

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4301 of 2017 (O&M)
Date of Decision: May 07, 2019

Anil Jain

...Appellant

Versus

Rulda Singh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Rajiv Kataria, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

The present Regular Second Appeal is directed against the concurrent findings of fact, whereby the suit of the appellant-plaintiff for specific performance of the agreement to sell dated 14.08.2006 in respect of plot bearing No.389, Sector 2, Mansa Devi Complex, District Panchkula agreed to be sold for a total sale consideration of ₹ 88,00,000/- on the basis of allotment No.343 dated 05.06.2006, has been dismissed and affirmed in appeal.

Appellant-plaintiff asserted that defendant No.1, being the allottee of the aforementioned plot, in pursuance to the allotment letter entered into an agreement to sell, *ibid*, though no target date was stipulated, but a sum of ₹ 8,50,000/- was paid as earnest money. The last date of payment was agreed as 28.01.2007 and the balance amount of ₹ 79,50,000/- was to be paid. The terms and conditions of the agreement were sacrosanct and the necessary permission was required to be undertaken by the plaintiff.

Defendant No.1 had, on 21.01.2007, taken a sum of ₹ 10,00,000/- as there was delay in obtaining the NOC. He acknowledged to have received ₹18,50,000/- in all and the time was not the essence of the agreement.

It was further averred in the plaint that owing to the increase of prices, defendant No.1 sent a legal notice dated 03.02.2007 cancelling the agreement. He committed cheating with the plaintiff by taking additional amount on the premise that he would obtain the NOC, whereas had already revoked the NOC with the Estate Office, HUDA, which was evident from the letter dated 08.03.2007.

On merits, defendant No.1 did not deny the ownership of the plot having been allotted under the oustees policy and the agreement to sell. It was stated that there was earlier agreement dated 07.11.2006 where the plaintiff had paid a sum of ₹ 7,25,000/- as earnest money in the presence of the witnesses, thus, the defendant had received a sum of ₹ 8,50,000/- from the plaintiff, whereas the plaintiff had agreed to perform entire transaction on 08.01.2007/28.01.2007. The defendant approached the office of the Sub Registrar on 28.01.2007, but it was holiday. Thereafter, on 29.01.2007 he went to the office of Sub Registrar and remained present, but plaintiff did not come forward. A legal notice dated 03.02.2007 was sent by defendant No.1 cancelling the agreement, which was replied by the plaintiff vide reply dated 08.03.2007. The defendant replied the same by way of rejoinders dated 13.03.2007 and 04.04.2007. As per the notice dated 03.02.2007, the agreement was cancelled and the earnest money was forfeited. The defendant also received a legal notice dated 16.04.2007 from the Estate Officer, which was replied on 04.05.2007. HUDA had issued a notice dated 13.03.2007 to the defendant which was duly replied on 17.03.2007 and

certain other correspondences. Defendant also issued notice dated 25.04.2007 to the Estate Officer for not transferring the plot in favour of the plaintiff or anybody else.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to the relief of specific performance of the agreement dated 14.08.2006 and 07.11.2006 for the sale of allotment No.343 dated 05.06.2006 as prayed for? OPP*
- 2. Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for? OPP*
- 3. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 4. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 5. Whether the plaintiff has not come to the court with clean hands and has suppressed the true and material facts from this court? OPD*
- 6. Whether the present suit is barred under section 41(b) of Specific Relief Act? OPD*
- 7. Relief.”*

Plaintiff, in support of the pleadings, examined PW-1 Jassy Anand, Document Expert, PW-2 Subhash Chander, Record Keeper, PW-3 Anil Jain (plaintiff) and brought on record the following documents:-

- Ex.PW1/1 Report of Handwriting and Finger Print Expert
- Ex.PW1/2 Photographic Enlargement attached with report of
to Expert
- Ex.PW1/8
- Ex.PW2/A Attested copy of allotment letter
- Ex.PW2/B Copy of letter dated 13.3.2007
- Ex.PW2/C Copy of letter dated 19.6.2007
- Ex.PW2/D Copy of legal notice dated 25.4.2007

Ex.PW3/A Receipt-cum-agreement dated 14.8.2006
Ex.PW3/B Agreement dated 7.11.2005
Mark-D Writing regarding receipt of payment of
Rs.10,00,000/- on dated 23.1.2007 on the back side
of agreement dated 7.11.2006
Ex.PW3/C Letter dated 08.03.2007
Ex.PW3/D Postal receipts
to
Ex.PW3/G
Mark-A Copy of letter
Mark-B Copy of affidavit of Rulda Singh
Mark-C Bank receipt dated 10.11.2006.

On the other hand, defendants examined four witnesses,
namely, DW-1 Jaswinder Singh, DW-2 Subhash Chand, DW-3 Rulda Singh
(defendant No.1) and DW-4 Devinder Parsad, Documents and Handwriting
Expert and also brought on record the following documents:-

Ex.D1 Copy of agreement dated 7.11.2006
Ex.D2 Copy of bank receipt
Ex.D3 Copy of acknowledgment receipt.
Ex.D4 to Receipts of bank
Ex.D17
Ex.D18 Copy of letter dated 1.10.2012 regarding No Dues
Certificate issued by HUDA
Ex.D19 Copy of letter dated 10.7.2012 issued by HUDA
Ex.D20 Copy of reply dated 14.7.2012
Ex.D21 Postal receipt
Ex.D22 Postal receipt
Ex.D23 UPC receipt
Ex.DW2/A Copy of letter dated 16.1.2007 written to Rulda
by HUDA
Ex.DW2/B Copy of legal notice dated 7.2.2007
Ex.DW3/B Copy of legal notice dated 7.2.2007
Ex.DW3/C Letter dated 13.3.2007 written by HUDA

department to Smt.Kaushalya Sharma, Advocate

Ex.DW3/D Copy of legal notice dated 17.3.2007

Ex.DW3/E Letter dated 16.4.2007 written by HUDA

Department to Smt.Kaushalya Devi, Advocate.

Ex.DW3/F Copy of reply to legal notice

Ex.DW3/G Postal receipt

Ex.DW3/H Copy of legal notice dated 25.4.2007

Ex.DW3/I UPC receipt

Ex.DW3/J Copy of legal notice dated 3.2.2007

Ex.DW3/K UPC receipt

Ex.DW3/L Copy of letter dated 8.3.2007 written by plaintiff
to defendant no.1.

Ex.DW3/M Copy of letter dated 8.3.2007 written by plaintiff
to defendant No.1

Ex.DW3/N Copy of letter dated 8.3.2007 written by plaintiff
to defendant No.1

Ex.DW3/O Copy of letter dated 8.3.2007 written by plaintiff
to defendant No.1

Ex.DW3/P Registered envelopes
to

Ex.DW3/S

Ex.DW3/T Copy of rejoinder to the notice dated 8.3.2007

Ex.DW3/U Postal receipt

Ex.DW3/V Registered Envelope

Ex.DW3/X Copy of rejoinder to the notice dated 8.3.2007

Ex.DW3/Y UPC receipt

Ex.DW3/Z Affidavit of Rulda Singh dated 8.1.2007

Ex.DW3/1 Affidavit of Rulda Singh dated 29.1.2007

Ex.DW3/2 Calender of the year 2007.

Ex.DW4/1 Report of Documents and Finger Print Expert
to along with Photographic Enlargements.

Ex.DW4/5

Mr. Rajiv Kataria, learned counsel representing the appellant-

plaintiff submitted that both the courts below have committed illegality and

perversity in non-suiting the plaintiff by relying upon the ratio decidendi culled out by Hon'ble the Supreme Court in **I.S.Sikandar (D) by LR.s. Versus K.Subramani and others, 2014 (1) RCR (Civil) 236**, which was not to be applied to the present case as the contents of the letter dated 16.01.2007 revealed that there was correspondence between the Estate Officer and the defendant regarding non-tallying of the signatures. As per the terms and conditions of the agreement, obligation was on the plaintiff, but the aforementioned correspondence was not brought to the notice of the plaintiff and, therefore, there was a malafide intention in the mind of defendant No.1. He took the advantage of the law and had cancelled the agreement on 03.02.2007 by sending a legal notice which was duly replied. There was no occasion for the plaintiff to appear in the office of Sub Registrar on 28.01.2007 as the defendant concededly had not taken any NOC, whereas the letter was only sent on 25.04.2007 giving cause of breach enabling the plaintiff to institute the suit on 31.07.2007.

I am afraid, the aforementioned arguments would not be sustainable in the eyes of law. Whatever the facts may be, the proposition relied upon in **I.S.Sikandar's case (supra)**, is that in case of cancellation by the defendant rightly or wrongly, it is obligatory upon the plaintiff to challenge the same by seeking declaration instead of discretionary relief under Section 20 of the Specific Relief Act.

It is a matter of record that the notice was much prior to the filing of the suit, i.e., 31.07.2007. Even if the argument of Mr. Kataria is to be accepted regarding non-supply of the correspondence or information received by defendant No.1 from HUDA, there was no cause for the plaintiff to seek specific performance, would not help, for, the contents of

the letter read out only spelled out the non-tallying of the signatures, but the fact of the matter is that it was the plaintiff, who submitted all the documents for transfer of the plot.

The terms and conditions of the agreement to sell read out in the court obligated the plaintiff to perform each and every part for obtaining NOC. No such event has been placed on record qua non-cooperation of the defendant calling upon him to perform his part of the agreement, much less appearance on the stipulated date, i.e., 28.01.2007. It reveals that the plaintiff was not ready and willing to perform his part of the agreement and owing to the cancellation by sending legal notice, he was required to challenge the same in accordance with law.

There is another aspect of the matter. The receipt of ₹10,00,000/- has not been witnessed by any witness.

For the reasons aforementioned, I do not find any illegality or perversity in the concurrent findings, which are based on oral and documentary evidence. No ground for interference is made out, much less involvement of any substantial question. Resultantly, the appeal is dismissed.

May 07, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No