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

RSA-818-2013
Date of decision : 15.01.2018

Manjit Singh

... Appellant

Versus

Dilbag Singh and others

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arvind Bansal, Advocate
for the appellant.

Mr. Kunal Dawar, Advocate
for the respondents.

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AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court in an appeal preferred by the defendant against the findings rendered by the trial Court, wherein a suit seeking specific performance of the agreement to sell dated 13.12.2006, instead of granting discretionary relief under Section 20 of the Specific Relief Act, a sum of ₹ 3 Lacs along with interest @9% from the date of the agreement, had been ordered, which in appeal had been set aside on the ground that the respondents-defendants had forfeited the amount.

Mr. Arvind Bansal, learned counsel appearing on behalf of the appellant-plaintiff submits that the parties had entered into agreement to sell dated 13.12.2006 for purchasing land measuring 3-½ marlas for a total sale consideration of ₹31 Lacs against the payment of ₹3 Lacs as earnest money.

The stipulated date for registration and execution of the sale deed was 15.03.2007. However, the same was extended to 15.05.2007. The trial Court after noticing the fact that a notification issued by the Punjab Government, vide which, a Town Planning Scheme was promulgated, had declared the area under the agreement as 'Unbuilt Area'. The aforementioned notification was issued in the year 1994 and this fact was concealed from the knowledge of the appellant-plaintiff. It is, in this backdrop of the matter, the Court below found that the appellant-plaintiff had been ready and willing to perform the part of the agreement owing to the fact that he had on the date of the execution and registration of the sale deed i.e. 15.05.2007, appeared before the Registrar for marking his presence by way of affidavit (Ex.P-2). The execution of the sale deed would be a farcical exercise as purpose could not be achieved. The lower Appellate Court did not examine the contents of the agreement, much less, the endorsement seeking extension of time and forfeiture of the amount as the agreement envisaged that the plaintiff had to pay a sum of ₹5 Lacs by January 2007 and thus, found that he was not ready and willing to perform the part of the agreement. The aforementioned findings are liable to be set aside by restoring the findings rendered by the trial Court as the appellant-plaintiff was not aggrieved of the refund of the earnest money, thus, there is illegality and perversity in the judgment and decree, under challenge.

Mr. Kunal Dawar, learned counsel appearing on behalf of the respondents-defendants submits that the findings rendered by the lower Appellate Court being the last court of fact and law cannot be tinkered with until and unless there is a glaring illegality and perversity. The terms and conditions of the agreement were sacrosanct. The payment of ₹5 Lacs by

January 2007 was not doubted at any point of time nor the plaintiff at any point of time issued a notice to the defendants seeking refund of the money on account of the promulgation of the Scheme in the year 1994. The Extension Clause reveals that the defendant(s)-vendor agreed to the request of the plaintiff for extension of time as he could not arrange a sum of ₹5 Lacs, therefore, the readiness and willingness was conspicuously wanting and rightly so, forfeiture clause had been pressed into service, thus, urges this Court for upholding the judgment and decree, under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that in order to suffice the equities and balance between the parties, the following fact/issues remained un-controverted:-

i) Agreement, terms and conditions, total sale consideration, earnest money, target date and extended date since both the parties were not at variance to the fact that the defendant(s)-vendor did not apprise with regard to the promulgation of the notification of 1994 (Ex.P-3), whereby the area under the suit property/agreement had been declared to be 'Unbuilt Area', therefore, a necessity arose according to the plaintiff for obtaining NOC from the concerned department.

ii) The agreement also envisaged the payment of ₹5 Lacs, over and above payment of earnest money by January 2007.

No doubt the trial Court noticed all the facts and also the fact that Affidavit (Ex.P-2) marking the presence and suit having been filed on 14.06.2007, had opined that the appellant-plaintiff had been ready and willing to perform the part of the agreement to sell, but the fact that the extension clause if read meticulously, it did not show that the extension was on account of vendor, but was a mutual one by both the parties and in this view of the matter, the parties adopted a blame game. Admittedly the area under the Scheme had been declared as 'Unbuilt Area', the plaintiff would not have been able to achieve the purpose for which it was agreed to be purchased or not. On appreciation of aforementioned points, I deem it appropriate to set aside the findings of the lower Appellate Court viz-a-viz forfeiture of the amount of earnest money, but also modify the findings rendered by the trial Court and order for refund the amount of ₹3 Lacs of earnest money without any interest. The aforementioned findings are given by noticing in peculiar facts and circumstances of the case.

Resultantly, the judgment and decree of the trial Court is modified and it is held that the plaintiff is entitled to recover the amount of ₹3 Lacs without any payment of interest or cost from the respondent-defendant, in accordance with law.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in ***“Pankajakshi (dead) through LRs and others V/s. Chandrika and others AIR 2016 SC 1213***”, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so wherever, there would be need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in ***“Kulwant Kaur and others V/s. Gurdial Singh Mann (dead) by LRs and others” 2001(4)***

SCC 262, on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in ***"Pankajakshi 's case*** (supra) reads thus:-

> *"Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of* ***Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]*** *cannot be sustained and is thus overruled." [at paras 27 - 29]"*
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> *27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue*

of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force."

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

With the aforesaid observations, the appeal stands disposed of.

(AMIT RAWAL)
JUDGE

15.01.2018
Yogesh Sharma

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**