IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.1436 of 2017 (O & M)
Date of Decision:25.10.2018

Ravinder Kumar and another ...Appellants

Versus

Harish Singla ...Respondent

RSA No.3657 of 2016 (O & M)
Date of Decision:25.10.2018

Harish Singla ...Appellant

Versus

Ravinder Kumar and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Manoj Kumar Sood, Advocate
for the appellants in RSA-1436-2017 and
for the respondent in RSA-3657-2016.

Mr. A.K. Jain, Advocate
for the appellant in RSA-3657-2016 and
for the respondents in RSA-1436-2017.

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ANIL KSHETARPAL, J.(Oral)

CM-3428-C-2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 16 days in re-filing the appeal is condoned.

Application is allowed.

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<u>CM-3429-C-2017</u>

For the reasons stated in the application, which is duly supported by an affidavit, delay of 100 days in filing the appeal is condoned.

Application is allowed.

<u>Main Cases</u>

These two cross-appeals have been filed i.e. one by the plaintiff and other by the defendants against the concurrent judgments of the Courts below while granting alternative relief of refund of earnest money along with appropriate rate of interest in place of relief of specific performance of the contract.

In the present case, execution of the agreement to sell and receipt of earnest money is not in dispute. It is also not in dispute that sale deed was to be executed and registered on 20.04.2009 on payment of balance sale consideration of Rs.1,04,00,000/- (approximately). Plaintiff filed the present suit on 15.02.2012 i.e. almost at the fag end of 3 years, the outer limit. Plaintiff has failed to prove that he took any step like service of notice etc. calling upon the defendants to execute the sale deed. It is further not in dispute that in the agreement to sell, it was written that the land is free from all encumbrances whereas in fact the land was encumbered having been mortgaged with the Bank. It is the case of the plaintiff that he came to know of this fact on 17.04.2009 i.e. before the target date for execution and registration of sale deed.

In such circumstances, neither the plaintiff took any step for almost three years nor the defendants repaid the amount to get the land

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redeemed from all encumbrances.

Keeping in view the aforesaid facts, the Courts below have ordered alternative relief rather than granting specific performance of the agreement to sell.

Learned Courts below have further found that the plaintiff was not in possession of the remaining sale consideration on the target date when he appeared before the Sub Registrar.

Both the Courts have also considered that merely because in the income tax record, plaintiff was having sufficient resources that itself would not prove his readiness and willingness on the target date. Balance sale consideration of Rs.1,04,00,000/- cannot be expected to be paid in cash. It is not the case of the plaintiff that he got prepared any draft or banker's cheque for paying the remaining sale consideration.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Both the appeals are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

25.10.2018 **(ANIL KSHETARPAL)**
sheetal **JUDGE**

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No

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