

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

115

CR-2494-2019

Date of decision: 29.11.2022

SMT. ROSHNI

..Petitioner

Versus

SATPAL AND OTHERS

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sumeet Jain, Advocate
for the petitioner.

Mr. Amit Jain, Advocate
for respondent No. 4 to 8.

ANIL KSHETARPAL, J(Oral)

Though the First Appellate Court has, primarily, dismissed the appeal on the ground of delay in filing the first appeal, however, it has also discussed the merits of the case. Hence, with the consent of the learned counsel representing the parties, this Court has heard the case on merits. The petitioner herein was the plaintiff in a suit for possession by way of specific performance of the agreement to sell. As per the case of the plaintiff, the defendants entered into an agreement to sell on 05.05.2008 with respect to 726 sq. yards plot for the sale consideration of Rs.68,97,000/-. It is the case of the plaintiff that on payment of earnest money/part payment of Rs.10,00,000/-, the parties agreed to execute a sale deed on 04.09.2008. The plaintiff filed the suit on 03.09.2011 which was the last day on which the limitation of filing the suit was to expire. The plaintiff did not lead any corroborative evidence to prove that she had the wherewithal to pay the balance sale consideration of nearly Rs.59,00,000/-. Except her bald statement, she did not lead any evidence in support of her case. Thus, the

trial Court recorded a finding of fact that the plaintiff was not ready and

willing to perform her part of the contract and it was she, who committed the default in performing her part of the contract.

The First Appellate Court has also affirmed the aforesaid findings of fact.

The learned counsel representing the petitioner contends that the petitioner is only interested in refund of the part payment and he does not wish to challenge the finding of the Court that the plaintiff had defaulted in performing her part of the contract. He relies upon the judgment passed in **M/s Kailash Nath Associates Vs. Delhi Development Authority (2015) 2 SCC (Civil) 502.**

This Court has considered the submissions. In **Maula Bux Vs. Union of India (1969) 2 SCC 54**, the Supreme Court held that Section 74 of the Indian Contract Act 1872 in the context of forfeiture of earnest money has no application. In **Satish Batra Vs. Sudhir Rawal, (2013) 1 SCC 345**, the Supreme Court held that the amount of earnest money is liable to be forfeited in terms of the contract and the defendant is not required to prove actual damages for invoking the aforesaid clause.

In **Regular Second Appeal No.4698 of 2017, titled as “Om Prakash and others Vs. M/s Ganga Developers Pvt. Ltd.”, decided on 22.01.2020**, this Court after discussing the various judgments passed by the Supreme Court including **M/s Kailash Nath Associates (supra)**, held that the forfeiture of earnest money in accordance with the terms of the contract is permissible and the defendant is not required to prove actual damages. Similar view has been taken by the Supreme Court in **Shree Hanuman Cotton Mills Vs. Tata Air Craft Ltd., (1969) 3 SCC 522.**

Keeping in view the aforesaid facts, no ground to interfere is made out.

Dismissed.

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

November 29th, 2022

(ANIL KSHETARPAL)
JUDGE

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<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>