IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

107

CM-18101-02-C-2016 in/and
RSA-6999-2016 (O&M)
Date of Decision : 13.08.2018

M/s Fair Deal General Finance Co. Ltd. and another

...... Appellants

Versus

Harwinder Singh and others

...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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Present :- Mr. Gaurav Tangri, Advocate for the appellants.

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AJAY TEWARI, J. (ORAL)

CM-18101-02-C-2016

For the reasons recorded, the applications are allowed. Delay of 479 days in refiling and delay of 2 days in filing the appeal is condoned.

RSA-6999-2016 (O&M)

This appeal has been filed against the judgment of the lower appellate court modifying that of the trial court and granting to the appellants the alternate relief of recovery instead of specific performance.

The case of the appellants was that the respondents had agreed to sell their property to it for a total price of Rs.2,60,000/- vide agreement to sell date 07.01.2003. At that time the appellants paid a sum of Rs.2,50,000/- by way of earnest money and only a sum of Rs.10,000/- was pending which had to be paid at the time of execution of the sale deed. As per the appellants, the respondents not having executed their part of the contract, they filed the instant suit for specific performance. The case of the respondents on the other hand was that the appellant No.1 was a finance company and that they had borrowed a sum of Rs.2,50,000/- from it and at that time they were made to sign on certain blank papers which may have been converted into an agreement to sell. They further brought to the notice of the court the fact that the original target date was about 9 months which was further extended to 3 years. The trial court held that once the respondents had accepted their signatures the agreement to sell stood proved and decreed the suit. The lower appellate court, however, held that from the facts on record it was clear that the stand of the respondents was correct to the extent that the agreement was actually a security document. The lower appellate court noted that there was no need to have 10 months gap once out of the total consideration of Rs.2,60,000/- a sum of Rs.2,50,000/- was paid at the time of agreement to sell. Further there was no explanation why three years were further sought for this paltry amount. Further the appellant No.1 was a finance company. It was in these circumstances that the lower appellate court held that the agreement to sell was actually a security document and decreed the suit for the alternative relief of recovery. The lower appellate court also disbelieved the version of the respondents that they had repaid a sum of Rs.1,30,000/- odd.

Counsel for the appellants has not been able to explain why a target date was kept after 10 months even though the remaining consideration amount was only Rs.10,000/- or why an extension of 3 years were sought for this paltry sum.

In the totality of circumstances, the finding given by the lower appellate court is not vitiated in any manner.

Appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

August 13, 2018
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Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No