

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

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**CM-36-C-2017 in/and
RSA-19-2017 (O&M)
Date of Decision : 27.08.2018**

Smt. Urmila Goyal

..... Appellant

Versus

Sushil Jindal

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. Ajay Jain, Advocate
for the applicant-appellant.

AJAY TEWARI, J. (ORAL)

CM-36-C-2017

For the reasons recorded, the application is allowed. Delay of 126 days in filing the appeal is condoned.

RSA-19-2017 (O&M)

This appeal has been filed against the concurrent judgments of the courts below decreeing a suit filed by the respondent.

The case of the respondent was that the appellant had entered into an agreement to sell her property (dated 05.04.2007) and she received a sum of Rs.5,00,000/- (Rupees Five Lakhs) as earnest money from the respondent. It was further stipulated that the appellant would get the necessary permission by the due date and it was further stipulated that in case the agreement could not fructify due to any act of omission or commission by the appellant, the respondent would be entitled to receive double the amount of earnest money. It was further pleaded that the

appellant did not take any steps to obtain the permission upto the target date. Further after the target date she applied for permission but then moved a letter in which she withdrew her application for permission to transfer. It was thus prayed that the respondent was entitled to get double the amount of earnest money by way of refund.

The case of the appellant on the other hand was that actually at the time of entering into the agreement to sell the respondent had undertaken that he would obtain the necessary permission and had got documents signed from the appellant to be used for that purpose. However, till the due date he did not take any steps to get the necessary permissions and in fact on the due date the appellant came to get the sale deed executed but had to return back because of this omission on the part of the respondent. It was in these circumstances that within two days she cancelled the contract and forfeited the money. Later on, she came to know that in fact the respondent had moved an application for permission to transfer and therefore she wrote a letter to HUDA revoking that earlier application for permission.

Both the courts below noticed that there was no evidence led by the appellant to prove that it was the duty of the respondent to obtain the permission. Both the courts below also noticed that in the letter withdrawing the application for permission to transfer the appellant had not taken this plea at all and rather that letter showed that the appellant had earlier applied to HUDA for obtaining transfer permission. Thus both the courts below came to the conclusion that it was the duty of the appellant to have applied for permission and she could not foist this liability on the respondent and decreed the suit.

Before me also the argument raised by the counsel is that actually the respondent is a very cunning person and had ensnared the appellant. As per the counsel, once the appellant had already cancelled the contract there was no occasion for her to have moved the application for permission.

In my considered opinion, this one argument can not tilt the preponderance of probability in favour of the appellant. There was no bar for the appellant to have mentioned all these facts in the letter which she wrote to HUDA withdrawing the application for permission. Counsel has read out to me that letter and that letter only says that her earlier application may be withdrawn because her contract has been cancelled. It does not mention any of the details which were later on projected in the written statement.

In the totality of circumstances, I am not persuaded that the findings of fact recorded by the courts below are either based on no evidence or based on such a perverse misreading of evidence so as to justify the interference of this Court in second appeal.

Appeal is dismissed. No costs.

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

August 27, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No