

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

RSA No.5166 of 2015

Dalbir Singh Sandhu

....Appellant

Versus

Chandigarh Housing Board, Chandigarh and Anr.

....Respondents

Date of Order: 02.4.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.S. Gill, Advocate for the appellant.

AMIT RAWAL, J (ORAL)

Appellant-plaintiff is aggrieved of the concurrent findings of facts recorded by both the courts below whereby his suit has been dismissed vide judgment and decree dated 10.9.2012 passed by the Civil Judge (Jr. Division), Chandigarh and the appeal filed against the same was dismissed by the lower Appellate Court vide judgment and decree dated 23.2.2015.

Plaintiff instituted the suit challenging the cancellation order dated 18.8.1995 on the ground that he was allotted a house registered at No.A-63 under the NRI Manimajra Scheme 1993 Scheme promulgated by the respondents-Chandigarh Housing Board, Chandigarh since he suffered hardship when his house caught fire while he was coming to India for the payment of the instalments of the aforesaid house. The tragedy was so big that he got himself burnt badly and all his household belongings were destroyed in the fire. He was admitted in hospital at London and is still under treatment. It is averred that a request was made to accept the payment without interest in 7 years equal annual instalments because the plaintiff had been destroyed in the fire incident. Earlier, the plaintiff filed a suit for

injunction, which was dismissed by the trial Court on 26.7.1995. It is averred that the terms and conditions of the brochure were not disclosed to the plaintiff and the cancellation order was passed on 18.8.1995 by the respondents, in haste.

Defendants-respondents contested the suit by taking various preliminary objections qua maintainability etc. It was stated that the tentative cost of the house was Rs.6,53,000/-. As per the Scheme, the houses were to be constructed in the Modern Housing Complex at Manimajra, UT, Chandigarh with the funds of the plaintiff. The allotment was to be made by draw of lots and on registration, the applicants were required to deposit 800 British Pounds/1200 American Dollars. The last date for submission of the application forms along with earnest money was 14.5.1993 and the registration for allotment of the house was made at Chandigarh on 12.12.1993 through draw of lots and the acceptance-cum-demand letter was issued on 31.12.1993. It was pleaded that the plaintiff made payment of Rs.65,000/- as registration money but did not pay the subsequent quarterly instalment of Rs.80,000/- each commencing from 10.4.1994 as per the Schedule given in the Acceptance-cum-Demand letter dated 31.12.1993.

The trial Court on the basis of evidence and other material placed on record dismissed the suit holding that no instalment was paid by the plaintiff in time and in the light of terms contained in Ex.DW1/A, written extension was to be sought by the applicant as a case of genuine hardship before the expiry of four months and on payment of interest at the rate of 36% per annum but the needful was not done nor any document was placed on record to show genuine hardship. Appeal filed against the

judgment passed by the trial Court was also met with the same fate.

Learned counsel for the appellant submitted that both the courts below have committed a serious error while overlooking the genuine hardship of the plaintiff and by not considering his request qua extension. He submitted that the respondents wrongly passed the cancellation order and re-allocated the house to somebody else without disclosing the particulars and that the amount returned by the respondents has not been encashed as yet, by the plaintiff. The trial Court has abrogated in not framing the issue qua declaration and that the respondents ought to have considered his request in respect of some other dwelling unit.

After hearing learned counsel for the appellant and perusing the paper book with his able assistance, I find no force in the contentions raised by learned counsel for the appellant. It is apparent from the terms and conditions of the Brochure that the extension could only be allowed in case of genuine hardship and on making written request before the expiry of four months on payment of interest at the rate of 36% per annum. It has also come on record that that the earlier civil suit filed by the plaintiff was also dismissed vide judgment dated 26.7.1995 for want of notice under Section 67 of the Haryana Housing Board Act, 1971.

It is also not in dispute that that the plaintiff has failed to comply with the terms and conditions of demand-cum-acceptance letter (ExDW1/A) and did not avail the remedy available for filing the appeal. The suit is itself an afterthought and non-framing of any issue would not be a vital and crucial point to be adjudicated by the courts below.

The contention of the learned counsel that during the pendency of the appeal before the District Judge, order of cancellation was passed

showing undue haste is not acceptable as the plaintiff had been perpetual defaulter in making the payment. In my view, both the courts below have rightly appreciated the oral as well as documentary evidence before dismissing the suit of the plaintiff.

No ground is made out to interfere.

Dismissed.

April 02, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No