

RSA No. 4558 of 2019 (O&M)

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

RSA No. 4558 of 2019 (O&M)

Date of Decision: October 04, 2019

Haryana Urban Development Authority

..... Appellant(s)

Versus

Manju Tavathia

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Arvind Seth, Advocate
for the appellant.

LISA GILL, J.

Appellant-plaintiff is aggrieved of the judgment and decree dated 21.02.2019, passed by the learned Additional District Judge, Faridabad as well as judgment and decree dated 28.05.2018, passed by the learned Civil Judge (Jr. Division), Faridabad whereby suit filed by the respondent-plaintiff has been decreed.

Brief facts necessary for the adjudication of the case are that respondent-plaintiff filed a suit for declaration with consequential relief for issuance of no dues certificate in respect to the property in question i.e. booth No. 163P, Sector-21 D, Faridabad as well as for refund of the excess money deposited with the appellant-defendant. Plaintiff-respondent pleaded that the booth in question was originally allotted to one Shri Prem Goel for a sum of Rs.9,01,000/-. 10% of the bid amount was deposited by the allottee on 30.12.2002 and 15% thereof on 14.02.2003 i.e. within the stipulated period of 30 days as per the allotment letter. The booth was transferred in favour of the

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plaintiff vide transfer letter dated 29.02.2008. Plaintiff pleaded that a sum of Rs.10,32,750/- was deposited with the defendant-appellant instead of Rs.9,01,000/-. Possession of the property was not handed over to the plaintiff despite numerous requests and reminders. Possession of the property was not delivered even after passing of 11 years of allotment. A complaint was filed by the plaintiff before the District Consumer Redressal Commission, Faridabad, which was allowed on 06.08.2012. Compensation of Rs.1,00,000/- was also ordered in favour of the plaintiff. However, the appeal filed by the defendant-appellant was allowed on 05.11.2012 on a technical ground that the plaintiff did not fall under the definition of Consumer Protection Act, 1986 and the complaint was not maintainable. Thereafter, the suit was filed.

Defendant-appellant resisted the suit taking various preliminary objections regarding maintainability etc. It is stated that the plaintiff was bound by the terms and conditions of the allotment but she failed to comply with the same, therefore, possession could not be given. Dismissal of the suit was sought.

Replication to the written statement was not filed by the plaintiff. Following issues were framed by the learned trial Court on the basis of the pleadings:-

1. Whether plaintiff is entitled to a decree of mandatory injunction directing defendant to issue a no dues certificate and refund the excess amount paid by the plaintiff? OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form? OPP

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3. Whether the plaintiff has no jurisdiction to entertain the suit?
OPD.
4. Whether the plaintiff has no cause of action to file the present
suit? OPD
5. Whether the plaintiff has not come to the Court with clean
hands? OPD
6. Relief.

Evidence was led by both the parties in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, facts and circumstances of the case as well as the specific stand of the defendant-appellant to the effect that the appellant was ready to refund the excess amount paid by the plaintiff but she herself had never applied for the same, decreed the suit filed by the plaintiff and ordered that the excess payment of Rs.36,208/- alongwith 12% interest be paid to the plaintiff from the date of handing over of the possession of the property, till actual realization of the amount besides the compensation of Rs.25,000/-.

Appeal preferred by the present appellant was dismissed by the the learned Additional District Judge, Faridabad vide the impugned judgment and decree dated 21.02.2019. Aggrieved therefrom, present appeal has been filed by the appellant-defendant.

Learned counsel for the appellant-defendant argues that both the learned Courts below have grossly erred on facts and in law in decreeing the suit filed by the plaintiff. The said suit is barred by limitation. It is argued that the plaintiff in the plaint herself stated that the cause of action arose to her

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on 21.01.2007 when she filed an application for transfer of the booth in question and thereafter, when the booth was transferred on 29.02.2008, but the present suit was filed on 03.03.2015. It is further submitted that a civil suit in such a situation is barred as per provisions of Section 50 of the Haryana Urban Development Authority Act, 1977. It is, thus, prayed that this appeal be allowed. Both the impugned judgments and decrees be set aside. Consequentially, suit filed by the plaintiff-respondent be dismissed.

I have heard learned counsel for the appellant at length and have gone through the photocopy of the record furnished by him in Court today.

Learned counsel for the appellant is unable to deny that excess amount of Rs.36,208/- stood deposited with the appellant. Initially the booth which was allotted was of a slightly larger area i.e. 23.64 square yards. The booth which was actually allotted/handed over to the plaintiff was 22.69 square yards. Moreover, it is noticed that the defendant-appellant had taken a specific stand that they were ready to make the payment in question but it is only that the plaintiff had never applied for the said amount. This has been duly noted by the learned trial Court in the judgment dated 28.05.2018. Though this fact in itself is sufficient to dismiss this appeal, the other factors which call for dismissal of this appeal are being discussed as well.

It is a matter of record that booth in question was originally allotted to Shri Prem Goel vide Memo dated 14.01.2003 for a sum of Rs.9,01,000/-. The booth was transferred in favour of the plaintiff on 29.02.2008. 10% of the bid amount was deposited by the allottee on 30.12.2002 and 15% thereof on 14.02.2003 i.e. within the stipulated period of

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30 days as per the allotment letter. A sum of Rs.10,32,750/- was deposited with the defendant-appellant instead of Rs.9,01,000/- as the price of the booth in question. Actual physical possession of the booth in question was handed over to the plaintiff on 26.08.2009.

Admittedly, the plaintiff filed a complaint before the District Consumer Redressal Forum, Faridabad on 22.04.2010, which was allowed in her favour on 06.08.2012. Appeal preferred by the appellant-Department was allowed on the technical ground of maintainability of the complaint by the plaintiff. Thereafter, the civil suit was promptly filed. It cannot be said that the suit is barred by the limitation. Similarly, in respect to the objection regarding the jurisdiction of the Civil Court, I do not find any merit and the said plea is rejected being untenable.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal. There is no illegality, infirmity or perversity in the impugned judgment and decree dated 21.02.2019, passed by the learned Additional District Judge, Faridabad as well as judgment and decree dated 28.05.2018, passed by the learned Civil Judge (Jr. Division), Faridabad, which calls for any interference by this Court in second appeal.

No other argument has been raised.

Judgment and decree dated 21.02.2019, passed by the learned Additional District Judge, Faridabad as well as judgment and decree dated

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28.05.2018, passed by the learned Civil Judge (Jr. Division), Faridabad are upheld.

There is a delay of 114 days in filing of this appeal. As the appeal has been adjudicated upon on merits, decision on the application for condonation of delay is rendered academic. Application is disposed of accordingly.

Before parting with the judgment, it deserves mention that the present is a case which in fact calls for imposition of costs, especially in view of the specific stand of the appellant before the learned Trial Court that on one hand it is ready to make the payment in question but it was not deposited as the plaintiff never applied for the same and on the other hand pursuing the challenge to the decision of the learned trial Court. However, on the fervent request of learned counsel for the appellant, cost is not being imposed.

Appeal is accordingly dismissed with no order as to costs.

October 04, 2019.

Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No