

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

RSA No.1519 of 2015 (O&M)
Date of decision : 18.12.2018

Avtar Singh

...Appellant

Versus

Punjab Mandi Board and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vishal Aggarwal, Advocate for the appellant.

Mr. Pardeep Bajaj, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM No.4223-C of 2015

Application is for permitting the appellant to make up the
deficiency of court fee.

Application allowed.

CM No.4224-C of 2015

For the reasons stated in the application, which is duly
supported by an affidavit, delay of 13 days in filing the present appeal is
condoned.

Application allowed.

Main case

The plaintiff-appellant is in the Regular Second Appeal

against the concurrent findings of fact arrived at by both the Courts below while dismissing his suit for recovery of ₹16,91,625/-, out of which principle amount is ₹15,75,000/-.

It is pleaded case of the plaintiff that the defendants developed a Fruit and Vegetable Market in Ludhiana and promised to provide all the facilities. The plaintiff applied for allotment and in open auction, he was allotted plot of shop No.154 at a total price of ₹62,20,000/-. He has deposited 25% of the total sale consideration but has not paid any further amount as the facilities as promised have not been provided.

The defendants contested the suit and pleaded that all the facilities have been provided and the plaintiff is at fault.

Both the Courts after appreciation of the evidence as a matter of fact have found that the facilities have already been provided and, therefore, the plaintiff is not entitled to refund of the amount deposited alongwith interest.

This Court has heard the learned counsel for the parties and with their able assistance gone through the judgments passed by both the Courts below.

Learned counsel for the appellant has submitted that even if it is assumed that the resumption of the plot is valid on account of non-payment of the remaining amount, still, he would be entitled to refund of the amount exceeding 10% of the total sale consideration. In this regard, he referred to last Clause of the Allotment Letter, which is extracted as

under:-

“If any allottee fails to comply with any of the above mentioned conditions or fails to construct the plot within time specified there in his plot will be liable to be resumed and his deposit, which in no case shall exceed ten percent of the total amount of the consideration money, interest and other dues payable in respect of the sale of site or building or both shall be forfeited by the Punjab Mandi Board and the property shall to be resold by public auction.”

On the other hand, learned counsel for the respondents submitted that the argument is beyond pleadings and the issues framed. He further pointed out that this argument is being raised for the first time in this Court.

Learned counsel for the appellant submitted that once the plaintiff has sought for recovery, may be on any ground, the High Court in second appeal can take judicial notice of the aforesaid fact and modify the decree.

It is fundamental that a party cannot be permitted to raise the argument for the first time in Regular Second Appeal which is based upon appreciation of evidence and facts. A party cannot be permitted to raise the argument which is based upon appreciation of the evidence for the first time unless it has been deliberated upon by the Courts below. High Court while examining the judgments passed by both the Courts below in Regular Second Appeal is to examine the correctness and validity of the judgments impugned herein. Since, learned counsel for the

appellant has failed to point out that the argument which is sought to be raised in this Court was ever pressed before the Courts below, this Court is not inclined to examine the argument without there being any foundation. Hence, there is no ground to interfere.

In view of the above, the present Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

18.12.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No