

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.3619 of 2012 (O&M)
Date of decision: 08.02.2019

Ashwani Kumar

..... Appellant

Versus

Jaspal Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. M.S. Sachdev, Advocate
for the appellant.

Mr. Darshan Gulati, Advocate, for
Mr. T.P.S. Bhatti, Advocate
for the respondent.

ANIL KSHETARPAL, J.(ORAL)

Defendant-appellant is in the regular second appeal against the judgment passed by the First Appellate Court granting relief of specific performance of the agreement to sell in place of refund of the earnest money along with interest granted by the trial Court.

As regards findings of the Court with regard to execution of the agreement to sell, readiness and willingness and payment of amount being finding of fact does not require interference. However, this Court is of the view that the plaintiff is not entitled to the decree for specific performance of the agreement to sell. The reasons are as under:-

1. The plaintiff in the plaint does not disclose that there was another transaction through which Rs.3,00,000/- had received back in the account of the plaintiff between the parties. The plaintiff in the plaint does not disclose this fact and when in the written statement it was pointed out by the defendant,

the plaintiff in the replication denies encashment of the aforesaid cheque. However, when the plaintiff appeared in cross-examination, he admitted that cheque of Rs.2,00,000/- had been encashed which was drawn on the account of the defendant but thereafter he took a plea that the aforesaid amount was on account of a loan which is not pleaded case of the plaintiff. This payment is dated 11.03.2004 in between the time when the agreement to sell was entered into and the target date for execution and registration of the sale deed.

2. It has also come in evidence that another amount of Rs.1,00,000/- was also credited to the account of the plaintiff although, from the account of one Charanjit which the defendant claims to be his friend and this amount was on account of transaction which would be explained in subsequent para.

3. The defendant while filing the written statement has taken a positive stand that there was no intention to sell the property. In fact, the defendant wanted to go to a foreign country and since the plaintiff was friend of a travel agent in Delhi, therefore, a deal was struck for Rs.15,50,000/- and since the defendant did not had the money, therefore, this agreement to sell was executed and Rs.9,00,000/- was shown as paid as earnest money. It will be noted that the agreement to sell is with respect to half share of a plot on which a factory is constructed and the plot jointly belongs to the defendant and his brother who is not signatory to the agreement to sell. The agreement to sell is with regard to half share of the factory.

4. There is unreasonable time gap between the agreement to sell and the target date. First agreement to sell is dated 22.06.2003 when out of total sale consideration of Rs.12,50,000/-, Rs.9,00,000/- was shown to have been paid as earnest money. The target date for execution and registration of the sale deed was fixed after a period of complete one year ie. 22.06.2004.

However on 21.06.2004, a fresh agreement was executed in which reference

was given to the first agreement. In that agreement to sell, target date was fixed as 21.07.2004 on which date, another amount of Rs.60,000/- is recited to have been further paid and the date was extended to 22.01.2005. These facts show that the agreement to sell was not for a sale or purchase of immovable property.

Learned First Appellate Court has totally mis-directed itself while recording a finding that since the defendant had lived in United States of America from 1987 to 1994, therefore, he was well versed with the procedure. The question here is not that “whether the defendant-appellant is know of the procedure or not”. It is well known that travel agents do charge money to send the persons abroad. This is very much prevalent in State of Punjab. Once the defendant had come back in the year 1994 and he wanted to go back and therefore, he contacted some travel agent in Delhi. There is nothing unusual about it. Still further, a reading of the agreement to sell clearly show that there was no clause in the agreement to sell for specific performance of the agreement to sell. In such circumstances, First Appellate Court has clearly erred in reversing the discretion exercised by the trial Court.

In view thereof, the judgment passed by the First Appellate Court is set aside and that of the trial Court is restored.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Regular Second Appeal is allowed.

08.02.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No