

RSA-4048-2016 (O&M)

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

**RSA-4048-2016 (O&M)
Date of decision : 20.02.2019**

M/s A & D Estate Private Ltd.

... Appellant

Versus

Mangat (deceased) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aashish Chopra, Advocate and
Ms. Rupa Pathania, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the suit for recovery of ₹62,97,600/- along with interest @ 18% per annum, has been dismissed by the trial Court and affirmed by the lower Appellate Court.

It was alleged that the defendant entered into an agreement to sell dated 26.08.2006 in respect of land measuring 12 kanals, situated within the revenue estate of Village Kherki Daula, District Gurgaon, for a total sale consideration of ₹4,92,00,000/- and ₹1,00,000/-, which was paid to be paid separately for submersible pump, against the payment of ₹49,20,000/- as advance/earnest money through cheque dated 26.08.2006. The terms and conditions of the agreement stipulated that the balance amount was to be paid on 14.10.2006 i.e. at the time of execution and registration of the sale deed. The plaintiff stated to have waited for the defendant in the office of

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sub-Registrar on 14.10.2006, but the defendant did not come, even after 14.10.2006, the plaintiff requested the defendant to execute the sale deed and even, sent a legal notice dated 09.03.2007, but the defendant did not fulfil the commitment, resulting into, another notice dated 29.03.2007, calling upon the defendant to appear before the office of sub-Registrar on 09.04.2007. The plaintiff was ready with the balance amount on the aforesaid date and prepared a demand draft of ₹4,22,80,000/-, but the defendant did not turn up. In such circumstances, sought the recovery of the amount as the requests for refund of the amount did not yield any positive result.

The defendant opposed the suit by raising objection with regard to the maintainability of the suit, want of cause of action, locus standi. On merits, it was alleged that the defendant-Mangat Ram, since deceased, was ready and willing to perform his part of the agreement and marked his presence before the Sub-Registrar on 16.10.2006 as 14.10.2006 and 15.10.2006 were Saturday and Sunday, and remained in the office of the sub-Registrar, but the plaintiff did not come forward. The plaintiff was called upon by legal notice dated 17.11.2006 to perform and appear in the office of sub-Registrar on 04.12.2006, but did not appear and again served with a notice dated 20.12.2006 (Ex.D5), whereby the agreement was cancelled and earnest money was forfeited. The present suit was filed in January 2009.

Both the parties led evidence and brought on record material documents to establish their respective cases.

Mr. Ashish Chopra, learned counsel, assisted by Ms. Rupa Pathania, learned counsel appearing on behalf of the appellant-plaintiff,

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submitted that since the agreement to sell had become impossible to performance owing to the non-appearance of the defendant, the plaintiff was left with no other option, but to seek the refund of the amount. The earnest money has been, in law, held to be a compensation, in view of the breach of contract, as per the provisions of Section 74 of the Contract Act. In support of his contentions, reliance has been laid down to the *ratio decidendi* culled out by Hon'ble the Supreme Court in **M/s Kailash Nath Associates V/s Delhi Development Authority and another" (2015) 4 SCC 136.**

In fact, the entire case of the defendant, in the evidence, was that he had appeared before the office of sub-Registrar on 14.10.2006, which fact was pointed out by Ex.D3 to Ex.D5 i.e. affidavits, whereas it was totally contrary and opposite to the pleadings in the written statement. In such circumstances, the discretionary relief under Section 20 of the Specific Relief Act, had become extinct. No postal receipt with regard to the first legal notice, has been placed on record, thus, there is an abdication.

I am afraid the aforementioned arguments are not sustainable in the eyes of law for the simple reason that Ex.D5, a notice dated 20.12.2006, reflected the previous notice dated 17.11.2006. If at all notice dated 17.11.2006, was not received, the plaintiff would have explained in the notice dated 29.03.2007 and 09.04.2007, qua the aforementioned notice. Ex.D5 has been proved through postal receipts. Vide the aforementioned notice, the defendants had, on unequivocal terms, cancelled the agreement to sell and forfeited the earnest money. It is a settled law that simpliciter suit for recovery of an amount by not giving the circumstances of agreement having become impossible to performance, is not maintainable. The entire gamut and substances of the plaint qua such requirement, are conspicuously

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wanting. Even there is no challenge to the cancellation as simpliciter suit for recovery has been filed.

As regards the *ratio decidendi* in the judgment cited supra, it was a case of a contract having entered between the parties, whereby the contractor had alleged the breach on the part of the other party and claimed the compensation in terms of Section 74 of the Contract Act, by placing on record the material of having suffered loss and by proving that the contractee had faulted, therefore, the judgment would not apply to the instant case.

Viz-a-viz the argument of Mr. Chopra that notice (Ex.D5) was also not received, the same is not sustainable in the eyes of law as the registered document carries a presumption of truth as per Clause of 27 of the General Clauses Act.

In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

20.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**