

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

RSA-6186-2014 (O&M)

Date of decision: 10.03.2022

Dharam Singh and anotherAppellants

versus

Narinder SinghRespondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Munish Gupta, Advocate
for the appellants.

Mr. Aman Arora, Amicus Curiae
for the respondent.

FATEH DEEP SINGH, J. (ORAL)

Due to outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

CM-14759-C-2014

The present application has become infructuous as the matter is listed for final arguments.

Dismissed as having been rendered infructuous.

RSA-6186-2014 (O&M)

Plaintiff-Narinder Singh, now respondent, as is the factual scenario before this Court entered into an agreement to sell

with defendants-Dharam Singh and Shiv Ram dated 18.08.2004 in respect of 06 Kanal 11 Marlas of land duly described and depicted in the head note of the plaint at the rate of Rs.4,000/- per square yard. Out of the total consideration amount, the plaintiff had paid a sum of Rs.16 lacs as earnest money and claims to have delivered the possession of the property. It is during the course of the turn of events, it transpired that the seller/defendants did not have any right title of interest over the property in question and it is in this situation, the plaintiff-Narinder Singh was forced to file a suit for recovery of the initial amount of earnest money of Rs.16 lacs along with interest at the rate of 9% per annum from the date of agreement till payment of the amount.

The Court of the learned Additional Civil Judge (Senior Division), Nabha through judgment/decreed dated 27.04.2013 decreed the suit for recovery of Rs.16 lacs along with interest @ 9% per annum from the date of agreement till decision of the suit and future interest @ 6% per annum till realization of the decretal amount. The unsuccessful defendants filed an appeal before the learned District Judge, Patiala. It is thereafter, the First Appellate Court vide impugned judgment/decreed dated dismissed the appeal upholding the orders of the Trial Court and under these

circumstances the present RSA has come about.

The stand of the appellants, then defendants to the claim besides taking up pleas of there being no cause of action lack of *locus standi*, the suit being false and frivolous the plea was taken denying that there arose a dispute over a property in question and claimed that they had been ready and willing to execute their part of the obligation arising out of the agreement and realized that it was the plaintiff who failed to make the payment of the excess area so found at the spot and sought dismissal of the suit.

The trial Court had framed the following issues:-

1. Whether the defendants failed to perform their part of the agreement dated 18.08.2004 and the same fell through due to their fault? OPP
2. Whether the plaintiff is entitled to recover Rs. Sixteen lacs part of the sale price from the defendants?OPP
3. Whether the plaintiff is entitled to recover interest from the defendants, if so at what rate and for what period? OPP
4. Whether the defendants are entitled to forfeit the sum of Rs. Sixteen lacs and are entitled to recover damages from the plaintiff? OPD
- 4A Whether the defendants always remained ready and willing to perform their part of the contract dated 18.08.2004? OPD
- 4B Whether the plaintiff resiled from the agreement dated 18.08.2004 as he failed to make the payment of Rs.50,00,000/- to the defendant on 31.01.2005, if so to what effect?OPD

5. Whether the suit is not maintainable and competent in the present form? OPD
6. Whether the defendants are entitled to recovery of special costs? OPD
7. Whether the plaintiff is estopped from filing the present suit by his act and conduct? OPD
8. Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD
9. Relief.

The plaintiff had examined Pargat Singh as PW-1, Hari Chand as PW-2, Narinder Singh as PW-3, Dharam Pal Bansal, Clerk as PW-4, Rakesh Kumar as PW-5 (*sic*) and proved documents as Ex.P-14 and Ex.P-15. On the other hand, defendants examined Dharam Singh as DW-1 and proved document as Ex.D-12, Ex.D-13 and Ex.D-14 and closed the evidence leading to the passing of the judgment in question.

In view of the recent pronouncement in **'Kirodi (since deceased) through his LR vs. Ram Parkash and others'** Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019, the Hon'ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal.

In light of the orders dated 03.02.2022, this Court had appointed Mr. Aman Arora, Advocate, Amicus Curiae to assist this Court in the disposal of the present matter.

Appreciating the submissions, primary issue between the parties is as to the execution of the agreement dated 18.08.2004 and the entitlement of the plaintiff to recover the amount in question.

The very evidence on record consisting primarily of witnesses to this agreement namely, PW-1-Pargat Singh who through his affidavit Ex.PW-1/A and PW-2-Hari Chand who through his affidavit Ex.PW-2/A have detailed and corroborated each other on the fact as to the due execution of the agreement between the parties on 18.08.2004. Both these witnesses had clarified that the sale was in respect of land measuring 06 Kanals 11 Marlas at the rate of Rs.6,000/- per square yards. In no uncertain terms as has been submitted on behalf of the respondents by amicus that Rs.16 lacs has been paid as earnest money and which submissions Mr. Munish Gupta, Advocate for the appellants could not controvert in light of being a documentary evidence as to this agreement between the parties clearly in lis that by virtue of this agreement to sell a sum of Rs.16 lacs was given as earnest

money. No doubt, in light of the submissions that the date for execution of the sale deed was fixed for 01.05.2005 but as is claim and counter-claim of the two sides on account of dispute over the extent of the area of the property subject matter of sale and legal title by the seller has led to this imbroglio between them. Rather the witnesses in their testimonies claim to be the go between of this agreement and have enunciated in their testimonies that an area of 350 square yards was found over and excess than the agreed area subject matter of sale and it is over the remaining price the parties fell apart. It is through the testimony of PW-4-Dharam Pal Bansal, Clerk of Sh. M.K. Goel, Advocate by means of affidavit Ex.PW-4/A its stand established that a legal notice dated 29.03.2005 was served by the Advocate on behalf of the plaintiffs upon the defendants and the deed writer PW-5-Rakesh Kumar (*sic*) has proved through his affidavit Ex.PW-5/A having prepared the agreement and got the same entered in his register and which stands corroborated from the documents Ex.P-5 to Ex.P-11.

To controvert this evidence though defendant-Dharam Singh has stepped into the witness box as DW-1 but could not dispute the claim of the plaintiffs firstly on account of a due admission in his written statement of having executed the

agreement to sell on 18.08.2004 and of having received cash amount of Rs.16 lacs but claimed that Rs.50 lacs was to be paid as balance of the total sale consideration which the plaintiff failed to pay and though claims that it was the plaintiff who was at default but as has been the arguments due payment of Rs.16 lacs is fully accepted by him. The dispute between the two sides trickles down over the very area of the land subject matter of this agreement though it is claimed by the plaintiff to be in excess to what he has agreed regarding which excess area title of ownership is under cloud and which the defendant invariably is unable to establish and, therefore, it is the own volition of the plaintiff he may or may not have purchased the excess amount over and above to what he has agreed as per his agreement which comes to 06 Kanals 11 Marlas and this is the reason how this rescinding of the agreement has come about. It is well settled principle of law that where an agreement on account of reasons beyond the control of the parties ends in its recession than the plaintiff instead of filing a suit for specific performance on the basis of the agreement to sell can exercise his rights of recovering of the amount. As is apparent from the evidence and the records and which fact is not displaced by any means the defendant had accepted a sum of Rs.16 lacs and had been utilizing the amount to his own personal needs and

requirements, therefore, he is under obligation to pay interest on this amount for the period he kept the amount to himself. The learned two Courts below had duly considered this fact and have rightly concluded that the defendant is under legal obligation to pay interest on the amount so received to which the plaintiff has the right and which findings on the issue needs to be upheld there being consistent findings of the two Courts below which in consonance with the settled proposition of law and in league with the evidence on record. This Court does not feel inclined to interfere in these concurrent findings which needs to be upheld, the appeal being hopelessly without merits, stands dismissed.

10.03.2022*Neha***(FATEH DEEP SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No