

RSA No.5160 of 2014 (O&M)

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

RSA No.5160 of 2014 (O&M)

Date of decision:26.02.2018

Pala Singh and others

... Appellants

Vs.

Charanjit Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Kunal Dawar, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.12159-C of 2014

For the reasons stated in the application which is duly supported by an affidavit, delay of 14 days in re-filing the appeal, is condoned.

C.M. stands disposed of.

RSA No.5160 of 2014 (O&M)

The present Regular Second Appeal is directed against the judgments and decrees of both the Courts below, whereby, civil suit No.310-T of 20.11.2006 titles as “Pala Sigh and others Vs. Charanjit Singh”, seeking declaration and cancellation of the agreement to sell dated 15.04.2006, was dismissed and counter claim preferred by the vendee for refund of earnest money of ₹20,00,000/- had been decreed.

The plaintiffs, Pala Singh, Jaswinder Singh, Kuldip Kaur and Jarnail Singh entered into an agreement to sell dated 15.04.2006 with respondent-defendant, Chanranjit Singh, for a total sale consideration of ₹1.5 crore against the payment of earnest money of ₹17 lacs and ₹3 lacs, on 16.05.2006, i.e., total amount of ₹20,00,000/- was received by the vendor. The aforesaid agreement to sell contained a clause of clearing the outstanding dues of bank which was to the extent of ₹4.5 cores before the execution and registration of the sale deed. As per the averments made in the plaint, vendor did not appear before the office of ADC Fatehgarh Sahib for execution and registration of the sale deed on 30.10.2006, therefore, the suit was filed on 20.11.2006.

In pursuance to the notice of the suit, defendant-vendee appeared and contested the suit by admitting the terms and conditions of the agreement to sell and filed a counter claim for recovery of earnest money on the premise that agreement to sell had become un-executable at the instance of the vendor as he did not clear the outstanding dues of the bank before the stipulated date.

Mr. Kunal Dawar, learned counsel appearing on behalf of the appellant-plaintiffs/vendor submitted that even if the terms and conditions of the agreement contained a clause of clearing the outstanding dues, vendee cannot seek recovery of the amount in the absence of relief of specific performance. In other words, civil suit/counter claim for recovery of earnest money of ₹20,00,000/- was not maintainable.

Both the Courts below have committed illegality and perversity in dismissing the suit as readiness and willingness on the part of the vendee was conspicuously wanting which is one of the essential conditions, even for ordering the alternative relief, though the agreement to sell was not in dispute.

During the pendency of the suit, the appellant-plaintiffs filed an application on 02.02.2008 showing readiness and willingness to perform their part of the contract without prejudice to the rights. The said application was contested by the counter claimant/defendant by filing a reply dated 17.05.2008, wherein, the defendant came out with a plea that he cannot be forced to get the sale deed executed and registered at the choice of the vendor. This fact itself was a clincher for dismissal of the counter claim. Mere appearance before the ADC instead of Sub Registrar would be meaningless. Only intention of the parties has to be seen, therefore, the provisions of Section 16 (c) of Specific Relief Act, 1963 had not been complied with and the counter claim was liable to be dismissed as earnest money of ₹20 lacs was forfeited.

This Court without issuing notice of motion had sent the matter to the Mediation and Conciliation Centre of this Court for amicable settlement of the parties, wherein, Charanjit Singh in person with Mr. Aakash Singla, Advocate has appeared on 23.08.2016. There is no formal notice of motion order.

I have heard the learned counsel for the appellant-plaintiffs, appraised the judgment and decrees of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Kunal Dawar.

The terms and conditions of the agreement, particularly specific clause of clearing the due of bank are not in controversy. The only thing to be seen is whether counter claim for recovery of ₹20 lacs in the absence of specific relief, was maintainable or not. In this regard, as per the evidence emanating from the judgments and decrees showed that counter claimant/defendant vendee referred to Ex.D11, copy of jamabandi for the year 2002-03 already Ex.P6 on record and Ex.D10 affidavit dated 30.10.2006 showing his intention to execute and register the sale deed and as well as the telegram dated 15.04.2006, Ex.D4 showing his intention to recover the amount from the plaintiffs, vendor, who had not cleared the dues. Even during the pendency of the suit, the offer given by the vendor was meaningless as outstanding dues of the bank had not been cleared. No explanation has come forth as to why vendor did not clear the outstanding dues despite having received the earnest money of ₹20 lacs against the total sale consideration of ₹1.5 crore, therefore, in my view, the vendor cannot be permitted to forfeit the aforementioned amount. Once the terms and conditions of the agreement were not fulfilled with/complied with, the discretionary relief could not have been granted. It could only have been granted, had the vendor given the clear undertaking or time line, for clearing

the dues with a caveat. The aforementioned facts are conspicuously wanting. Any sane person after having parted with a sum of ₹20 lacs, would not allow his money to be forfeited, in my view, was diligent in pursuing the counter claim for recovery of amount. Even today also, Mr. Kunal Dawar was not able to given an answer to the specific query that whether the outstanding dues were cleared or not. It was a commercial transaction, thus, interest @ 12% is also correct.

Resultantly, judgments and decrees under challenge do not call for any interference, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

February 26, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No