

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 123 of 2017(O&M)

Date of Decision: 9.8.2018

Ranbir Singh

---Appellant

versus

Jai Karan Kundu and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.Gurinder Pal Singh, Advocate
for the appellant**

Rekha Mittal, J.

Heard.

Notice of motion.

Mr. S.K.Lamba, Advocate, accepts notice on behalf of respondent No. 1.

The present appeal directs challenge against judgments and decrees passed by the Courts whereby suit filed by the appellant-plaintiff Ranbir Singh seeking specific performance of agreement to sell dated 15.4.1994 was dismissed by the trial court under Order 17 Rule 3 of the Code of Civil Procedure (in short “the Code”) for want of evidence and appeal preferred by unsuccessful plaintiff did not find favour with the Additional District Judge, Panipat.

Counsel for the appellant would urge that no doubt, the case was adjourned 3/4 times for evidence of the appellant but the trial court shut a valuable right of the appellant-plaintiff on account of his failure to

adduce evidence on 30.10.2014, the date on which the case was adjourned from 5.7.2014. It is argued that even no order was made by the Court allowing last opportunity to the appellant for adducing evidence but the trial court proceeded to dismiss the suit by invoking Order 17 Rule 3 of the Code. It is prayed that judgments and decrees passed by the Courts may be set aside and the matter be remitted to the trial court for adjudication afresh after allowing one effective opportunity to the appellant to adduce evidence, may be, subject to payment of reasonable costs.

Counsel for respondent No. 1 has supported the judgments passed by the Courts on the premise that as the appellant availed four effective opportunities as against three admissible in view of provisions of the Code, appellant has no case worth consideration seeking setting aside the judgments passed by the Courts at the cost of further delay and agony to respondent No. 1-defendant.

I have heard counsel for the parties, perused the paper book and certified copies of zimni orders recorded by the trial court with effect from 24.9.2013 onwards.

The suit was instituted in the year 2011. On completion of pleadings of the parties, issues were framed on 24.9.2013 and the case was adjourned to 15.1.2014 for evidence of the plaintiff-appellant. On the adjourned date, request for adjournment was allowed and the case was fixed for 28.3.2014 for evidence of the plaintiff-appellant. By that time, the case was transferred to some other Court and on 28.3.2014, case was adjourned to 5.7.2014 with direction that all the Pws be examined at own responsibility. On 5.7.2014, the case was adjourned to 30.10.2014. Perusal of the zimni orders recorded by the Court(s) would reveal that the Court(s)

have not taken any serious view of failure of the appellant-plaintiff to adduce evidence on the dates granted. Further, this shows that the appellant was being allowed adjournments just on asking meaning thereby that the court never made the appellant conscious that he would not be entitled to any further opportunity in case he fails to adduce evidence on 30.10.2014. No doubt, the appellant availed four effective opportunities for adducing evidence but failed to examine himself or any witness. The consequence of failure of the appellant to examine the witnesses is quite serious and led to dismissal of suit under Order 17 Rule 3 of the Code. Taking into consideration the interest of substantial justice coupled with principle of natural justice that no one should be condemned unheard unless there is a gross lapse on his/her part, in my considered opinion, the present is a fit case where the appellant can be allowed one opportunity to adduce evidence subject to payment of costs to compensate the contesting respondent-defendant who had been pursuing the litigation without any default. In this view of the matter, judgments and decrees passed by the Courts are set aside, suit filed by the plaintiff-appellant is restored on the Board of trial court for decision afresh. The appellant-plaintiff shall be entitled to one effective opportunity for adducing evidence at his own responsibility, subject to the following conditions:-

1. The appellant shall deposit an amount of Rs. 50,000/- by way of demand draft in the name of respondent No. 1 towards costs/compensation within a period of 15 days from today, with the trial court.
2. The appellant shall be entitled to only one effective opportunity for adducing evidence.

3. He would ensure presence of the witnesses at his own responsibility.

4. After evidence is adduced by the appellant, the contesting defendant(s) would be at liberty to adduce evidence, in accordance with law.

Failure of the appellant to comply with either of the aforesaid conditions would entail dismissal of the appeal.

The parties through their counsel are directed to appear before the trial court on 10.9.2018.

Disposed of accordingly.

(Rekha Mittal)
Judge

9.8.2018
PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No