

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

RSA No.2968 of 2018 (O&M)

Date of decision : 22.02.2019

Sumit Kumar

...Appellant

Versus

Lalit Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Dr. Deepak Jindal, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.7564-C of 2018

For the reasons stated in the application, which is duly supported by an affidavit, delay of 1 day in refiling the present appeal is condoned.

Application is allowed.

CM No.7566-C of 2018

For the reasons stated in the application, which is duly supported by an affidavit, delay of 35 days in filing the present appeal is condoned.

Application is allowed.

CM No.7565-C of 2018

Deficiency in the Court fees has been made good. Delay, if any, is condoned.

Application is allowed.

Main case

Plaintiff No.2-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court reversing the judgment of the trial Court.

Plaintiffs filed suit for recovery of ₹13,86,000/- the amount paid as earnest money under agreement to sell dated 24.01.2006. It was claimed that the plaintiffs were ready and willing to perform their part of contract but the defendant had not brought “no objection certificate” as required under law and, therefore, the sale deed could not be registered. Hence, suit for recovery.

Defendant contested the suit and pleaded that the plaintiffs were never ready and willing to perform their part of the contract.

On appreciation of the evidence, learned trial Court decreed the suit whereas learned First Appellate Court after re-appreciating the evidence reversed the judgment of the trial Court.

This Court has heard the learned counsel for the appellant at length and with his able assistance gone through the judgments passed by both the Courts below and photocopies of the agreement to sell and affidavit Ex.P2 which plaintiffs claims to have sworn and got it attested by the Executive Magistrate, Thanesar on 24.08.2006 i.e. target date.

After hearing learned counsel for the appellant, this Court is of the view that the judgment passed by the learned First Appellate Court does not require interference for following reasons:-

1. In the agreement to sell, there is no Clause that the defendant is

required to take “no objection certificate” from the concerned authorities before execution of the sale deed.

2. As per the agreement to sell, the target date for execution and registration of the sale deed was 24.08.2006. As per the case of the plaintiffs, Notification declaring the area to be 'notified area' requiring “no objection certificate” was issued on 28.04.2006 and 21.06.2006. However, thereafter plaintiffs have never communicated to the defendant in writing that “no objection certificate” would be required and, therefore, he should take steps to get “no objection certificate”.
3. There is no evidence to prove that the plaintiffs, who were required to pay more than ₹49,00,000/- towards balance sale consideration apart from stamp duty and registration charges, were possessed of the required amount. In the affidavit Ex.P2, there is no assertion that the plaintiffs are carrying sufficient money to pay of the defendant towards balance sale consideration.
4. Even after target date i.e. 24.08.2006, plaintiffs did not take any steps to inform the defendant to apply for no objection certificate and then come forward for execution and registration of the sale deed.
5. Complete silence of the plaintiffs for a period of almost three years clearly indicate that the plaintiffs were never ready and willing.

Learned counsel for the appellant submitted that the First Appellate Court has erred while recording a finding that the land is not proved to be part of controlled (notified) area. He submitted that the defendant admitted that Village Sirsama falls in the controlled area. No doubt, the defendant has admitted that village is now part of controlled area,

however, there is no admission that the land in dispute falls within the notified area or the entire village has come within the 'notified area'.

Learned first Appellate Court has recorded finding on appreciation of the evidence that there is no cogent evidence which proves that the land in question was part of notified area.

Hence, there is no ground to interfere with the judgment passed by the learned First Appellate Court reversing the judgment of the trial Court .

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

22.02.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No