

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

108

CR-905-2020(O&M)
Date of Order: 17.03.2022

KARAM SINGH @ KARAN SINGH AND ANOTHER

..Petitioner

Versus

RANDEEP SINGH

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Akshay Kumar Jindal, Advocate
for the petitioners.

Mr. Ramesh Sindhar, Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

This court is faced with a peculiar difficulty.

The petitioners herein were the defendants in a suit for grant of decree of specific performance filed by the respondent-Randeep Singh which was decreed by the trial Court on 04.01.2018. The operative part of the decree reads as under:-

“It is ordered that the suit of the plaintiff is partly decreed with costs to the effect that the plaintiff is entitled to seek specific performance of agreement to sell dated 20.06.2012 on payment of balance sale consideration within a period of two months from the date of order after deducting the earnest money of Rs.54,50,000/- from the amount of total sale consideration. However, the plaintiff has failed to prove payment of Rs.18,00,000/- as additional earnest money to the defendant. The defendants are restrained from alienating the suit property in any manner. The defendants are directed to execute the sale deed in favour of the plaintiff, failing which plaintiff shall be at liberty to get the decree executed through process of law.”

The defendants (petitioners) did not file any first appeal,

whereas the respondent-Randeep Singh (who was plaintiff in the suit) filed an appeal claiming that the finding of the trial Court to the effect that the plaintiff has failed to prove the payment of Rs.18,00,000/-, as additional amount. In the aforesaid first appeal, the plaintiff prayed for stay of operation of the decree which was declined. The appeal filed before this Court by the plaintiff (Randeep Singh) was also dismissed. The main first appeal is stated to be pending.

The petitioners (defendants in the suit) filed an application under Section 28 of the Specific Relief Act, 1963 for rescinding the agreement to sell dated 20.06.2012, as the plaintiff has failed to honour his part of the decree. In a suit for specific performance of the agreement to sell a conditional decree is passed. The application filed by the defendants (petitioners herein) has been allowed and the agreement to sell dated 20.06.2012 stands rescinded. The plaintiff has not challenged the aforesaid order. However, the defendants have challenged its correctness with respect to the direction to the defendants to refund the amount of earnest money of Rs.54,50,000/-.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

The learned counsel representing the petitioners submits that the Additional Civil Judge (Sr. Divn.), Karnal, while directing refund of the earnest money to the plaintiff, has not recorded any reason whatsoever. While continuing, the learned counsel contends that in this case it was proved that the plaintiff in the suit has failed to comply with the directions of the conditional decree, therefore, the order of refund could not be passed.

Per contra, the learned counsel representing the respondent

(plaintiff in the suit) contends that as per the findings recorded by the trial Court, the plaintiff was always ready and willing to perform his part of the contract.

Once, the conditional judgment and decree has been passed, it is incumbent upon both the parties to perform their part of the decree. Now the position is that the plaintiff has not challenged the decision of the Additional Civil Judge (Sr. Divn.). It is only the defendants in the suit who have filed the present revision petition. It is also evident while directing that the agreement to sell stands rescinded, the Court has not recorded any reason for directing refund of the earnest money.

Since, the first appeal against the judgment and decree is pending, it will not be appropriate to express any final opinion on the merits of the case. However, this Court cannot overlook the fact that the order directing refund of earnest money is bereft of any reason whatsoever.

Keeping in view the aforesaid facts, at this stage, the direction to the defendants to refund the earnest money is set aside, subject to the decision of the First Appellate Court. The First Appellate Court which is a Court of fact, shall be at liberty to pass judgment and decree in accordance with law without being influenced by the observations made by this Court.

Disposed of accordingly.

All the pending miscellaneous applications, if any, are also disposed of.

March 17th, 2022

nt

**(ANIL KSHETARPAL)
JUDGE**

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