

Sr. No.226

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

**RSA-3544-2017 (O&M)
Date of decision: 09.12.2021**

Ludhiana Improvement Trust, Ludhiana
Vs.

...Appellant

Gagandeep

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Ms. Kavita Arora, Advocate,
for the appellant.

Mr. Shehbaz Thind, Advocate,
for the respondent.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are described as per recitals
before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts
below, the defendant is in second appeal before this Court assailing the trial
Court judgment and decree dated 25.05.2009, as upheld by the learned First
Appellate Court vide its judgment and decree dated 05.08.2016.

3. Briefly stated, facts as noticed by Courts below are that
Pushpinder Kumar deceased father of the plaintiff Gagandeep had applied
with the defendant for allotment of plot under 475 acres scheme, Shaheed
Bhagat Singh Nagar, Ludhiana. The draw was held on 10.09.1999 and plot
No.1054-G was allotted in favour of father of the plaintiff. The allotment
letter No.LIT/SB/11478 dated 28.10.1999 was issued in favour of father of
the plaintiff. The plaintiff came to know that the total price of the plot was
Rs.181875/-. The plaintiff was at liberty to pay this amount in lump sum or

in instalments as per the schedule of payment. The plaintiff never received the allotment letter or the schedule of payment. His father had expired on 14.12.1987. The plaintiff came to know regarding the allotment of said plot. He approached the defendant and submitted his legal heir certificate along with affidavit. The affidavit of his mother Santosh Rani and grandmother Maya Devi was also submitted. On the basis of said document, the defendant trust agreed to transfer the plot in the name of the plaintiff. The plaintiff deposited Rs.2000/- as Transfer Fee vide receipt dated 25.08.2000 with the defendant trust. The plot was then transferred in the name of the plaintiff vide allotment letter no.9366 dated 07.09.2000 on the same terms and conditions. The defendant transferred the plot in the name of the plaintiff on 25.08.2000. The plaintiff is and has always been ready and willing to deposit the amount towards the sale consideration. He visited the office of defendant a number of times to supply the schedule of payment, so that, he is able to deposit the sale amount, but the schedule of payment was neither supplied nor payment was accepted in lumpsum. Suddenly, the defendant trust informed the plaintiff that an amount of Rs.3,50,000/- is to be paid by the plaintiff to the defendant trust, failing which the allotment shall be cancelled. The possession of the plot was not handed over to the plaintiff, who asserted that the penalties or interest cannot be charged by the defendant board without handing over possession of the plot. The allotment letter was issued on 07.09.2000 by the defendant trust and the demand raised by the defendant is illegal, arbitrary and unconstitutional. The plaintiff got prepared two Bank drafts No.148333 dated 05.02.2003 for Rs.1,13,500/- and draft No.74792 dated 05.02.2003 for Rs.5,23,910/- drawn on Allahabad Bank, Ludhiana and Punjab & Sind Bank, Ludhiana respectively and offered

the same in the defendant under protest. The defendant trust refused to accept the same and threatened to cancel the allotment of plot. The plaintiff is and has always been ready and willing to pay the due amount against the said plot, but the defendant trust failed to supply the schedule of payment and has now refused to accept the payment with ulterior motive. Hence, the present suit. The defendants contested the plaintiff's claim and raised various objections.

4. Based on the rival pleadings, following issues were framed:

1. Whether the plaintiff is entitled to the permanent injunction as prayed for? OPP

2. Whether the suit is not maintainable in the present form? OPD

3. Whether no cause of action is accrued to the plaintiff to file the present suit? OPD

4. Whether the plaintiff has not come to the court with clean hands? OPD

5. Whether the suit is time barred?

6. Relief.

5. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues *ibid*.

6. On appraisal of evidence vis-a-vis pleadings, issue No.1 was decided in favour of the plaintiff. Issues No. 2 to 5 were decided against the defendant and the suit of the plaintiff was decreed with costs by the trial court.

7. First Appellate Court dismissed the appeal, hence Regular Second Appeal before this Court.

8. Having perused the record particularly letter dated 30.01.2003

Ex.P8 vide which whatever happened in the past was treated as water flowed

under bridge and fresh offer was made asking the plaintiff/respondents to pay a sum of Rs.3,58,910/- within 5 days of the letter i.e. on or before 05.02.2003 and pursuant thereto respondents complied with their part of performance inasmuch as demand drafts dated 05.02.2003 drawn on Allahabad Bank, Ludhiana and Punjab & Sind Bank, Ludhiana in favour of Improvement Trust, Ludhiana for an amount of Rs.1,13,300/- and Rs.5,23,910/- respectively were duly got prepared, which clearly reflect that respondent not only accepted but also had actually performed the obligation on his part as per the offer letter. Therefore, it does not lie in the mouth of Improvement Trust to say that respondent failed to accept the offer and, therefore, liable for consequences in terms of the original allotment letter.

9. Relevant part of First Appellate Court judgment, is as below:

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“14. After hearing the learned counsel for the appellant and learned counsel for the respondent, I am of the view that it is admitted fact that previously, the plot in question was allotted to Pushpinder Kumar, father of respondent and after his death on 14.12.1987, the plot was allotted to the respondent being legal heir of Pushpinder Kumar, vide allotment letter Ex.P7 dated 07.09.2000. However, one letter Ex.P8 dated 30.01.2003 was then sent to the respondent directing him to deposit a total sum of Rs.3,58,910/- on or before 05.02.2003. Whereas, it is the case of the appellant that this amount was not deposited by the respondent. However, respondent has placed on record copies of two drafts dated 05.02.2003 Ex.P9 and Ex.P10 regarding payment of the total amount of Rs.3,58,910/-. Whereas, respondent alleged that the appellant refused to accept this amount and threatened to cancel the plot. But appellant alleged that no payment was made so, the cancellation was automatic. However, before cancelling the plot, appellant was supposed to serve a notice giving him opportunity of being heard, but no such notice was served. Rather, appellant has stated that the plot in dispute allotted in the name of respondent is not being cancelled and only interest and other charges are to be paid by the respondent. This fact has not been controverted even during course of arguments by the appellant. Now, there is only dispute with regard to charging of interest or penalty on the delayed payment.

15. *However, the trial Court has refused to grant interest to the appellant or impose penalty on the delayed payment on the ground that due amount was offered by the respondent but was not accepted by the appellant. But there is no document on record, from which any inference could be drawn that offer to make the payment was declined by the appellant and who were the official, who refused to accept the payment or drafts Ex.P9 and Ex.P10. In case any of the officials appellant had refused to accept the payment, the respondent was supposed to approach higher authorities, but he did not. Whereas, allotment was made to Pushpinder Kumar original allottee but was transferred in the name of the respondent vide letter Ex.P7 dated 07.09.2000 and he was asked to deposit total sum of Rs.3,58,910/- on or before 05.02.2003. It was not deposited till the decision of the suit i.e. 25.05.2009 or upto today. In my view for delayed payment the appellant is entitled to interest. Since, it has not been proved how much interest, appellant is entitled to recover. Therefore, in my view on the delayed payment, respondent should be directed to pay simple interest @9% per annum.*

16. *Since the findings of the trial court given on issue no.1 is not suffering from any illegality except for non awarding the relief of interest to the appellant. Therefore, the findings of the trial Court on issue no.1 is partly upheld and partly modified to the extent that appellant is entitled to recover interest @ 9% per annum from 05.02.2003 till it is finally paid.*

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18. *In view of my above said findings, the appeal is partly allowed with modification in the relief clause that respondent will pay the sale consideration as per the notice Ex.P8 within two months from today along with interest at the rate of 9% per annum from 05.02.2003 till the payment is finally made. In case, the payment is not made or within the stipulated period, the appeal shall be deemed to be allowed and the suit of the plaintiff/respondent shall be deemed to be dismissed in toto."*

10. Learned Trial Court has given cogent reasons in returning the findings against the appellant, which have been rightly upheld by the First Appellate Court albeit with part modification in the relief clause with which I am in agreement. To my mind, judgments under challenge have been rendered after due and correct appreciation of evidence adduced by the respective parties.

11. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

12. Furthermore, no question of law, much less substantial one, a sine qua non for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

13. In view of my discussion above and the reasons aforesaid, this appeal is dismissed, being bereft of any merit. Resultantly, decree and judgment as modified by the First Appellate Court is upheld. Dismissed.

14. Since the execution proceedings instituted during pendency of the instant appeal were put on hold, it is expected of the Court below to proceed in accordance with law, as expeditiously as possible.

15. Pending application/s, if any, shall also stand disposed of.

16. No order as to costs.

09.12.2021
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes
No