

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4570 of 2015(O&M)
Date of Order: 19.03.2019

Amolak Singh

..Appellant

Versus

Karnail Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vinod Gupta, Advocate,
for the appellant.

Mr. V.G.Jauhar, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned first appellate court reversing the judgment and decree passed by the trial court ordering refund of the earnest money.

It may be noted that both the courts have recorded a concurrent finding that the plaintiff is not proved to be ready and willing to perform his part of the contract.

It is undisputed that the plaintiff filed this suit for possession by way of specific performance of the agreement to sell after a period of approximately 2 years and 11 months. During this period, plaintiff has not taken any step to get the agreement to sell enforced.

As per the agreement to sell, more than Rs.74,00,000/- was payable. Plaintiff has failed to show that he was possessed of the means on the target date for execution and registration of the sale deed.

Learned counsel appearing for the appellant has submitted that the plaintiff had visited the office of sub-Registrar on the target date and got his presence marked by swearing an affidavit in which it was asserted that the plaintiff was ready and willing. Hence, while relying upon a judgments passed by the Hon'ble Supreme Court in the cases of **Pramod Buildings and Developers (P) Ltd. vs. Shanta Chopra, (2011) 4 SCC 741** and **Urvashi Aggarwal (since deceased) through LRs. and another vs. Kushagr Ansal (successor in interest of erstwhile Defendant no.1 Mrs. Suraj Kumari) & Ors., Law Finder Doc ID # 1386836** has submitted that the judgments and decrees are liable to be set aside.

This court has considered the submissions.

No doubt, plaintiff has produced affidavit attested by the Executive Magistrate on the target date in order to prove his presence in the office of registering authority. However, it has come in evidence that brother of the plaintiff was working in the office of Sub Divisional Magistrate, Payal and he manipulated the aforesaid affidavit. It has also come in evidence that the defendants had also come present on the target date and their affidavit along with the photographs attested by the Executive Magistrate has been proved.

The judgment passed by the Hon'ble Supreme Court in the case of **Pramod Buildings and Developers (P) Ltd. (supra)** does not lay down that even if the plaintiff is proved to be not ready and willing to perform his part of the contract still the earnest money must be ordered to be refunded. Hon'ble Supreme Court in the aforesaid case did not discuss this aspect of the matter and dismissed the appeal passed by the Single Bench and the Division Bench of the High Court. Hence, the aforesaid judgment cannot be

said to be laying down that the refund of the earnest money is necessary even if it is proved that the plaintiff was not ready and willing.

As regards the judgment passed in Urvashi Aggarwal(supra), the Hon'ble Supreme Court decided the aforesaid case in the facts and circumstances of the case which can be gathered from paragraph 14 of the judgment, which is extracted as under:-

“14. The High Court directed a refund of Rs.70,000/- which was paid by the Plaintiffs to the Defendants in 1975 with interest at the rate of 24% p.a. In view of the peculiar facts of this case in which the Plaintiffs have paid Rs.70,000/- way back in 1975 and the steep increase in the price of the property over time, we are of the considered opinion that the Plaintiffs are entitled to a higher amount than what was granted by the High Court. Instead of the refund of Rs.70,000/- with interest at the rate of 24% p.a., we direct the Defendants to pay Rs.2,00,00,000/- (Rupees Two Crores) to the Plaintiffs within a period of eight weeks from today.”

Once the plaintiff has failed to prove his readiness and willingness as concurrently found by the courts below, the learned trial court was incorrect in ordering refund of the earnest money and therefore, the same has rightly been set aside by the learned first appellate court.

Hence, there is no good ground to interfere with the findings of fact arrived at by the learned first appellate court.

The regular second appeal is dismissed.

March 19, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No