IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3953 of 2019 (O&M)
Date of decision: 22.08.2019

Zonal Manager, Punjab National Bank and others
.......Appellants

versus

Vijay Kumar Banga
......Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. D.K. Gupta, Advocate, for the appellants.

RAMENDRA JAIN, J. (ORAL)

Defendants have preferred this Regular Second Appeal against judgment and decree of the lower appellate Court dated 22.04.2019, affirming judgment and decree of the trial Court dated 26.04.2018, whereby suit of respondent-plaintiff for declaration, permanent and mandatory injunction against the appellants-defendant was decreed.

Briefly, appellant-bank vide advertisement dated 21.02.2015 offered sale of villas and plots etc. through e-auction on "as is where is basis". Respondent-plaintiff participated in e-auction, depositing ₹13,80,000/- i.e. 10% towards earnest money. He further deposited ₹20,70,000/- i.e. 15% of the bid price, totalling ₹34,50,000/- making the same to 25%. Thereafter, respondent-plaintiff asked the appellant-bank to issue allotment letter in his name along with one Amit Sharma, but the appellant did not adhere to his request. Thereafter, respondent moved an application dated 29.04.2015 for making the entire balance payment. However, the appellant-bank asked him to furnish certain documents to execute sale deed in his favour. Whereupon, respondent-plaintiff demanded original sale deed of the property in question, approval letter of PUDA and municipal corporation, non-encumbrance certificate issued by the competent authority qua property purchased by him, latest revenue record etc. But the same were never handed over to him. The said documents were basic documents to verify the valid title of the bank and its authority to auction the property purchased by the respondent-plaintiff, but when the appellant-bank did not adhere to his request, respondent-plaintiff demanded refund of his earnest money of ₹34,50,000/-, to which appellant-bank refused. Rather the amount was forfeited pursuant to the alleged terms and conditions of the auction-notice. Consequently, respondent-plaintiff filed a suit for declaration, permanent and mandatory injunction to declare the forfeiture of amount of ₹34,50,000/- deposited by him with the appellant-bank illegal, null, void and restraining the appellants from alienating the property which he had purchased in any manner whatsoever or removing any material, fixtures, fittings and all other items of iron, wood, steel etc. and restrain them from asking balance sale consideration.

After contest of the said suit by the appellants tooth and nail, trial Court decreed suit of the respondent-plaintiff vide judgment and decree dated 26.04.2018.

Being aggrieved, appellant-bank approached the first appellate Court, but remained unsuccessful as its appeal was dismissed vide judgment and decree dated 22.04.2019.

Learned counsel for the appellants *inter alia* contends that according to the terms and conditions of the auction-notice, pursuant to which respondent-plaintiff had participated in the e-auction, in case of nondeposit of balance sale consideration within 15 days of the auction, the amount whatsoever deposited by the successful auction bidder had to be forfeited. Both the Courts below have failed to appreciate that respondent-plaintiff, in utter violation of the terms and conditions did not deposit 75% of the amount within prescribed time. Therefore, his 25% amounting to ₹34,50,000/- was rightly and legally forfeited by the appellant-bank.

Having given thoughtful consideration to the submissions made by learned counsel for the appellants, this Court finds the instant appeal completely devoid of any merit for the reasons to follow.

No question of law much less substantial has been raised in this appeal, which may warrant interference in the concurrent findings of both the Courts below.

It is apparent from the perusal of judgments of both the Courts below that after deposit of ₹34,50,000/- i.e. 25% of the total sale consideration of ₹1.38 crore, respondent-plaintiff demanded certain documents to verify authority of the appellant-bank as to whether it was competent to transfer the property purchased by him from it, but the appellant-bank did not supply the same to the respondent-plaintiff for the reasons best known to it.

Contention of learned counsel for the appellant-bank that title documents were qua huge property, out of which respondent-plaintiff had purchased only two villas. Therefore, original title documents could not have been supplied to him, is devoid of any merit for the simple reason that in such a situation, appellant-bank could supply photocopies of the title documents, other necessary approvals and non-encumbrance certificate in its favour to the respondent-plaintiff to verify its competency to transfer property purchased by him in the e-auction and execution and registration of the sale deed.

Since appellant-bank did not meet legitimate demand of the respondent-plaintiff, therefore, he had legal right to ask for refund of the amount of ₹34,50,000/- deposited by him with the appellant-bank inasmuch as the appellant-bank kept his legal right to verify its competency to transfer the suit property in the name of the respondent-plaintiff intentionally in abeyance. Since respondent-plaintiff was kept in dark qua competency of the appellant-bank to transfer the auctioned property, therefore, no fault can be found in his right to ask for refund of the amount deposited by him. Considering this aspect of the matter, terms and conditions of auction-notice had no binding effect upon the respondent-plaintiff.

I have gone through the judgments of both the Courts below and find no illegality or perversity in the same.

Dismissed.

(Ramendra Jain)
Judge

August 22, 2019
R.S.

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