

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

RSA No.4311 of 2019(O&M)

Date of decision: 30.9.2019

Darshan SinghAppellant

VERSUS

SavitaRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Jai Bhagwan Sharma, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for recovery of Rs.1 lakh paid under agreement to sell dated 06.08.2011 was dismissed by the trial Court vide judgment and decree dated 15.12.2016 that came to be affirmed in appeal by the District Judge, Yamunanagar at Jagadhari vide judgment and decree dated 24.04.2019.

The Courts have consistently held that the appellant/plaintiff, purchaser under agreement aforesaid has failed to establish that he always remained ready and willing to perform his part of the agreement, therefore, earnest money of Rs.1 lakh paid under the agreement is rightly forfeited by the proposed vendor and he is not entitle to recovery thereof.

The sole submission made by counsel for the appellant is that as sum of Rs.1 lakh paid towards earnest money was liable to be adjusted towards sale consideration of Rs.9 lakh at the time of execution and registration of the sale deed, the same is to be treated as a part of sale

consideration, as such, the respondent/defendant is not entitle to forfeit the same. In support of his contention, he has relied upon judgment of Constitution Bench of Hon'ble the Supreme Court **Fateh Chand Vs. Balkishan Dass, AIR 1963 SC 1405.**

Perusal of contents of agreement to sell dated 06.08.2011 leaves no manner of doubt that a sum of Rs.1 lakh was paid on the date of agreement towards earnest money. The contention raised by counsel for the appellant seeking refund of earnest money, even if findings of the Courts with regard to his failure to prove his readiness and willingness to perform his part of the agreement are sustained, is not tenable in the light of judgment of a three- Judge Bench of Hon'ble the Supreme Court **Shree Hanuman Cotton Mills and another Vs. Tata Air Craft Ltd., AIR 1970 SC 1986** wherein the Court has considered the judgment in **Fateh Chand's case** (supra) in detail and taken note that even in **Fateh Chand's case** (supra), the amount of earnest money of Rs.1000/- was not refunded to the proposed vendee but regarding second item of Rs.24,000/-, the claim was allowed as the same was not treated as earnest money or to say that it was considered to be a part of sale consideration. In this view of the matter, contention raised by counsel for the appellant is not meritorious when examined in the light of aforesaid judgments.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

SEPTEMBER 30, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no