

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2449-2005(O&M)
Date of Order:23.01.2019

M/S SHYAM ENTERPRISES

..Appellant

Versus

HARYANA URBAN DEVELOPMENT AUTHORITY AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.P.Arora, Advocate and
Mr. Himanshu Arora, Advocate,
for the appellant.

Mr. Arvind Seth, Advocate,
for the respondents.

ANIL KSHETARPAL, J (Oral)

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

Challenge in the present suit was to order dated 14.05.2001 passed by the Haryana Urban Development Authority(allotting and developing authority) forfeiting 10% amount.

Plaintiff as well as other persons participated in an open public auction for purchasing shop-cum-office cites. Plaintiff was successful in giving highest bid for SCO No.89, DHS Road, Police Lines Area, Hissar. He had deposited certain amount. After the public auction took place, plaintiff appears to have filed a civil suit as pleaded in the plaint alleging that the lay out plan has been changed. The result of the aforesaid suit is not known.

Defendant contested the suit and pleaded that the plaintiff had

moved an application for refund of the earnest money on 08.03.2001 and since the plaintiff failed to deposit remaining 15% of amount required to be deposited for confirmation of the auction, therefore, 10% of the amount was forfeited.

Both the courts on appreciation of the evidence have found that the action of the defendant-respondent is in accordance with law.

Learned counsel appearing for the appellant has submitted that the amount was forfeited, although, there is no evidence that the allotment letter was ever served upon the appellant. He submitted that as per regulations, allotment letter was required to be sent through registered post although it was sent through courier.

Learned counsel for the appellant was called upon to explain as to whether in the letter dated 08.03.2001, an application for refund of the amount deposited, this fact was mentioned that he has not received the allotment letter, he admitted that such fact was not mentioned.

Obviously, prayer for refund of the amount deposited has been made only on receipt of allotment letter. Still further, terms of the allotment were known and the plaintiff with open eyes participated in the aforesaid auction.

Learned counsel for the appellant further submitted that in a case of similar auction purchaser, Financial Commissioner-cum-Secretary to the Government of Haryana has passed an order setting aside the order cancelling allotment.

In the considered view of this court, such order is beyond the scope of the present suit. Admittedly, as per the pleadings, plaintiff has already filed a separate suit and if that is pending, the plaintiff can take up

this plea in the aforesaid suit. As far as civil court is concerned, the civil suit is to be decided on the basis of prayer made in the suit and regular second appeal is to be decided on the basis of points urged before the courts below.

In view thereof, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

January 23, 2019
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(ANIL KSHETARPAL)
JUDGE

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