

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

RSA No. 730 of 2018(O&M)

Date of decision: 11.12.2019

Malkhan

.....Appellant

VERSUS

M/s Vikram Electric Equipment Pvt. Ltd. and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Jagjot Singh, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for recovery of Rs.6 lakhs paid vide cheque No.109384 dated 29.07.2006 drawn on ABN Amro Bank, Gurgaon was decreed by the trial Court vide judgment and decree dated 31.03.2005 that stands modified by the Additional District Judge, Gurgaon with regard to rate of interest payable on the amount of Rs.6 lakhs.

Counsel for the appellant would argue that the cheque in question is dated 29.07.2006 and the same was encashed by the appellant on 03.08.2006. The suit filed on 31.07.2009 being beyond three yearss w.e.f. from the date of issuance of cheque i.e. 29.07.2006 is barred by limitation.

Another submission made by counsel is that no NOC from office of the Director, Town and Country Planning for executing an

agreement of sale by the appellant was required as land that was to be sold by the appellant was more than 20 kanals. It is further argued that a copy of agreement executed between the parties was marked on record and the same also makes reference to aforesaid cheque issued by the respondent/plaintiff. It is further argued that on the stipulated date mentioned in the agreement of sale, the appellant got his presence marked in the office of concerned Registering Authority, therefore,, the Courts have committed a serious error rather perversity by accepting claim of the respondent despite he being a defaulting party and responsible for the transaction to fall through.

I have heard counsel for the appellant, perused the paper-book particularly the judgments impugned.

Before advertng to the submissions made by counsel for the appellant, it is pertinent to note that concurrent findings recorded by the Courts cannot be interfered with merely because a different view is possible on re-appreciation of evidence. Equally settled is that concurrent findings can be said to be faulty if the same suffer from perversity.

Indisputably, the cheque issued by the respondent is dated 29.07.2006 but the same was encashed on 03.08.2006. The cause of action seeking recovery for repayment of cheque amount accrued only on encashment of cheque and remittance of this amount to the appellant/defendant. Since the suit has been filed within three years from the date of encashment of cheque, contention raised by the appellant with regard to the suit being barred by limitation is patently misconceived and accordingly rejected.

This brings the Court to the second submission made by counsel. The respondent raised a specific plea that the appellant made a representation that agreement to sell would be executed after getting NOC from office of the Director, Town and Country Planning. It is another thing to say that actually no such permission was required as land to be sold was more than 20 kanals or to say that it was 32 kanals 7 marlas. The appellant failed to adduce sufficient much less cogent and convincing evidence that since the respondent was responsible for failure of the transaction to fructify into a sale deed, the respondent is not entitled to seek refund of amount by taking advantage of its own wrong. Agreement to sell set up by the appellant has not been proved in accordance with law nor the original had seen light of the day. Counsel for the appellant, in response to a query, would fairly inform that no application was filed by the appellant calling upon the respondent/plaintiff to produce the original document with the plea that same is in possession of M/s Vikram Electric Equipment (P) Ltd. Since the appellant failed to prove any such agreement between the parties, he cannot be heard to say that the respondent/plaintiff is a defaulter for failing to perform its part of the agreement, thus, disentitled to seek refund of the amount.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

DECEMBER 11, 2019

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no