

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

RSA-308-2021 (O&M)

Date of Decision: 29.06.2021

Saddik

...Appellant

Versus

Leeladhar

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rakesh Kumar Sharma, Advocate,
for the appellant.
(Presence marked through Video Conference)

-:-

ARUN MONGA, J. (ORAL)

Defendant is in second appeal before this Court having suffered adverse concurrent findings by both the Courts below.

2. Learned counsel for the appellant argues that in the absence of specific prayer with regard to recovery of amount paid pursuant to the agreement to sell, the learned Trial Court committed material irregularity in passing the money decree in a suit for specific performance.

3. Learned counsel relies on Section 22(2) of the Specific Relief Act, 1963 to argue that the relief of money decree is specifically barred unless prayed for. Said Section is reproduced hereinbelow:

Section 22 in The Specific Relief Act, 1963

xxx

(2) “No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed: Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.”

4. A perusal of the said Section would reveal that the interpretation resorted by the learned counsel for the appellant is completely misconceived. That apart, even if the said interpretation is to be so believed, as canvassed, the same is belied by the prayer clause of the plaint wherein the plaintiff has specifically prayed that in the first instance either the agreement to the specific performance be implemented or in the alternative any other relief that may be deemed fit be granted.

5. Even otherwise, after threadbare going through the evidence, the trial Court came to the conclusion that petitioner was entitled to alternative relief for refund of money. Accordingly, suit was decreed.

6. The appellate Court has also validly upheld the said money decree. It would be apposite to reproduce the relevant part of the judgment rendered by the First Appellate Court as below:-

“26. Thus, from the above evidence, it is clear that since the land of defendant was under financial stress, as it was mortgaged with the bank to secure some loan already taken by him for cattle. Therefore, it fairly indicates that after receiving Rs. 4.00 lacs loan from the plaintiff, the defendant approached the said bank for the clearance of loan. Statements of plaintiff as PW5, Deen Dayal as PW4 and Jamaluddin as PW6 clearly indicate that on 15.06.2015 plaintiff did not pay Rs. 4.90 lacs to the defendant. Rather defendant borrowed Rs. 4.00 lacs from the plaintiff. However, the amount mentioned in the agreement to sell, which in essence is a loan transaction, was Rs. 4.90 lacs. In this regard, clarification has been given by the own witnesses of the plaintiff, as it is stated that the interest for 11 months @ 2% per month on Rs. 4.00 lacs would come to Rs.88000/- and Rs.2000/- were added for expenses of execution of agreement. Thus, an amount of Rs. 90,000/- was added in advance with the principal amount of Rs. 4.00 lacs. Therefore, in my considered opinion, learned trial court did not appreciate the said crucial evidence, which somehow skipped the attention of learned trial court. In any case, defendant cannot succeed to eat up Rs. 4.00 lacs despite the fact that the agreement to sell Ex.P1 has been ruled out out of consideration, which has been found to be a loan transaction. But that does not mean that defendant has no liability to return Rs. 4.00 lacs along with reasonable interest. Under the equity, he is liable to return Rs. 4.00 lacs to defendant along with interest @ 6% per month from the date of taking loan on 15.06.2015 till realization.

27. Reliance in this regard placed by learned counsel for the defendant on the authority of Hon'ble Supreme Court of India in case **ADCON ELECTRONICS Pvt Ltd vs DAULAT and another, 2001 (2) PLJ 523** will not enure any benefit to the defendant in view of the fact that in the present case, though plaintiff did not seek the alternative relief of refund of earnest money, yet by applying the principle of equity, justice and good conscious, the defendant can be given the direction for the return of the loan amount along with reasonable interest.

28. Learned trial court in the impugned judgment passed the order of refund of the earnest money, which is certainly barred under section 22 (2) of the Specific Relief Act, 1963. In my considered opinion, present is a clear case of return of repayment of the loan amount by the defendant to the plaintiff and not of refund of earnest money. In this regard, it is the defendant himself, who took a specific plea in his written statement showing his willingness to return the loan amount to plaintiff. As such, now the defendant cannot wriggle out the said pleading. Further he cannot be permitted to be unjustly enriched under the garb of plea of plaintiff not seeking alternative relief of refund of earnest money. He still shall have to restitute the benefits received by him vide agreement Ex.P1 to the plaintiff."

7. Having perused the judgment of the First Appellate Court, I do not find any fault with the same as the same is based on cogent and valid reasons.

8. Learned first appellate Court relying on a judgment rendered by this Court in **Sawaran Singh vs. Ajit Singh 2004 (2) LJR 850** has rightly observed that in the event of a case filed under the Specific Performance Act, 1963, if the Court feels that, it is in fact, a case of money transaction to secure a loan then, even if refund of advance payment is not specifically prayed, the Court is well within the power to grant a money decree for refund of the advance payment.

9. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below on appreciation of evidence. No interference is thus called for to disturb the findings of facts recorded by the Courts below. No fresh ground worthy of interference in the appellate jurisdiction of this Court is made out.

10. Furthermore, no question of law, much less substantial, a sine qua non to entertain second appeal before this Court, is involved herein, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

11. In view of my discussion above and the reasons recorded therein, this appeal is dismissed being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

12. Pending application, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

29.06.2021
Vandana/SN

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No