IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-132-2021 (O&M)
Reserved on : 17.03.2021
Pronounced on: 23.04.2021

Satish Kumar ....Appellant

Versus

Naresh Kumar ....Respondent

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

Present: Mr.Neeraj Kumar, Advocate, for the appellant.

Mr.Ajay Jain, Advocate, for the respondent.

G.S. SANDHAWALIA, J.

The defendant-appellant has preferred the present appeal against the concurrent findings of the Courts below at Rewari, whereby the suit for possession by way of specific performance has been decreed by the Civil Court at Rewari on 19.07.2016 and upheld on 07.01.2020 by the Appellate Court.

The agreement to sell in question was dated 13.10.2011 regarding property bearing house No.630 situated at Arjun Nagar, Rewari, Tehsil & District, Rewari for the land measuring 5 marlas described in the headnote of the suit. The sale consideration for the property in question was Rs.22,00,000/- and Rs.4,75,000/- was received vide cheque dated 12.10.2011 and Rs.25,000/- was paid in cash and thus, a total sum of Rs.5,00,000/- was received as earnest money by the defendant-appellant. The last date to execute the sale deed was 31.03.2012 and the appellant was to obtain NOC from the concerned authorities. Prior to the cut-off date, on 13.02.2012, an additional sum of Rs.3,50,000/- was received vide cheque. In order to show his readiness and willingness, respondent got prepared a demand draft of Rs.13,50,000/- on 29.03.2012 for payment of balance amount and purchased stamp papers of Rs.1,54,000/- on 26.03.2012 for the purpose of execution of the sale deed. He had put in appearance before the Sub-Registrar on 02.04.2012 as 31.03.2012 and 01.04.2012 were holidays. Since the defendant-appellant did not come present, a legal notice dated 16.04.2012 (Ex.PW-1/1) had also been served upon him for executing the sale deed. The Civil Suit was filed on 24.04.2012, immediately thereafter.

In the written statement filed, the defence of the defendant-appellant was that he had not entered into any agreement to sell regarding the property in dispute and the same was a forged and fabricated document and did not bear his signatures. It was also alleged that he had moved a complaint dated 02.05.2012 to the police. There was denial regarding receiving the earnest money both vide cheque and cash and the plea was that the plaintiff had approached him to obtain the property in dispute on rent and under that impression, signatures were got obtained which were papers of lease.

On issues being framed, the plaintiff, who is a Bank Manager, examined as many as 11 witnesses whereas the defendant examined 13 witnesses.

The Trial Court, while deciding the first four issues in favour of the plaintiff, came to the conclusion that the agreement in question had been executed and the plaintiff was ready and willing to perform his part of the agreement and was entitled for the decree of specific performance along with permanent injunction. The reasoning to come to the said conclusion was that the agreement dated 17.10.2011 (Ex.PW-4/1) was proved by examining Lekh Ram, PW-4 who was attesting witness of the said agreement along with Rajeev Kumar Garg, Advocate, PW-5 who had attested the same as Notary Public and also made entry in his register at Sr.No.200. Similarly, PW-10, Subhash Chand, the Scribe of the agreement was also examined.

The alternative defence of the defendant-appellant that the agreement had been executed while he was in a state of intoxication was rejected while noticing that the plea of fraud and forgery was to be proved beyond the reasonable shadow of doubt. It was also noticed in cross-examination that the defendant-appellant had admitted that he had taken steps for obtaining the NOC from the Municipal Council, Rewari (Ex.PW-6/9) in his own handwriting and once he had done so, it would go on to show that the agreement was executed in a conscious state of mind with the intention to sell the property and not for giving the same on rent. It was also noticed that the defendant-appellant, in his cross-examination, admitted that his signatures were there at all relevant point of time in the agreement to sell and therefore, now could not stand by the alternate plea in his affidavit by way of evidence that he had signed the agreement in question on the pretext of obtaining a loan from the Bank. Even otherwise, it was kept in mind that the plea of obtaining the loan was beyond the pleadings and was not the initial case set up, as already noticed earlier. The defendant's wife, namely, Usha Devi herself having admitted the factum of the agreement, as per the document (Ex.PX/B) and whose signatures were identified by none-else but by the defendant, were also the reason to accept the agreement to sell. The testimony of Mukesh Kumar, PW-10, the other attesting witness was discarded on the ground that the witness seemed to be won over by the defendant-appellant as he had given his statement that the signatures of the defendant had been obtained on account of the fact that it was to be a loan agreement paper. It was noticed that the defendant had appeared as a surety for the brother of the said witness in a criminal case and therefore, his relationship with the defendant being of that nature and his obligation towards the defendant was the reason why the statement of the said witness was discarded.

On the issue that whether there was readiness and willingness on the part of the plaintiff-respondent, it was noticed that apart from making payment of Rs.5,00,000/- at the initial stage as earnest money, which had been received by the defendant-appellant in as much as his account statements were produced and proved by PW-3, Vinay Kumar Aggarwal, the Deputy General Manager of the Bank as Ex.PW-3/1. Similarly, the factum of the cheques and the vouchers in favour of the defendant-appellant were also produced as Exs.PW-3/2 and PW-3/3 wherein a sum of Rs.4,35,000/- was credited in his bank account. The additional amount of Rs.3,50,000/- which was received by way of cheque was also kept into consideration and the defence that the amount had been deposited in the account of the defendant-appellant without his consent was rejected by holding that neither any offer was made by the plaintiff-respondent to pay back the money nor he had issued any notice to pay back the said money. It was further recorded that the earnest money had been utilized for the purpose of clearing the loan account on 09.03.2012 by making the payments of Rs.3,75,000/- (Ex.PW-9/3) and therefore, it would not lie in the mouth of the defendant-appellant that the agreement had not been entered into since he had enjoyed the fruits of the advance.

The plaintiff-respondent having purchased stamp papers worth Rs.1,54,000/- on 26.03.2012, i.e. prior to the cut-off date, which fact was verified by the testimony of PW-7, Gayan Yadav, Clerk of SBI, Rewari who had proved the factum of the sale of stamp papers (Ex.PW-7/1) which had been done vide transaction No.728. Similarly, on account of the draft worth Rs.13,50,000/- (Ex.PW-8/1) being prepared which was the balance amount would go on to show that the plaintiff-respondent was having the sale consideration and was ready and willing to execute the sale deed. The defendant-appellant had also been put to notice by sending him a legal notice (Ex.PW-1/1) and by issuing a telegram which was proved by examining PW-2, Bajrang Lal, Incharge Telegram Office. Resultantly, the first four issues were decided in favour of the plaintiff-respondent whereas issues No.5 to 9, the onus of which was upon the defendant-appellant were decided against him as neither the same were pressed nor any evidence had been laid in support of the same. Resultantly, direction was issued to execute the sale deed within a period of 60 days from the date of the decree.

Counsel for the appellant has brought to the notice of this Court that an application for additional evidence had also been filed before the Appellate Court which was decided on the same day, i.e., on 17.01.2020 wherein it was sought to be proved that the criminal complaint had been filed by the plaintiff against the defendant regarding cheating which had been done with him and which had been withheld. Similarly, RTI information regarding the presence of the plaintiff in the bank where he was employed on the date of the alleged agreement was also sought to be brought on record.

The Appellate Court, while deciding the application on the same day while deciding the appeal, came to the conclusion that civil proceedings are different from criminal proceedings and both had to be adjudicated independently. Even otherwise, since the plaintiff was posted as a Field Officer and was at liberty to go outside the bank at any time and therefore, even if he was outside the bank at the time of execution of the agreement would not make a difference, as such. The production of the said evidence by way of additional evidence was also held not to be of any useful purpose as it was not the case that the agreement was on account of less sale consideration. Resultantly, the application had been dismissed.

Counsel for the appellant, thus, stressed that after the decision of the Trial Court also, the criminal complaint filed by the plaintiff had been dismissed on 24.10.2016 and therefore, even the

Criminal Court had found that there was no evidence of cheating and the decree of specific performance should not have been ordered in favour of the plaintiff and the dismissal of the appeal was also not justified.

On the other hand, counsel for the respondent has argued that the defendant had received huge amount of money and his act and conduct showed that the agreement had been entered into since he had applied for the NOC and therefore, now, cannot be allowed to blow hot and cold at the same time.

In the opinion of this Court, the said argument raised by counsel for the appellant, is without any basis. Merely because the plaintiff had also preferred criminal proceedings on the ground that the accused had taken bank loan from ICICI Bank but had entered into an agreement with him to sell the property, and he had been cheated, would not be a ground to deny the benefit of the decree to him. The Criminal Court had found that sufficient material had not been produced in the form of evidence regarding the agreement in question and once the Civil Court had decreed the suit, the complainant could not be allowed to blow hot and cold at the same time. It was also noticed that the sale deed was to be executed on 31.03.2012 and there was no impediment in getting the sale deed executed and the complaint was, thus, filed mainly to harass the accused. Even if the factum of the loan taken from ICICI Bank had been concealed but the Civil Court had already held in favour of the complainant-plaintiff and therefore, giving the benefit of doubt to the accused-appellant, Satish Kumar had been acquitted of the charges under

Section 468 IPC and also by coming to the conclusion that there was no intention to cheat the complainant-plaintiff.

The Appellate Court, while examining the issues, also came to the conclusion that there was a valid and legal contract between the parties and the plaintiff was ready and willing to perform his part and it would not cause any hardship to the defendant if the relief is granted to the plaintiff. The contrary stand of the defendant of denying the agreement to sell before the Courts below and taking the plea of loan whereas the plea that the agreement was signed in the presence of the attesting witnesses, was also kept in mind while rightly rejecting the appeal. The argument raised that the signatures were obtained by the plaintiff by misusing the papers for some loan document was also negatived on the ground that nothing could be proved that any loan had been taken from the branch when the plaintiff, was working.

While noticing that there was an admission that the agreement bore the signatures and keeping in view the educational qualification of the appellant, it was noticed that he was matric pass and was not an uneducated person and a NOC had been obtained from the concerned department, which further proved that the agreement had been entered into and which had been partly acted upon by the appellant himself. Similarly, the admission of the wife who had complained about the agreement having been got entered was also taken into consideration and the fact that out of Rs.22,00,000/-, a sum of Rs.5,00,000/- had been received and the majority of the amount was by cheque apart from

Rs.25,000/- which had been received by cash and the attesting witness had also proved the agreement. The factum of the amount having been utilized by the appellant led to the dismissal of the appeal.

The above narration of facts would go on to show that though at an initial point of time, the plaintiff might have been aggrieved against the factum that the appellant-defendant had concealed the factum of loan outstanding against the said plot which led to the filing of the criminal complaint also. But the fact remains that the appellant had received a sum of Rs.5,00,000/- initially as earnest money out of which, Rs.4,75,000/- was by way of cheque and thereafter, before the cut-off date, he had received an additional amount of Rs.3,50,000/- in his bank account, the factum of which had been proved. After the receipt of the said amount, he had cleared the loan account due from the ICICI Bank, which would go on to show that he had been acting towards the agreement to sell which had been denied by him though claimed to have been obtained under the state of intoxication. The alternate plea was, thereafter, taken that the agreement was for the purpose of obtaining the loan which was never the stance in the written statement.

It is settled principle that evidence beyond the pleadings cannot be taken into consideration and neither there was any issue on this aspect that the plaintiff had misused his capacity as a bank official to advance a loan and no evidence had been produced to this aspect that he had obtained the loan from SBI Bank in which the plaintiff was an employee. Reliance can be placed upon **Rajasthan State TPT Corporation & another Vs. Bajrang Lal 2014 (4) SCC 693** for the said proposition. The same goes on to discredit the alternate plea which the appellant is taking in order to wriggle out of his liability to execute the sale deed in question after having received a sum of Rs.8,50,000/- which was also duly proved by not only examining the bank statements but also the witnesses regarding that aspect.

The readiness and willingness was also sufficiently proved and the ability of the plaintiff to have the balance sale consideration available as demand draft of Rs.13,50,000/- had also been prepared before the cut-off date and stamp papers worth Rs.1,54,000/- had also been purchased. The filing of the suit was also within a month and a half after serving a legal notice dated 16.04.2012, asking the appellant to execute the sale deed. All these factors combined would go on to show that the Courts below have justifiably decreed the suit in favour of the plaintiff. The amount having been utilized also for clearing of the loan account would go on to show that the appellant, now, cannot turn around and say that the amount was deposited without his consent. Admittedly, he never, at any stage, offered to pay back the same or wrote to the Bank officials as to how the entries had been made to his account. The said action would only go on to prove that he was a willing recipient of the earnest money and the additional amount thereafter and the agreement stood duly proved not only by examining one of the attesting witnesses but also the scribe and the Notary.

The wife of the appellant herself had also opposed the agreement by approaching the police whereas on one hand, the appellant himself has also applied for NOC to sell the property. Thus, these factors would go on to show that the agreement had been entered into for the sale of the said property and almost 1/3rd of the amount had been received in advance and therefore, it would not lie in the mouth of the appellant to contend that the same had not been executed by him willingly.

It is settled principle that allegations of misrepresentation or undue influence have to be given in full and precise particulars and then duly proved under Order 6 Rule 4 CPC which has not been done in the present case. Reliance can be placed upon the judgment of the Apex Court in **Shanti Budhiya Vesta Patel & others Vs. Nirmala Jayprakash Tiwari & others 2010 (5) SCC 104**.

Resultantly, keeping in view the above, no question of law much less any substantial question of law arises which would warrant interference by this Court and the present appeal is, accordingly, dismissed.

23.04.2021 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*