

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

**RSA No.99 of 2021 (O&M)
Reserved on : 10.03.2021
Pronounced on : 24.03.2021**

Malkit Singh and another

... Appellants

Versus

Komal Sharma

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Kanhiya Soni, Advocate
for the appellants.

(The proceedings have been conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J.

The present regular second appeal has been filed for setting aside the concurrent findings of the Courts below, whereby the suit of the plaintiff-respondent was decreed for recovery of Rs.55 lakhs on account of earnest money alongwith interest @ 9% from the date of filing of the suit till the date of order and future interest at the same rate. The same is directed against the judgment and the decree of the Civil Judge, SAS Nagar, Mohali dated 12.03.2018, which was upheld in appeal on 14.08.2019 by the then District Judge.

2. Initially, an appeal bearing RSA No.5594 of 2019 had been filed, which was dismissed as withdrawn on 18.02.2020 and the Coordinate Bench had recorded the factum that after arguing for sometime counsel wishes to withdraw the present appeal with liberty to file a fresh one with better particulars. Resultantly, the appeal was

RSA No.99 of 2021 (O&M)

dismissed with the liberty as such. The second appeal has thus now been filed alongwith application for condonation of delay of 123 days in filing the same, in which it has been averred that the earlier counsel had not informed the appellant and only when the auction notice had been fixed, he had come to know about the said order and sought condonation.

3. Firstly, the delay in the opinion of this Court is not of 123 days, since the judgment and decree of the Appellate Court was dated 14.08.2019 and the appeal was only filed on 01.03.2021, even if we take the date of withdrawal into consideration. Since the main appeal as such now is being decided on merits for the reasons given below, no serious consideration on the application for condonation of delay as such is required.

4. A perusal of the paper-book would go on to show that an agreement to sell dated 10.05.2013 was executed *inter se* the parties for land measuring 32 bighas of land @ Rs.40,25,000/- per acre, situated at village Budhanpuur, Tehsil Banur, District SAS Nagar, Mohali. The same was from a share of land of 82 bighas 9 biswas, as per the *jamabandi* for the year 2006-2007. The last date for registration of sale deed was fixed as 12.08.2013 and an additional sum of Rs.5 lakhs was also received on 20.05.2013. The time was got extended by the appellants themselves on 12.08.2013 till 22.08.2013 by making an endorsement behind the said agreement.

5. The suit was filed on the strength that the defendants were not owner of 32 bighas of land, but only of 7 bighas of land and,

RSA No.99 of 2021 (O&M)

therefore, the agreement was a result of fraud for which an FIR No.10 dated 07.01.2014 under Sections 406, 419, 420, 120-B IPC had already been lodged at Police Station Rajpura City against the defendants. The case of the plaintiff-respondent was that he had remained ready and willing to perform his part of the agreement and had also appeared before the Sub-Registrar, Banur and got his presence marked. Resultantly, the suit was filed on 10.05.2016 for recovery of the said amount.

6. The defence of the appellants was that the earnest money of Rs.55 lakhs had been forfeited as the plaintiff had failed to perform his part of agreement and a legal notice dated 27.08.2013 had also been served upon him regarding this fact.

7. After taking into consideration the statement of DW-1-appellant No.1 herein, the trial Court recorded that there was an admission that a sum of Rs.55 lakhs had been received as earnest money and that the ownership of the land as such was only to the extent of 27 bighas, which was on the strength of statement of the DW-3 Tajinder Pal Singh, Patwari Halqa Bhuddanpur who was also examined by the plaintiff as PW-2. It was also noticed that appellant No.2 being the brother of appellant No.1 did not step into the witness box for his cross-examination and, therefore, his evidence could not be taken into account. Resultantly, on account of the inability as such to execute the sale deed of the land which had been agreed to be sold, the amount was ordered to be refunded by rejecting the case of the appellants that the agreement had been cancelled and the amount forfeited, since the plaintiff-respondent

RSA No.99 of 2021 (O&M)

was ready and willing to pay another sum of Rs.22 lakhs, which was the balance sale consideration.

8. The lower Appellate Court while relying upon the judgment of the Apex Court passed in '**Basavantappa Vs. Irappa (D) by L.Rs. & others', 2016 (4) RCR (Civil) 469**, also has dismissed the appeal.

9. In '**Krishan Kumar Vs. Ram Pal', 2015 (1) PLJ 385**, this Court while rejecting the appeal of the plaintiff for specific performance on account of the fact that the defendant was a allottee of land with a restrictive condition, has held that specific performance could not be enforced. However, keeping in view the fact that a sum of Rs.1,15,000/- had been received by him, it was held that the said amount was liable to be repaid alongwith interest @ 9%.

10. Once the appellants did not have a valid title as such for the total land for which they had entered into an agreement, they cannot claim that they are entitled to retain the huge amount of Rs.55 lakhs, which they had received. On account of the assurance that they had title, the plaintiff as such was deprived of the huge amount on the promise put forth that they were in position to execute the sale deed and the agreement had been entered into. The criminal proceedings had also been launched by the plaintiff on 07.01.2014 in which the appellants have been acquitted on the ground that the plaintiff would have at liberty to avail appropriate civil remedy. The dispute as such was of civil nature and if the amount as such had been wrongly received, the same could be recovered.

11. As per Section 55 (1) (a) of the Transfer of Property Act, the seller is bound to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not aware, and which the buyer could not with ordinary care discover. An omission to make such disclosures which would termed as fraudulent. Thus, if the same is to be kept in mind, the onus was upon the appellants to show that they had complete title, therefore, in the absence of the same, the agreement could not have been acted upon. Thus, the purchaser was entitled to claim the refund of the earnest money.

12. Section 22 of the Specific Relief Act, 1963 also provides that prospective buyer is entitled to claim of refund of the earnest money. Similar situation also arose before the Apex Court in the case of **'Thiriveedhi Channaiah Vs. Gudipudi Venkata Subba Rao (D) by LRs. and others', 2009 (17) SCC 341**, wherein on account of litigation arising out of the acquisition proceedings, the agreement to sell as such could not be enforced. The Trial Court as such had allowed the suit for specific performance, subject to the deposit of the amount. The High Court had reversed the said judgment and come to the conclusion that the buyer was not ready and willing to perform his part and was aware of the acquisition proceedings. The appeal was allowed by the Apex Court on the ground that a notice had been served and refund had been asked for, which had led to the seller invoking the forfeiture clause. In such circumstances, the SLP was allowed and directions were issued to refund the amount of advance alongwith interest, on account of failing of the

same. Thus, the respondent has been rightly held entitled for the said relief.

13. In '**Ravanasiddhaya Vs. Gangamma @ Shashikala and another**', 2018 (1) SCC 610, in order to balance the equities as such, the refund of earnest money was directed, subject to the restoration of the possession of the suit land, to the legal representatives whose father was the original owner of the suit land, who had entered into an agreement to sell the suit land. Possession had also been delivered to the prospective buyer, who had contested the suit filed by the legal representatives for declaration and possession of the land. The Trial Court had decreed the suit by granting a declaratory decree in the respondents' favour of their ownership, but did not give the benefit of possession. In the meantime, the suit for specific performance had been filed and was dismissed. The appeal filed by the legal representatives was allowed by the High Court and they were held entitled to claim possession of the suit land, since the suit for specific performance had been dismissed of the prospective buyer. In such circumstances, the unsuccessful buyer was held entitled for the refund of the earnest money within a stipulated period, failing which it was to carry interest @ 6% per annum, which judgment would also be applicable to the facts and circumstances of the present case.

14. In such circumstances, it cannot be said that the findings recorded by the Courts below suffers from any illegality or irregularity, which would warrant interference by this Court, as no substantial question of law arises. The argument that the appellants were entitled to

RSA No.99 of 2021 (O&M)

forfeit the money is without any basis, as the fault did not lie on the part of the plaintiff and it was not that he was not ready and willing as such to execute the sale deed. In fact, after the agreement had been entered into on 10.05.2013, 10 days later on 20.05.2013 another sum of Rs.5 lakhs had been paid by him. It is not the case of the appellants as such they had served any notice upon the plaintiff-respondent that he should come forth with the balance sale consideration of Rs.22 lakhs, since they were ready and willing to execute the sale deed in his favour.

15. Accordingly, the present appeal is dismissed in limine, as no substantial question of law is made out.

24.03.2021
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes