IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

140

RSA-671-2022(O&M)
Date of Order: 04.04.2022

AVTAR SINGH **..Petitioner**

Versus

GURDEEP SINGH AND OTHERS **..Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay Sharma, Advocate
for the appellant.

Mr. Kapil Kakkar, Advocate
for respondent No.2.

ANIL KSHETARPAL, J(Oral)

The plaintiff, while assailing the concurrent findings of fact arrived at by the Courts below, has filed the present appeal. Admittedly, as per the agreement to sell, the plaintiff has failed to pay the complete earnest money. The learned counsel representing the appellant does not dispute that the total earnest money of Rs.30,00,000/- as per the agreement to sell between the parties was agreed to be paid. The plaintiff did not pay the remaining amount of Rs.20,00,000/- after the initial payment of Rs.10,00,000/-.

The learned counsel contends that for forfeiture of the earnest money, the defendant is required to establish that he suffered any damage or loss. He relies upon the judgment passed in ***M/s Kailash Nath Associates Vs. Delhi Development Authority and another, 2015(4) SCC 136***.

In ***Ran Singh and others Vs. M/s Capex Projects Pvt. Ltd. Regular Second Appeal No.4920 of 2014, decided on 28.03.2019***, this Court after analyzing the various judgments passed by the Supreme Court has held as under:-

> *"Learned First Appellate Court has first relied upon the judgment passed in the case of Satish Batra (Supra). This Court has carefully read the aforesaid judgment. The aforesaid judgment is rather helps the defendants-appellants and not the plaintiff-respondent company. In the aforesaid judgment, Hon'ble the Supreme Court was examining the correctness of the Division Bench judgment of the Delhi High Court, in which out of total earnest money of Rs.7,00,000/-, Rs.50,000/- was permitted to be forfeited whereas Rs.6,50,000/- was ordered to be refunded. The Supreme Court after examining the contract found that earnest money was paid on two different dates i.e. Rs.4,00,000/- on 29.11.2005 and Rs.3,00,000/- on 30.11.2005. The Supreme Court held after discussing various judgments of the Court that intended seller was justified in forfeiting the amount of 10% i.e. Rs.7,00,000/-, therefore, the trial Court as well as First Appellate Court have not applied the aforesaid judgments in correct perspective.*
>
> *The First Appellate Court has further relied upon a judgment passed by Hon'ble the Supreme Court in the case of Videocon Properties Ltd. (Supra). In the aforesaid judgment, the Supreme Court was examining the order passed by a Division Bench of Bombay High Court arising from interim order passed by the learned Single Judge. In the aforesaid case, earnest money had been refunded. Suit for recovery was filed by the intended purchaser who was a builder for grant of interest. In the aforesaid circumstances, learned Single Judge ordered creation of charge under Section 55(6)(b) of the Transfer of Property Act, 1882 which order was modified by the Division Bench. The Supreme Court reversed the judgment of the Division Bench and restored the order of the learned Single Judge. The aforesaid judgment nowhere lays down that the earnest money as per the contract cannot be forfeited."*

SLP(C) against this judgment has been dismissed on 14.10.2022.

Again in ***Om Parkash and others Vs. M/s Ganga Developers Pvt. Ltd., Regular Second Appeal No.4698 of 2017, decided on 22.01.2020***, held as under:-

> *"Before this Court proceeds to analyse the various submissions of learned counsel, it would be appropriate*

*to notice that the entitlement of the intended sellers to forfeit the earnest money has been drawing attention of the Courts for quite some time. Various judgements have been cited by learned counsel for the parties. Learned counsel for the plaintiff company has relies upon the judgement passed by the Hon'ble Supreme Court in the case of **Kailash Nath Associates v. Delhi Development Authority 2015(2) SCC (Civil) 502**. He submitted that it has been held that in absence of any power to forfeit the earnest amount paid/deposited, the owner is not justified in forfeiting the amount of earnest money. On the other hand, learned counsel for the defendants has relied upon the judgement passed by the Hon'ble Supreme Court in **Shree Hanuman Cotton Mills v. Tata Air Craft Ltd. 1969 (3) SCC 522 and Satish Batra v. Sudhir Rawal 2013(1) SCC 345.***

*On careful reading of the judgement passed in the case of **Kailash Nath Associates (supra)**, it will be noted that in the aforesaid judgement, the Hon'ble Supreme Court was considering a situation wherein Kailash Nath Associates had given its bid to purchase immovable property in a bidding which was open to public and deposited 25% of the total sale price towards earnest money and part payment. Subsequently, there were various communications, and time for deposit of the remaining amount was extended. The matter remained pending with the authorities for pretty long time. Other similarly situated purchasers had also not deposited the amount. The public authority, with respect to other similarly situated allottees, had not ordered any forfeiture of the amount paid. In those circumstances, the Hon'ble Supreme Court held that the time was never treated as an essence of the contract and hence the forfeiture of the amount by a government agency, in the facts of the aforesaid case, was not justified in forfeiting the amount paid.*

*As regards judgements relied upon by learned counsel for the defendants, on careful reading thereof, it has been laid down that the earnest money can be forfeited by the intended sellers once the quantum of amount is agreed as liquidated damages even in the absence of evidence of loss/damages suffered by the vendors. At this stage, it would be appropriate that the principles culled by the Hon'ble Supreme Court, in the case of **Shree Hanuman Cotton Mills(supra)** in para 21, are taken note of:-*

> *"(1) It must be given at the moment at which the contract is concluded.*
>
> *(2) It represents a guarantee that the contract will be fulfilled or, in other words, "earnest" is given to bind the contract.*

> *(3) It is part of the purchase price when the transaction is carried out.*
> *(4) It is forfeited when the transaction falls through by reason of the default or failure of the purchaser.*
> *(5) **Unless there is anything to the contrary in the terms of the contract, on default committed by the buyer, the seller is entitled to forfeit the earnest**". "*

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.

April 04th, 2022
Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*