

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.2424 of 2014 (O&M)

Date of decision: 23.08.2018

Rajender Parshad

..... Appellant

Versus

Shiv Tej Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. C.B. Goel, Advocate
for the appellant.

Mr. Abhinav Sood, Advocate, for
Mr. Vikram Singh, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

CM-5753-C-2014

Application is allowed and the delay is condoned.

Main Case

Defendant-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court partially reversing the judgment and decree passed by the learned trial Court refusing specific performance of the agreement to sell but ordering refund of the amount paid along with appropriate interest.

In the considered opinion of this Court, following substantial question of law arise for consideration:-

“Whether the learned First Appellate Court while interfering in the discretion exercised by the learned trial Court refusing to grant specific performance of the agreement to sell, is required

to come to conclusion that the discretion exercised by the trial Court was suffering from any error?”

The plaintiff filed a suit on 31.10.2003 for specific performance of the agreement to sell dated 06.11.2000 through which 8 kanals of land was agreed to be sold for a sum of Rs.3,00,000/- and earnest money amounting to Rs.1,50,000/- is stated to have been paid as earnest money. As per the agreement to sell, the target date for execution and registration of the sale deed was fixed to 06.05.2002 i.e. after a period of one year and 7 months. It is further pleaded fact that on 06.05.2002, no sale deed was executed but the date was extended to 10.09.2003 i.e. by one year and 6 months after the target date. The defendant-appellant pleaded that in fact, his son was involved in a murder case and therefore, he had taken a loan of Rs.1,50,000/- and some papers were got thumb marked as a security. Learned trial Court after appreciating the evidence found some substance in the plea of the defendant and ordered that instead of specific performance of the agreement to sell, decree for refund of Rs.2,00,000/- along with appropriate rate of interest i.e. 6% per annum from the date of the execution of the agreement to sell till its realization is passed.

However, learned First Appellate Court has reversed the discretion exercised by noticing a factually incorrect fact that on the day, the agreement to sell was executed, son of the defendant-appellant had been acquitted. This factually incorrect fact as noticed by the learned First Appellate Court is not disputed by learned counsel for the respondent. However, he submits that the son of the appellant was acquitted on 17.01.2001 which was before 06.05.2002 when additional payment of Rs.50,000/- was received.

This Court has also carefully examined the photocopy of the receipt dated 06.05.2002 through which the date for execution and registration of the sale deed has been extended to 10.09.2003 i.e. for further period of one year and 6 months. On careful examination of the aforesaid receipt, it is not clear as to whose request, the date was extended. The only thing mentioned is that another amount of Rs.50,000/- has been received because of requirement and therefore, the date is being extended to 10.09.2003. Learned trial Court noticed that the suit has been filed nearly after 3 years and the genuineness of the agreement to sell of the property is not also doubtful.

Learned counsel for the respondent-plaintiff submitted that the cause of action accrued in favour of the plaintiff only on 10.09.2003 when on extended date, the defendant did not come forward to execute the sale deed. He submitted that on 13.09.2013, he got served a notice calling upon the defendant to come present on 29.09.2003 and the suit was filed immediately i.e. 31.10.2003.

This Court has heard learned counsel for the parties at length. As noticed, the judgment of the learned First Appellate Court is factually incorrect with regard to date of acquittal of the son. Still further, the discretion exercised by the learned trial Court, no doubt capable of reversal in appeal, however, can only be reversed if there are sound and cogent reasons. In the present case, it is undisputed that the son of the defendant-appellant was involved in a murder case. He was facing trial when the alleged agreement to sell dated 06.11.2000 was executed. It is abnormal that even after paying 50% as earnest money out of total sale consideration, the date for execution and registration of the sale deed was fixed after a

period of one year and 6 months. Still further, after one year and 6 months of the agreement to sell, the sale deed was not executed but it was extended by another one year and 6 months approximately. The receipt which is executed does not even referred to the reason as to why the date is being extended. The only thing mentioned is that the defendant is in further need of Rs.50,000/-. There is no reason forthcoming as to when the payment of Rs.50,000/- was paid on 06.05.2002, the sale deed was not registered. In these circumstances, the learned trial Court was correct in observing that the agreement to sell is not above board.

As per Section 20 of the Specific Relief Act, the relief of specific performance of the agreement to sell is discretionary. In the present case, the learned trial Court had exercised discretion which cannot be said to be suffering from any perversity. The First Appellate Court should be slow in interfering in the discretion exercised unless the order passed by the learned trial Court suffers from any error of fact or there is any misreading or non-reading of evidence. In fact, in the present case, the judgment of the learned First Appellate Court proceeds after noticing incorrect fact as admitted by learned counsel for the respondent.

Accordingly, question of law framed earlier, is answered in favour of the appellant.

In view thereof, the judgment of the learned First Appellate Court is set aside and that of the learned trial Court is restored.

Regular second appeal is allowed.

23.08.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**Whether speaking/reasoned
Whether ReportableYes / No
Yes / No