

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

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RSA No.2784 of 2012 (O&M)

Date of decision: 10.12.2019

Mohammad Tasin

... Appellant

Versus

Rakesh Kumar

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Krishan Singh, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

CM No.1401-C of 2015

Heard.

For reasons contained in the application, same is allowed; order dated 06.02.2015 is recalled and the appeal is restored to its original number and stage and taken up on board today itself.

Main Case

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for recovery on the basis of agreement to sell dated 24.03.2006 was partly decreed by the trial Court to the following effect:-

It is ordered that the present suit filed by the plaintiff is hereby partly decreed with costs and a decree for recovery of Rs.60,000/- as principal amount along with interest calculated at the rate of 9% PA from 24.03.2006 till today along with future interest @ 6% per annum is passed against the defendant and in favour of the plaintiff.

The appeal preferred by unsuccessful appellant/defendant was dismissed by District Judge, Yamuna Nagar at Jagadhri vide decree and judgment dated 06.03.2012.

The sole submission made by counsel for the appellant is that as the appellant did not get necessary permission to execute the sale deed in favour of the respondent/plaintiff on the basis of agreement dated 24.03.2006, there was no alternative with him except to refund the amount of earnest money received from the respondent/plaintiff. It is further submitted that a specific plea was raised by the appellant that he had already

refunded Rs.70,000/- i.e. amount of earnest money plus incidental charges, the respondent is not entitled to recovery of the suit amount. It is further argued that both the Courts have failed to appreciate contention and evidence of the appellant with regard to refund of Rs.70,000/-, therefore, the impugned judgments are liable to be set aside.

I have heard counsel for the appellant, perused the paper book particularly the judgments impugned.

Be that as it may, it is undisputed position of the case that the appellant agreed to sell plot No.6 measuring 29' x 61' to the defendant @ Rs.1375/- per square yard vide agreement dated 24.03.2006 and was paid Rs.60,000/- towards earnest money. The appellant failed to obtain no objection certificate from Municipal Committee, Jagadhri and as a result the deal could not fructify in a sale deed. The respondent filed suit for recovery of Rs.60,000/- with interest calculated to the tune of Rs.27,600/- @ 2% per month from 24.03.2006 till date of filing of the suit along with future and pendent lite interest. The appellant had raised the plea with regard to payment of Rs.70,000/- to the respondent/plaintiff. However, he could not adduce sufficient much less cogent and convincing evidence to substantiate his plea with regard to re-payment of the aforesaid amount much less the same being evidenced by a writing. It is difficult to accept that a person who has received some amount by way of documentary evidence would refund the same without getting necessary acknowledgment with regard to discharge of his liability. In this view of the matter, I do not find an error much less perversity in consistent findings recorded by the Courts accepting claim of the respondent in terms of the decree passed by the trial Court.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

10.12.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No