IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2029 of 2019 (O&M)
Date of Decision: May 28, 2019

Dr. Pramod Mittal and another

...Appellants

Versus

Jagdish Kumar Sahdev and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. I.S. Saggu, Advocate
for the appellants.

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<u>JAISHREE THAKUR, J.</u> <u>(Oral)</u>

1. Notice of motion.

2. At this stage, Mr. Bhupinder Ghai, Advocate, who is present in the court, accepts notice on behalf of the respondents.

3. The instant appeal has been filed by the appellants/defendants No.1 and 2 against the judgment and decree dated 30.03.2019 passed by the first Appellate Court whereby, the appeal filed by the appellants/defendants No.1 and 2 against the judgment and decree dated 30.09.2016 passed by the lower court, has been dismissed.

4. In brief, the facts of the case are, that respondents No.1 and 2/ plaintiffs filed a suit for recovery of ₹ 40,00,000/- along with interest @ 12% per annum w.e.f. 30.05.2012 till realization, alleging therein that vide agreement to sell dated 02.11.2011, the appellants/defendants No.1 and 2

agreed to sell the land, as detailed in para no.1 of the plaint, to respondents No.1 and 2/plaintiffs for a total sale consideration of ₹ 4,60,00,000/-, out of which a sum of ₹ 40,00,000/- was paid as advance through cheque. The targeted date fixed for execution of the sale deed was 30.05.2012 and before the date fixed for execution of the sale deed, it was incumbent upon the appellants/defendants No.1 and 2 to obtain the permission for transfer of property under sale from respondent No.3/defendant No.3 in order to get the sale deed registered in the name of respondents No.1 and 2/plaintiffs. It was submitted that respondents No.1 and 2/plaintiffs visited the appellants/defendants No.1 and 2 at their house and hospital but the appellants/defendants No.1 and 2 refused to meet them. It was alleged that the appellants/defendants No.1 and 2, at the time of execution of the agreement to sell, deliberately did not disclose to respondents No.1 and 2/plaintiffs, that they had taken a loan against the property under sale from ICICI Bank. It was averred that the appellants/defendants No.1 and 2 informed respondents No.1 and 2/plaintiffs about the loan against the property under sale after the execution of the agreement to sell, thereby entrapping respondents No.1 and 2/plaintiffs with a mala fide and dishonest intention. When respondents No.1 and 2/plaintiffs objected to the concealment of the fact of there being a loan against the property under sale, the appellants/defendants No.1 and 2 assured respondents No.1 and 2/plaintiffs that they would get the lien of ICICI Bank removed by repaying the said loan at the earliest and would get the No Objection Certificate and No Dues Certificates from ICICI Bank, so that the appellants/defendants No.1 and 2 can execute the sale deed of the property. The appellants/defendants No.1 and 2 would also take back the chain of all the original title deeds pertaining to the property under sale from ICICI Bank after having removed the lien of the said Bank. It is claimed that despite giving assurance, the appellants/defendants No.1 and 2 did not come forward with No Dues Certificate and did not inform respondents No.1 and 2/plaintiffs about the status of the title deed, loan agreement etc. Having left with no option, respondents No.1 and 2/plaintiffs sent legal notice dated 26.05.2012 calling upon the appellants/defendants No.1 and 2 to execute the sale deed by 30.05.2012 and to do all the acts necessary for transfer of the title from the appellants/defendants No.1 and 2 to respondents No.1 and 2/plaintiffs. In response to the legal notice, the appellants/defendants No.1 and 2 sent reply dated 03.06.2012 and stated that the land was free from all encumbrances and there was no lien of any financial institution. On inquiry from ICICI Home Finance, it was learnt by respondents No.1 and 2/plaintiffs that the pre-payment of the loan was made by the appellants/defendant No.1 and 2 on 24.05.2012, however, documents pertaining to the title of the suit property were not in the possession of the appellants/defendants No.1 and 2 on 30.05.2012, which was the targeted date fixed for execution of the sale deed. On 30.05.2012, respondents No.1 and 2/plaintiffs along with the property dealer Sh. Yogesh Taneja visited the office of Sub Registrar, Faridabad along with money, but the appellants/defendants No.1 and 2 did not execute the sale deed, as per the and conditions of the agreement to sell dated 02.11.2011. Respondents No.1 and 2/plaintiffs requested the appellants/defendant No.1 and 2 to refund the earnest money of ₹ 40 lacs, but to no avail. Hence, this suit.

5. Upon notice, the appellants/defendants No.1 and 2 filed their written statement, in which apart from taking the preliminary objections, it was submitted by the appellants/defendants No.1 and 2 that even during the pendency of the present suit, they are still ready to honour and fulfill the terms of the sale-purchase agreement dated 02.11.2011 in spite of the fact that they have no legal obligation to honour it after the expiry of the time period, even extended time and forfeiture of the earnest money. It was averred that respondents No.1 and 2/plaintiffs have intentionally concealed the material facts regarding extension which the appellants/defendants No.1 and 2 provided in reply dated 03.06.2012 towards legal notice dated 28.05.2012. In the reply dated 03.06.2012, it was clarified that on the request made by respondents no.1 and 2/plaintiffs, Mr. Yogesh Taneja and neighbour Mr.Arun Ghai, the last date for execution of the sale deed was extended till 30.06.2012. It was alleged that in spite of one month's time provided to respondents No.1 and 2/plaintiffs, they failed to arrange the balance sale consideration and filed the present suit on 05.07.2012. The property dealer was also informed simultaneously, but the appellants/defendants No.1 and 2 did not get any response. It was submitted that the agreement was got executed with the intervention of the property agent M/s City Property, who approached the appellants/defendants No.1 and 2 on behalf of respondents No.1 and 2/plaintiffs and after making thorough inquiry from HUDA and getting the photocopy of chain of documents, got struck the deal. The appellants/defendants No.1 and 2 had signed the transfer application in favour of respondents No.1 and 2/plaintiffs to be submitted in the office of

respondent No.3/defendant No.3. The appellants/defendants No.1 and 2 have completed their obligation in view of the agreement dated 02.11.2011, but it was respondents No.1 and 2/plaintiffs, who could not arrange the balance sale consideration for execution of the sale deed. It was claimed that the property was free from all encumbrances and respondent No.3/defendant No.3 has already executed conveyance deed pertaining to the suit property and the appellants/defendants No.1 and 2 have received all the original documents from the financial institution by 23rd of May 2012 i.e. prior to the date of execution of sale deed as per the terms of the agreement. Reply dated 03.06.2012 and its reminder dated 02.07.2012 is self explanatory. The appellants/defendants No.1 and 2 even appeared before the office of Sub Registrar on the due date and kept on waiting for respondents No.1 and 2/plaintiffs, but respondents No.1 and 2/plaintiffs did not come forward or approached the appellants/defendants No.1 and 2 along with money and stamp papers. It was further submitted that HUDA had already executed the conveyance deed of the suit property on 11.06.1997 and as such, there was no hurdle for getting the property transferred in favour of respondents No.1 and 2/plaintiffs.

6. Replication was filed. From the pleadings of the parties, issues were framed and evidence was led by both the parties. After hearing both the sides, the lower court decreed the suit of respondents No.1 and 2/plaintiffs. Feeling aggrieved, the appellants/defendants No.1 and 2 filed an appeal before the first Appellate Court, which also came to be dismissed. Now, judgments and decrees passed by both the courts below have been challenged in this regular second appeal.

7. Learned counsel appearing on behalf of the appellants/defendants No.1 and 2 argues that the appellants/defendants No.1 and 2 have already completed all the formalities to execute the sale deed on 30.05.2012, but this aspect has been ignored by the courts below. It is contended that both the courts below failed to consider the fact that the appellants/defendants No.1 and 2 were ready to execute the sale deed in favour of respondents No.1 and 2/plaintiffs and there was no hurdle for getting the property transferred in the name of respondents No.1 and 2/plaintiffs. It is submitted that the reply to the legal notice has not been considered by the courts below.

8. On the other hand, learned counsel appearing on behalf of respondents No.1 and 2/plaintiffs argues that the appellants/defendants No.1 and 2 have failed to prove their stand, as such, there is no ground made out to interfere with the well reasoned concurrent findings recorded by the courts below.

9. I have heard learned counsel for the parties and have gone through the case file.

10. In the instant case, as per agreement to sell in question, the appellants/defendants No.1 and 2 were made bound to transfer the suit property free from all encumbrances i.e. mortgage, court decree charges etc. and the appellants/defendants No.1 and 2, at the time of execution of agreement to sell, assured the respondents No.1 and 2/plaintiffs that the suit property is free from all sorts of encumbrances. Whereas, admittedly in the year 1997, the appellants/defendants No.1 and 2 had obtained loan from ICICI Bank against the property in question and had not repaid the same till

entering into agreement to sell Ex.PW2/A and this fact has not been mentioned in the agreement. The appellants/defendants No.1 and 2 had obtained the said loan after obtaining permission from HUDA department and after payment of the said loan, they were bound to inform the HUDA department to seek no objection certificate as well as to seek transfer permission. Whereas, till the targeted date fixed for execution of the sale deed i.e. 30.05.2012, the appellants/defendants No.1 and 2 did not do any of the aforesaid act. The said facts are evident from the cross-examination of appellant/defendant Dr. Pramod Mittal wherein he conceded that he obtained loan from ICICI bank on the suit property in the year 1997 and paid back the loan on 24.05.2012, but did not inform HUDA department and did not seek transfer permission. The appellants/defendants No.1 and 2 misrepresented that the land was free from all sorts of encumbrances when in fact, it was not so as per their own admission. The agreement to sell was executed way back on 02.11.2011 and loan was only paid on 24.05.2012, as such, at the time of entering into agreement to sell, in no manner, land was free from encumbrances and assurance given by the appellants/defendants No.1 and 2 was false.

11. Learned counsel for the appellants/defendants No.1 and 2 has laid great stress that a demand draft had been prepared for a sum of ₹ 5000/- towards obtaining the NOC from HUDA, which has been produced on the record by respondents No.1 and 2/plaintiffs as Ex. PW-6/E, and therefore, there was sufficient proof that all the formalities were to be completed by respondents No.1 and 2/plaintiffs. This argument is without merit, since there is no application on the record showing that HUDA had been

approached for obtaining NOC. Merely, because a demand draft had been prepared (though produced on record by respondents No.1 and 2/plaintiffs) there is nothing on record to substantiate the plea that respondents No.1 and 2/plaintiffs were to get the NOC from the HUDA whereas, as per clause 6 of the agreement to sell, the appellants/defendants No.1 and 2 were made bound to hand over all the documents pertaining to the suit property, including the NOC.

12. Admittedly, on the targeted date of execution of sale deed i.e. 30.05.2012, the appellants/defendants No.1 and 2 did not intimate HUDA department about clearance of loan, did not obtain transfer permission and did not obtain NOC, as such, there is clearly violation of clause 6 of the agreement by the appellants/defendants No.1 and 2. A careful scrutiny of reply to the legal notice dated 03.06.2012 indicates that same was in fact offer for extension of the targeted date fixed for execution of the sale deed and it is nowhere proved on the case file that the said offer was accepted by respondents No.1 and 2/plaintiffs, so as to bind them by the same. Affidavit Ex.DW1/B indicates the presence of the appellants/defendants No.1 and 2 in the office of Sub Registrar on 30.05.2012, but nowhere in the contents of the said affidavit, they have specified that they were in possession of document of title, transfer permission and other relevant documents at that time. The findings recorded by the lower court have been affirmed in appeal by the first Appellate Court. Learned counsel for the appellants/defendants No.1 and 2 has miserably failed to point out anything wrong in the findings so recorded by the courts below.

13. In view of the above, this court finds no illegality or perversity

in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellants-defendants No.1 and 2, which has no merit.

14. Dismissed.

(JAISHREE THAKUR)
May 28, 2019 **JUDGE**
vijay saini

Whether speaking/reasoned Yes/No
Whether reportable Yes/No