

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

RSA-5099-2019 (O&M)

CM-15542-C-2019

CM-15541-C-2019

CM-15543-C-2019

Date of Decision: 07.01.2022

AMRIK SINGH AND ANOTHER

...Appellants

Versus

KASHMIRI LAL THROUGH LRS. AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Harsh Aggarwal, Advocate, for the appellants.

(Presence marked through video conference)**Arun Monga, J. (oral)****CM-15542-C-2019**

This is an application seeking condonation of delay of 06 days
in filing the appeal.

For the reasons recorded in the application, the same is allowed
and delay of 06 days in filing the appeal is condoned.

CM-15541-C-2019

This is an application seeking condonation of delay of 46 days
in re-filing the appeal.

For the reasons recorded in the application, the same is allowed
and delay of 46 days in re-filing the appeal is condoned.

RSA-5099-2019 (O&M)

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

2. Having suffered concurrent adverse findings by the two Courts below, the plaintiffs are in second appeal before this Court assailing the trial Court judgment and decree dated 31.03.2015, as upheld by the learned First Appellate Court vide its judgment and decree dated 17.12.2018.

3. Briefly stated, facts as noticed by Courts below are that plaintiffs instituted a suit for possession by way of specific performance of contract/agreement dated 12.04.2007. Vide said agreement, defendant No.1 had agreed to sell the suit land for a total sale consideration of Rs.74,63,750/-i.e. @ Rs.14 lakh per acre. He was to receive a sum of Rs. 5 lakh as earnest money out of the total sale consideration from the plaintiffs vide Cheque no.344752 dated 12.04.2007 issued from SBI, Ladwa. The date fixed for the purpose of payment of balance sale consideration and for execution and registration of sale deed was 12.10.2007. However, two sale-deeds bearing Vasika no.1313/1 dated 20.02.2009 and 1314/1 dated 20.02.2009 qua the same suit land had been executed by defendant No.1 in favour of defendants No.2 and 3. Said sale-deeds are stated to be not binding on the rights of the plaintiffs as per their case. Upon notice, defendants appeared and filed their separate written statement, stating therein, that the cheque of Rs.5 lakh was dishonoured as Drawer's signatures were incomplete/illegible/differ. Not only this, even after issuance of notice, no amount of earnest money was paid. It is only thereafter that defendant No.1 had executed aforesaid sale deeds.

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

1. *Whether defendants have executed an agreement to sell dated 12.04.2007 in favour of plaintiffs, with regard to the land in question, if so to what its effect? OPP*

2. *If issue no.1 is prove, whether plaintiffs are entitled to relief of specific performance of contract with possession of land in question? OPD*
3. *Whether plaintiffs are entitled to relief of injunction against the defendants on the ground as mentioned in the plaint and as prayed for? OPP*
4. *Whether plaintiffs were/are ready and willing to perform his part of contract? OPD*
5. *Whether suit is not maintainable? OPD*
6. *Whether plaintiffs have no locus standi to file the present suit? OPD*
7. *Whether plaintiffs have no cause of action to file the present suit? OPD*
8. *Whether plaintiffs are estopped by their own act and conduct from filing the present suit? OPD*
9. *Whether plaintiffs have not come to the Court with clean hands and suppressed true and material facts from the Court? OPD*
10. *Relief.*

5. Parties 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, trial Court decided issue Nos.1 to 4 against the plaintiffs. Issue Nos.5 to 9 were also decided accordingly in view of the findings on issues No.1 to 4.

7. First Appellate Court dismissed the appeal. Hence instant Regular Second Appeal.

8. I have heard the learned counsel and perused the judgments of both the Courts below. Learned First Appellate Court while upholding the trial Court findings re-appreciated the evidence and, *inter alia*, reasoned as below:-

“17. In the present case, the main point for consideration is whether the agreement to sell Ex.P10 is valid

*and enforceable?. Admittedly, no sale consideration in cash was passed from plaintiff No.2 Gurmeet Kaur to defendant No.1 Kashmiri Lal at the time of execution of the agreement to sell dated 12.4.2007 Ex.P10 and plaintiff No.2 Gurmeet Kaur has given a cheque No.344752 Ex.D1 for Rs.5,00,000/- of the earnest money to defendant No.1 Kashmiri Lal and further, the said cheque was dishonoured vide memo Ex.D2 as Drawer's signatures were incomplete/illegible or differ. There is nothing on record that after dishonouring of the cheque Ex.P1, the plaintiffs had paid Rs.5,00,000/- as earnest money to defendant No.1 either in cash or in the shape of demand draft or in any other mode. Even there is nothing on record that the plaintiff has made any attempt to make the payment of earnest money. So, it is established that no consideration has been passed to defendant No.1 in pursuance of the agreement to sell Ex.P10. As per section 25 of the Contract Act, an agreement made without consideration is void unless it falls within the exceptions provided therein and undisputedly, agreement to sell Ex.P10 does not fall within any of the exceptions provided under Section 25 of the Contract Act. The Hon'ble Supreme Court in case titled **Sheo Diyal and another Vs. Om Parkash alias Dhaulia and others, 1992(1) R.R.R. 349; 1992 P.L.J. 249**, has also held that agreement without consideration is void and as no consideration amount was paid at the time of execution of the agreement to sell, the agreement was not admissible in the eyes of law. The reliance can also be placed upon the judgment of the Hon'ble Punjab and Haryana High Court in case **Som Nath and others Versus Mohd. Illias and another, 2010(4) R.C.R. (Civil) 244**.*

In view of the above discussion, agreement to sell Ex.P10 being without consideration is, void ab initio and therefore is not valid and enforceable.

18. *So, once the agreement to sell Ex.P10 is void ab initio, the question of readiness and willingness become immaterial. Further, since the agreement to sell Ex.P10 is void ab initio and not in existence in the eyes of law, therefore, defendant No.1 has every right to sell the suit property to defendants No.2 and 3. Even otherwise, defendants No.2 and 3 are the bonafide purchasers as they have purchased the suit land after verifying the title from the revenue record and there is nothing on record that they have any knowledge of the earlier agreement to sell Ex.P10 and further, defendants No.2 and 3 have purchased the suit property for valuable consideration, which is evident from agreement Ex.D4, sale deeds Ex.D5 and Ex.D6 and receipt Ex.D13, so, the agreement to sell Ex.P10 cannot be enforced against defendants No.2 and 3."*

9. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. Apart from merits of the case, even otherwise, I am of the opinion that both the Courts below have taken an equitable view. There is no ground to interfere on merits to disturb the said concurrent findings of the trial Court and the First Appellate Court. No fresh ground worthy of interference in the appellate jurisdiction of this Court is made out.

10. To my mind, judgments under challenge have been rendered after due and correct appreciation of evidence adduced by the respective parties.

11. So far as the argument of learned counsel for the appellants as canvassed before me that merely because the cheque was dishonoured, will not absolve the parties of promise. The acceptance of the promise results into binding contract. The proposition is not tenable in view of the fact that it is the elementary principle that any agreement without consideration is void, unless of course, it is a case of acceptable exception per Section 25 of the Contract Act. Concededly, the cheque issued by the appellant was dishonoured. Same amounts to no consideration ever paid to the other party. Acceptance of the offer stood vitiated the moment the cheque was dishonoured. Merely, because a person who made the offer on acceptance of counter offer turns around and says that he still has the money to pay (assuming so), will not bind the other party. As already noted, once the cheque was dishonoured, contract stood vitiated.

11. Furthermore, no question of law, much less a substantial question of law, a *sine qua non* for entertaining regular second appeal, 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, 1908.

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

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

14. No order as to costs.

January 07, 2022
Gurpreet/vs

(Arun Monga)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No