

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

RSA No.6330 of 2014 (O&M)

Date of decision: 19.07.2018

Charan Singh and others

..... Appellants

Versus

M/s Brijbasi Projects Pvt. Ltd. and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Aditya Jain, Advocate
for the appellants.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while decreeing the suit for recovery of Rs.43,50,000/- which was paid to the defendants-appellants as earnest money under agreement to sell dated 24.07.2006.

It is the case of the plaintiff that the defendants did not adhere to the terms of the agreement and failed to fulfill the obligation as the agreement to sell in getting no objection certificate from the concerned authority and therefore, the amount paid should be refunded to it.

On the other hand, it is the case of the defendants that they were ready and willing to perform their part of the contract and it was in fact the plaintiff who had not shown its readiness and willingness and there is no evidence to prove that on the target date i.e. 15.09.2006, the plaintiff were having the balance sale consideration available with it.

Both the Courts after examining the evidence have found that as per the terms of the agreement to sell, the defendants were required to take no objection certificate which was necessary for the execution and registration of the sale deed.

Learned counsel for the appellants has read over Clause 8 and 9 of the agreement to sell which clearly stipulate that requirement to apply and get no objection certificate was pre-condition before execution and registration of the sale deed. It was provided in Clause 9 that till no objection certificate is received, the target date for execution and registration of the sale deed shall be deemed to have been extended. Mahender-the appellant who appeared as DW-1 has admitted that he had not applied for grant of no objection certificate. Still further, the Courts have noticed that only Rs.50,000/- was paid as earnest money and the remaining amount was a part payment towards sale consideration. This is also clear from Clause 1 of the agreement to sell.

Learned counsel for the appellants has submitted that the suit was filed at the fag end i.e. almost before the limitation was to expire and therefore, the suit was not maintainable. He further submitted that Mukesh, one of the defendant was impleaded wrongly. He further submitted that Hemant Yadav, the Officer of the plaintiff company who went to the office of the Sub-Registrar, has not been examined and there is no evidence available on the file which proves that Hemant Yadav was authorized.

This Court has considered the submissions, however, find no substance therein. The suit is not for specific performance of the agreement to sell. The limitation period for recovery of the amount paid is three years.

Even if the suit is filed at the fag end when the limitation was going to

expire, still the suit is filed within the limitation, hence, it would not make any difference.

Second argument of learned counsel is that Mukesh is an unnecessary party. It will be noted that the Courts below were never called upon to examine this aspect. Still further, the Courts did not frame any issue thereon. Still further, Mukesh is one of the agreement holder, although she may not have signed the agreement to sell. Mukesh is not a appellant before this Court. Hence, she is not aggrieved of judgment passed.

Next submission of learned counsel with regard to non-production of Hemant Yadav as a witness in the Court. It will be noted that Hemant Yadav had visited the office of the Sub-Registrar on the target date i.e. 15.09.2006 and got attested an affidavit in token of having come for execution and registration of the sale deed on behalf of the plaintiff company. Affidavit of Hemant Yadav has been exhibited as Ex.P-5. In the present case, non-examination of Hemant Yadav cannot prove fatal to the case of the plaintiff.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

19.07.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No