

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

RSA No.1132 of 2017(O&M)

Date of decision: 8.8.2018

Satbir and another

....Appellants

VERSUS

M/s Vikram Electric Equipment Pvt. Ltd.

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sachin Mittal, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against judgment and decree dated 29.09.2016 passed by the Additional District Judge, Gurgaon whereby appeal preferred by M/s Vikram Electric Equipments Pvt. Ltd. (plaintiff in the suit) against the judgment and decree dated 21.10.2013 passed by the Additional Civil Judge (Senior Division), Gurgaon (hereinafter to be referred as the trial Court) was partly allowed, the judgment and decree passed by the trial Court were set aside and suit filed by the plaintiff/respondent for recovery of Rs.11,28,640/- paid towards earnest money has been decreed.

Counsel for the appellants has two-fold submissions to make, to assail the judgment and decree passed by the Court in appeal. It is argued that the agreement was executed between the appellants and one Dharampal wherein name of the proposed vendee was left blank and filled in later. The earnest money of Rs.11,28,640/- was paid by said Dharampal, therefore, only Dharampal was entitled to seek recovery of the

amount, if any. The second submission made by counsel is that as the respondent/plaintiff has been held guilty of committing breach of terms and conditions of the agreement as it failed to get the sale deed executed in compliance thereof, the respondent cannot be allowed to take advantage of its own wrong and press for refund of earnest money. Counsel would inform that in para 35 of the judgment of Court in appeal, there is reference to judgments relied upon by the trial Court for dismissing claim of the respondent/plaintiff.

I have heard counsel for the appellants, perused the paper-book particularly the judgments passed by the Courts.

Indisputably, the appellants entered into agreement for sale of land and received earnest money of Rs.11,28,640/- from Sh. Dharampal. In the agreement, it was left blank as to who would be the proposed vendee, meaning thereby that Dharampal was left at liberty to mention the name later in point of time. The Appellate Court has noticed that the earnest money was paid by Dharampal on behalf of respondent-Company and as a matter of fact the amount had gone from the Company itself.

The Courts have consistently held that the respondent-Company has failed to comply with the terms and conditions of agreement as representative of the Company did not appear in the office of Sub Registrar on the stipulated date i.e. 31.08.2006. The plea taken by the respondent that the appellants did not obtain NOC, therefore, violated the terms and conditions of agreement has been negated by holding that there was no such stipulation in the agreement. However, the Court has noticed that in the agreement there is no such recital that in case of failure of the vendee to perform his part of the agreement, the vendors shall be entitled to forfeit earnest money. Meaning thereby that the parties have not

reached an agreement fixing any liquidated damages payable to the vendor in the event of proposed vendee having failed to perform his part of the agreement. Similarly, there was no such clause in the agreement that in case the vendors fail to perform their part of the agreement, the vendees shall be entitled to refund of earnest money much less double the amount which is usually a term and condition in the agreement. Once the parties have not fixed any such term with regard to entitlement of the vendors to forfeit earnest money on account of failure of the vendee to perform its part of the agreement, the appellants/defendants can not justify forfeiture of earnest money unless they had raised a plea that because of non-performance of agreement by the vendee, vendors have suffered any loss or damage and established the same. Counsel for the appellants has fairly informed that neither any such plea was raised in the written statement nor any evidence has been adduced in this regard. He has also failed to cite any judgment where the vendors have been permitted to forfeit the earnest money in absence of any agreement to this effect. In this view of the matter, I do not find an error much less perversity in the judgment and decree passed by the Court in appeal, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

AUGUST 8, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no