

RSA No. 2053 of 2018 (O&M)

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

RSA No. 2053 of 2018 (O&M)

Date of decision: 06.11.2019

Amarjit Singh

... Appellant

Versus

Mangat Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Surinder Garg, Advocate,
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the respondent-plaintiff was dismissed by the trial court. But as the appeal preferred against the said decree was accepted, vide impugned judgment and decree dated 31.8.2017, and the judgment rendered by the trial court was reversed, the defendant is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for a declaration that owing to the default committed by the defendant in fulfilling the terms and conditions of the agreement to sell dated 25.8.2007 as regards the house in question, the said agreement stood cancelled/rescinded. Thus, the plaintiff was not bound by the terms thereof, and was entitled to restoration of possession.

In brief, the case set out by him was that parties had entered into an agreement to sell dated 25.08.2007 qua the suit property for a sale consideration of Rs.3,50,000/-. Defendant had paid Rs.70,000/- as earnest money. And, since the said house was under loan, it was agreed that

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defendant would pay the installments alongwith interest and clear the loan obtained from State Bank of Patiala, Faridkot Branch. Whereafter the sale deed was to be executed on 25.8.2008. Possession of the house was delivered to the defendant at the time of execution of the agreement itself. However, the defendant continued to default in payment of loan installments. Resultantly, the Bank started proceedings of recovery and the house was put to auction. Ultimately, on 20.2.2011, plaintiff paid Rs.20,000/- to the Bank and the auction proceedings were deferred. Whereafter, it was plaintiff, who paid the remaining installments. For the defendant committed a default, the agreement stood cancelled, and thus the suit.

In the written statement filed by the defendant, it was pleaded, *inter alia*, that plaintiff never deposited Rs. 20,000/- with the Bank. Rather, it was the defendant, who was depositing the installments @ Rs.5,000/- per month, so that the loan amount could be cleared at the earliest. Thus, the suit was liable to be dismissed.

The trial court, vide judgment and decree dated 19.8.2013, held that an analysis of the agreement to sell revealed that it was never agreed between the parties that in the event of default, the plaintiff would be entitled to seek restoration of possession. Likewise, none of the conditions envisaged that in the event of default, plaintiff shall be entitled to deposit the loan amount. Therefore, in the absence of any such condition, the plaintiff was not entitled to the relief prayed for. Accordingly, the suit was dismissed.

However, upon due and comprehensive analysis of the matter in issue and the evidence on record, the appellate court concluded that the

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essence of the agreement was that defendant would clear the loan amount till 25.8.2008. Concededly, the defendant failed to deposit the entire loan amount and thus, breached the agreement. Therefore, in the given situation, it was implied if the defendant commits breach of the agreement, the plaintiff shall be entitled to recover possession. The defendant having failed to deposit the installments and the property having been put to auction, the plaintiff had no option but to somehow manage and repay the loan. Thus, the plaintiff was entitled to rescind the agreement, and seek possession. However, as regards the amount deposited by way of installments by the defendant, it was observed that plaintiff was liable to return the said amount with simple interest @ 9% per annum.

Upon being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the findings recorded by the appellate court. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

November 06, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO