

RSA-1049-2020 (O&M)

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

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RSA-1049-2020 (O&M)

Decided on : 17.10.2023

Santosh Rani

... Appellant(s)

Versus

Geeta Ram

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Neeraj Gupta, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)

CM-3406-C-2020

i. This is an application filed under Section 149 CPC for making up good the deficiency in the Court fee.

ii. Learned counsel for the applicant-appellant submits that deficiency in the Court fee has already been made good. Said fact also finds corroboration from the office note dated 02.03.2020, appended in the case file.

iii. Thus, in view of above, learned counsel prays that present application may be disposed of as such.

Ordered accordingly.

CM stands disposed of.

CM-3405-C-2020

For the reasons set out in the application, the same is allowed. Consequently, the delay of 39 days in re-filing the accompanying appeal is hereby condoned.

Civil Miscellaneous application stands disposed of.

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1. Present Regular Second Appeal (RSA) has been filed by the defendant (appellant herein) against the concurrent findings of partial decretal of the suit filed by the plaintiff (respondent herein).
2. Both the Courts below have held that the conduct of both the parties is not above board, therefore, there is a direction to return the earnest amount (i.e. Rs.2,30,000/- along with interest @ 8% per annum), which was paid by the plaintiff (respondent). In paragraph No.34 of the Trial Court judgment, findings have been given as under:-

“34. In the peculiar facts and circumstances of the case in hand where conduct of both the parties was not above board, this Court is of the view that it would be in the interests of justice as well as in the fitness of the things to refund the earnest money of Rs.2,30,000/- paid by the plaintiff to the defendant. Accordingly, defendant is directed to refund the earnest money of Rs.2,30,000/- to the plaintiff within a period of one month. In the peculiar facts and circumstances of the case, the plaintiff is not held entitled for the refund the double amount of the earnest money or any interest upon the earnest money. Accordingly, issue no.2 is decided against the plaintiff and issue no.3 is partly decided in favour of the plaintiff and against the defendant.”

3. Counsel for the appellant (defendant) relies upon the judgment of the Hon’ble Apex Court rendered in **Desh Raj & Ors. vs. Rohtash Singh, 2023(1) RCR (Civil) 334**, and submits that in the absence of any prayer/claim in regard to the return/refund of the earnest money, said relief cannot be extended to the plaintiff. Thus, decretal of the suit to that extent is argued to be against the spirit of the judgment passed by the Hon’ble Apex Court.
4. On being asked by the Court, Mr. Neeraj Gupta, learned counsel

for the appellant (defendant) is unable to highlight any portion from the cited judgment that in the said case also, there was a condition of payment of double the amount, in case seller backed out to the agreement to sell. However, in the present case, it is undisputed that there is a specific clause of forfeiture of the amount of earnest money, if the purchaser backs out. In fact, there would be two options i.e.; *(i) seeking sale of the property in question through specific performance, and/or, (ii) to pay back double the amount to the purchaser.*

Thus, the cited judgment is not applicable to the facts and circumstances of the present case. Moreover, the learned Lower Appellate Court, has also affirmed the findings given by the learned Trial Court. Rather, the learned Lower Appellate Court has disagreed with the observations given by the Trial Court that plaintiff was not having the balance sale consideration along with stamp charges required for registration of the sale-deed. Learned Appellate Court has held that plaintiff was not precluded from arranging the cash or keeping the same. Relevant findings recorded by learned Lower Appellate Court in paragraphs No.13 & 14, are reproduced as under:-

“xx xxx xx xxx

In the considered opinion of this Court when amount is due, interest is automatically due and when no reason has been advanced for declining the interest, the finding of the learned Court cannot be allowed to sustain.

This Court is not in agreement with the finding of the learned lower Court that in none of the bank accounts, the plaintiff was having balance sale consideration and the amount for stamp charges required for registration of the sale deed. After all, the plaintiff was not precluded from arranging the cash or keeping the same. It is pertinent to mention that the plaintiff

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had allegedly sent legal notice dated 10.1.2012 Ex.PB, legal notice dated 29.2.2012 Ex.PD, legal notice dated 19.11.2012 Ex.PE and legal notice dated 27.11.2012 Ex.PI, calling upon the defendant to remain present in the office of Sub-Registrar, Kaithal to execute the sale deed in his favour.

This Court is not in agreement with the finding of the learned lower Court that the sending of the legal notices could not advance the case of the plaintiff because after the expiry of the target date for the execution of the sale deed i.e. 9.12.2011. It is a fact that one who is interested in execution of the agreement to sell, would make every endeavor to avoid the intricacies of going to the Court and such legal notices if sent before the filing of the suit involving the payment of considerable Court fee was not a misplaced step on the part of the plaintiff.

In the written statement, defendant has taken the plea that two days prior to the date fixed for execution of the sale deed, plaintiff had come to her stating that he was not having the balance sale consideration and the agreement would stand cancelled. Moreover, when the case of the defendant is that she was approached two days before telling that agreement stood cancelled, it should have been so proved. It is incomprehensible as to what restrained the defendant from getting her presence marked before the Sub-Registrar on the target date. DW3 admitted that she had not visited the office of Tehsildar, Kaithal, for marking her presence. DW3 stated that when Geeta Ram told her that agreement to sell stood cancelled, no one else was present.

14. In the cross-objection, the specific performance of the contract has not been sought. It was stated by the learned counsel for the cross-objector during the course of arguments that house had been constructed by appellant Santosh over the suit property and thus, the specific performance of the contract was not sought. In these circumstances, the specific performance of the contract has not been granted.”

5. Since, both the learned Courts below have considered the

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conduct of both the parties and therefore, considering the aspect that refund of the earnest money of Rs.2,30,000/-, along with interest, would be an equitable justice, thus, this Court does not find any substance in the submissions made by counsel for the appellant (defendant).

Even, no question of law, much less, any substantial question of law arises for consideration in the present appeal for interference in the impugned judgments & decree passed by the Courts below.

For the reasons recorded herein-above, the instant appeal *sans* merits, and thus, **dismissed**. The judgment(s) & decree passed by both the Courts below are hereby affirmed.

Since the present appeal has been considered on its merits, and the facts in details have been addressed, and discussed by this Court in the present judgment, thus, there is no need to pass any separate order in the application (i.e. CM-3404-C-2020) for condonation of delay in filing the main appeal.

Remaining civil misc. application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

October 17, 2023

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No