

Date of decision: 01.05.2018

Sarma Singh

..... Appellant

Versus

Sukhdev Ram (deceased) through LRs

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sapan Dhir, Advocate
for the appellant.

Mr. Rishab Lohan, Advocate
for respondent No.1(i).

Mr. P.S. Gulani, Advocate
for respondent No.1(iii).

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff had filed a suit for recovery of double the amount of earnest money paid at the time of entering into agreement to sell on 28.06.2003. It was pleaded that the defendant was not ready and willing to perform his part of the contract on the target date i.e. 15.11.2006, although, the plaintiff-respondent was always ready and willing to perform his part of the contract and he was present in the office of Sub-Registrar, Tehsil Complex, Patiala on the target date i.e. 15.11.2006 along with the balance sale consideration.

The defendant contested the suit and pleaded that the amount of

earnest money stands forfeited as the plaintiff was not ready and willing to perform his part of the contract.

Both the Courts after examining the evidence available on the file have recorded a concurrent finding of fact that the plaintiff was ready and willing to perform his part of the contract whereas the defendant was not ready to perform his part of the contract. Learned First Appellate Court while dismissing the appeal has extracted the relevant part of the statement given by the defendant-appellant which is extracted as under:-

“Sukhdev Ram was present along with balance sale consideration on 15.11.2006 at tehsil complex Patiala and he got marked his presence. I am owner of 13 Bighas of land which I have agreed to sell to Sukhdev Ram vide agreement to sell Ex.P2. I am not ready to execute the sale deed even today.”

On the basis of the aforesaid statement, the learned First Appellate Court recorded that it is the defendant-appellant who was not ready and willing to perform his part of the contract and therefore, the refund of the earnest money as ordered by the trial Court does not require any interference.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the paper book.

Learned counsel for the appellant has vehemently argued that the suit for recovery simpliciter would not be maintainable in view of the provisions of Section 22 of the Specific Relief Act, 1963. He submitted that the plaintiff could only file a suit for specific performance of the agreement to sell and along with that he could pray for recovery of the amount in alternative. He submits that since no specific performance of the agreement to sell has been sought for by the plaintiff, therefore, the suit filed by the

plaintiff was not maintainable.

Section 22 of the Specific Relief Act, 1963 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 (5 of 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 [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.”

A careful reading of Section 22 provides that any person suing for specific performance of a contract is also entitled to seek other reliefs like possession, partition, separate possession or any other relief including the refund of the earnest money. Sub-section (2) further provides that if relief under Clause (a) and (b) of sub-section (1) have not been prayed for, the Court would not grant such relief.

This Court has considered the submission. Learned counsel for the appellant could not point out any statutory prohibition to file a suit to

claim only refund of the earnest money particularly when the defendant is not ready and willing to perform his part of the contract. Under the common law, an amount which has been paid, would always be recoverable. However, the decree for recovery would always depend upon the facts and circumstances of each case. In the present case, both the Courts have concurrently found that it was the defendant-appellant who was not ready and willing to perform his part of the contract. In such circumstances, in the considered opinion of this Court, the plaintiff was justified in seeking only relief of refund of the earnest money.

In view thereof, there is no ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

01.05.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No