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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 21st OCTOBER, 2019

+ RSA 119/2019 & CM No. 27753/2019 (stay)

NABEEL AHMAD @ NABEED AHMAD Appellant
Through: Mr. Zakir Raza, Adv.

versus

IQBAL Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The appellant had concededly entered into an agreement of sale dated 17.01.2018 with the respondent respecting built up property described as measuring 31 square yards bearing khasra no. 1/33, property no. 368, Gali no. 22, Chand Bagh, Brijpuri, Delhi -110094, the consideration having been settled at Rs. 20,20,000/-. Concededly again, at the time of execution of the said agreement of sale, the appellant had received from the respondent, an amount of Rs. 3,00,000/- as earnest money. Indisputably, no formal document transferring the right, title and interest in the said property came to be executed in the wake of the said transaction.

2. The respondent had instituted civil suit (no. 196/2018) on 21.04.2018 seeking recovery of the amount of Rs. 3,00,000/- paid as earnest money along with interest @ 18 per cent per annum, *pendente*

lite and future, w.e.f. 17.01.2018. The appellant (the defendant) suffered the said case *ex-parte* as he did not appear nor filed any written statement. The suit of the respondent (plaintiff), however, was dismissed by the civil judge, by judgment dated 01.09.2018 primarily for the reason the trial judge was of the view that the agreement of sale (Ex.PW-1/A) had stipulated execution of transfer documents in the nature of “IGPA, Sale Deed, Agreement to Sell, Receipt etc.” whereas the plaintiff was insisting that the understanding was for “sale deed” to be executed.

3. The judgment of the civil judge dismissing the suit was challenged before the Additional District Judge by first appeal (RCA DJ no. 88/2018) which proceedings were again suffered by the appellant, despite notice, *ex-parte*. The appellate court set aside the judgment of the trial court, by judgment dated 28.11.2018 and decreed the suit, as prayed for holding such reliefs liable to be granted because it had been proved that the earnest money had not been returned, failure to execute the transferred documents being in breach of the agreement of sale, no case being made out for its forfeiture.

4. The judgment of the first appellate court is sought to be challenged by the appeal at hand, it being the grievance of the appellant that the first appellate court had failed to go by the decision of the trial court, the issue of breach of terms and conditions of the agreement not having been decided upon, the document in question being not registered or notarized.

5. Having heard the learned counsel for the appellant, this court finds no merit in the appeal at hand. As noted earlier, the proceedings before the trial court and the first appellate court were suffered *ex-parte*. The appellant did not join issue with the case set out by the respondent (decree holder) in the plaint, and in the memorandum of appeal before the first appellate court, about the agreement of sale, payment of earnest money and the obligation on the part of the respondent to execute appropriate document transferring the right, title, interest in the subject property by a specified date. It may be further added that the appellant did not also join issue with averment that having received the earnest money and having failed to execute any transfer documents, he had failed to refund the earnest money. No case was set up about the right to forfeit the earnest money on account of the defaults on the part of the opposite party. In these circumstances, the issue of breach of terms and conditions which the appellant states has not been decided upon was not even raised.

6. The impugned judgment of the first appellate court is not found to be suffering from any error or infirmity. The appeal and the applications filed therewith are dismissed *in limine*.

R.K.GAUBA, J.

OCTOBER 21, 2019

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