

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

RSA No.4944 of 2001 (O&M)

Date of Decision:09.01.2019

Bhagwan Singh

...Appellant(s)

Versus

Surjit Singh and another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Varun Jain, Advocate for
Mr.Rishav Jain, Advocate for the appellant.
Mr.V.K.Mahajan, Advocate for respondent No.1.

ANIL KSHETARPAL, J.

Defendant-appellant is in the regular second appeal against the judgment passed by the learned first appellate court, ordering refund of earnest money along with interest @ 12% from the date of agreement to sell till filing of the suit and @6% from the date of filing of the suit till realisation while reversing the judgment and decree passed by the trial court.

Question of law which needs consideration is whether before a defendant is permitted to forfeit the earnest money, it is necessary for the defendant to prove that he has suffered loss and issued notice to the plaintiff forfeiting the earnest money?

Execution of the agreement to sell dated 12.12.1995 for sale of land measuring 8 kanal for a total sale consideration of Rs.4,60,000/- and receipt of earnest money of Rs.1,85,000/- is not disputed. As per agreement to sell, the target date for execution and registration of sale-deed 15.6.1996, which was a holiday. The plaintiff claims that he visited the office of Sub-

Registrar on 13.6.1996 and marked his presence, whereas it is the case of the defendant that he visited the office of Sub-Registrar on 13.6.1996, 14.6.1996 and 17.6.1996, as 15.6.1996 was a holiday.

The suit was filed after a period of 1 year and 3 months. The learned trial Court on appreciation of evidence found that the plaintiff was not having sufficient resources to pay balance sale consideration, as he was able to prove that he had Rs.1,60,000/- , whereas balance sale consideration was Rs.2,75,000/-. Thus, the suit filed by the plaintiff was dismissed.

The learned first appellate court reversed the judgment passed by the learned trial court, while assigning two reasons, i.e. (i) defendant has failed to show that he has suffered any loss as he sold the property to defendant No.2 on 28.11.1996 (ii) No notice was served by the defendant on the plaintiff, forfeiting the earnest money.

As per agreement to sell, in case the plaintiff fails to perform his part of the contract, earnest money was liable to be forfeited. The target date in the present case was 15.6.1996, which was a holiday. 16.6.1996 was also a holiday. Obviously the parties were required to appear before the concerned authority on 17.6.1996, on which date, the plaintiff has not appeared. Still further, even if the plea of the plaintiff is accepted, he visited the office of Sub-Registrar on 13.6.1996, thereafter, he slept over the matter for a period of more than 1 year and four months. Further, the learned trial court, on appreciation of evidence, found that the plaintiff did not have wherewithal to pay balance sale consideration of Rs.2,75,000/-

Once the agreement to sell itself provides that if the plaintiff fails to perform his part of the contract, the earnest money paid by the proposed vendee shall be forfeited and no further evidence was required to

be led by the defendant. There was no requirement in the written contract that before forfeiting the earnest money, he would issue a notice to the plaintiff in this respect. Still further, the finding of the learned trial court that the plaintiff was not ready and willing to perform his part of the contract, has not been set aside by the learned first appellate court.

The learned first appellate court has also committed an error in recording a finding that the defendant was required to prove that he had suffered loss before he is entitled to forfeit the amount. A written contract between the parties is binding and once it is provided that the plaintiff did not perform his part of the contract, the amount of earnest money paid shall stand forfeited and the defendant was not required to further prove anything except to prove that the plaintiff was not ready and willing to perform his part of the contract. The learned trial court has recorded a positive finding which has not been reversed by the learned first appellate court.

Still further, it is apparent from the evidence and the findings of the learned trial court that the defendant did suffer a loss. Through the agreement to sell, he had agreed to sell 8 kanals of land for Rs.4,60,000/-. Since on account of fall in the market price the plaintiff did not come forward and the defendant had to sell the land measuring 10 kanals for a sum of Rs.4,70,000/- which included the land measuring 8 kanals agreed to be sold by the defendant. Obviously the defendant had suffered loss. The learned first appellate court erred in overlooking that finding also.

Since both the reasons assigned by the learned first appellate court have been found to be erroneous, hence the judgment passed by the learned first appellate court cannot be sustained.

Accordingly, the judgment of the learned first appellate court is

set aside and that of the learned trial court is restored. Pending application(s), if any, shall also stand disposed of, in terms thereof.

09.01.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No