

**RSA-2583-2019****1****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****109****RSA-2583-2019 (O&M)
Reserved on : 30.04.2024
Date of Decision : 06.05.2024**

Femella Fashions Pvt. Ltd.

....Appellant

Versus

S. C. Jain & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. I. S. Ratta, Advocate for the appellant.

ALKA SARIN, J.**CM-7043-C-2019**

For the reasons stated therein, the delay of 6 days in refiling the present regular second appeal is condoned. Application stands disposed off.

RSA-2583-2019

1. This is a second appeal by the plaintiff-appellant against the judgments and decrees dated 31.07.2015 and 30.07.2018 passed by the Trial Court and the First Appellate Court, respectively, whereby it's suit for mandatory injunction has been dismissed.

2. The plaintiff-appellant approached the Court seeking the relief of mandatory injunction for directing the defendant-respondents to hand over the physical possession of the demised premise being No.803 Udyog Vihar Phase-V, Gurgaon and further for directing them to execute and register the lease agreement on the terms and conditions as agreed on 09.02.2013 in favour of the plaintiff-appellant. It was averred that the plaintiff-appellant is engaged in the business of manufacturing cloth

**RSA-2583-2019****2**

garments and was working from it's site at B-23 Udyog Vihar, Gurgaon and since the plaintiff-appellant wanted to expand it's business it needed some more property within Gurgaon and started searching for a suitable property through a broker Sh. Jasvinder Singh Seth. It was further averred that after seeing many properties the said broker showed the property bearing No.803 Udyog Vihar Phase-V, Gurgaon and thereafter the plaintiff-appellant through the broker approached the owners of the said property i.e. the defendant-respondents. A deal was struck between the parties wherein the plaintiff-appellant agreed to take the property on lease with immediate effect on a month lease of Rs.1,90,000/- per month wherein a sum of Rs.47,500/- was to be paid to each of the defendants separately in lieu of the lease rent. As the meeting was fruitful between the parties, the points discussed between the parties were reduced into writing on a piece of paper on 09.02.2013. It was further averred that the defendant-respondents agreed that the lease deed would be in writing with all the terms and conditions agreed between the parties and would be got registered with both parties bearing the registration expenses in equal proportion. It was the stand of the plaintiff-appellant that the demised premises was not in a habitable condition and required removal and construction of certain portions as per it's requirement and the defendant-respondents undertook to clear all the issues pertaining to the removal and raising of construction before execution of the lease agreement and handing over the possession. As all the terms and conditions were duly agreed between the parties, the plaintiff-appellant handed over four cheques of Rs.47,500/- each (total Rs.1,90,000/-) in favour of the four

**RSA-2583-2019****3**

defendant-respondents which were encashed by them. However, despite email/letter sent to the defendant-respondents, they did not come forward to prepare the demised premises for lease and execute the lease agreement in favour of the plaintiff-appellant. It was further submitted that the plaintiff-appellant had ordered material of Rs.2.5 crores to be transferred in the demised premises but the defendant-respondents had not given the possession of the demised premises and had misappropriated the amount of rent and committed a criminal offence. A complaint was also lodged with the Police. Hence, the present suit. Upon notice, the defendant-respondents appeared and filed written statement raising preliminary objections of maintainability, non-joinder of necessary parties, cause of action etc. On merits it was submitted that they were the owners in possession of the demised premises and Mr. Jasvinder Singh Sethi had contacted them for leasing the same and agreement was entered between parties on 09.02.2013. Replication was not filed.

3. On the basis of the pleadings of the parties the following issues were framed by the Trial Court :

1. *Whether the plaintiff is entitled for the relief as prayed for ? OPP*
2. *Whether the plaintiff has no cause of action and locus standi to file the present suit ? OPD*
3. *Whether the suit of the plaintiff is not maintainable in the present form ? OPD*



4. *Whether the suit of the plaintiff is barred under the provisions of Section 41(h) of the Specific Relief Act ?*

OPD

5. *Whether the plaintiff has not come to the court with clean hands and has suppressed the true and material facts from the court ? OPD*

6. *Whether this Court has no jurisdiction to entertain, try and decide the present suit ? OPD*

7. *Relief.*

4. Vide judgment and decree dated 31.07.2015 the Trial Court dismissed the suit of the plaintiff-appellant. The Trial Court held that the suit for mandatory injunction was not maintainable and was barred under Section 41(h) of Specific Relief Act, 1963. The plaintiff-appellant filed an appeal against the decision by the Trial Court but it's appeal was dismissed by the First Appellate Court vide judgment and decree dated 30.07.2018. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant has contended that both the Courts have erred in dismissing it's suit for mandatory injunction. It is urged that the defendant-respondents have admitted the agreement reached on 09.02.2013 and had also mis-appropriated Rs.1,90,000/- and therefore the plaintiff-appellant was justified to approach the Court with a suit for mandatory injunction, which was maintainable, and that both the Courts have erred in holding that a suit for mandatory injunction was not maintainable.



6. Heard learned counsel for the plaintiff-appellant.
7. One of the main findings against the plaintiff-appellant is that a suit of this nature for mandatory injunction is not maintainable as according to both Courts the plaintiff-appellant ought to have sought such a relief by way of an appropriate suit under the Specific Relief Act, 1963. Section 41(h) of the Specific Relief Act, 1963 lays down that an injunction, which is a discretionary equitable relief, cannot be granted when an equally efficacious relief is obtainable in any other usual mode or proceeding.

8. The Trial Court found that :

“14. After hearing arguments of both the parties, I am of the considered opinion that arguments put forth by Ld. Counsel for defendants have weight and substance in it. The execution of agreement dated 9.2.2013 has not been disputed by the defendants. Through this present suit, plaintiff wants to enforce agreement dated 9.2.2013. The present suit has been filed by plaintiff for seeking relief of mandatory injunction for directing the defendants to hand over physical possession of demised premises and to further direct them to execute and register lease agreement on the terms and conditions as agreed on 9.2.2013. Section 41(h) of Specific Relief Act 1963 provides that no relief of injunction can be granted to plaintiff in case equally efficacious remedy is available to the plaintiff. It was required on part of plaintiff to file



RSA-2583-2019

6

suit for specific performance of said agreement. From the perusal of pleadings of plaint filed by plaintiff, it is very much clear that plaintiff wants to enforce agreement dated 9.2.2013 and for that purpose, proper remedy that was available to the plaintiff was to file suit for specific performance or to claim damages under that act. In this regard, I am fortified with decision in State of U.P. v. Tara Singh Jaiswal 2012(95) ALR 29 (Allahabad) wherein Hon'ble Division Bench of Allahabad High Court have observed that "As a general rule the proper remedy of a person seeking to enforce the specific condition of contract is either to file suit if it is maintainable for specific performance of contract to sell or to claim damages for breach of contract. It has been further observed that the bar created under Section 41(h) of the Act cast a duty on the court not to grant injunction in the cases enumerated therein in clause (a) to (j). We may also usefully refer Section 14(l)(a) of the Act which provides that a contract for the non performance of which damages is an adequate relief, decree for specific performance cannot be passed. In the case of contract, a party has two remedies either to get the contract specifically enforced or to claim the damages". Further, reliance can be made on decision in



RSA-2583-2019

7

State of Punjab v. Phoola Singh (P&H) 2011 AIR CC 990 wherein it has been observed that “In a suit seeking mandatory injunction, Court is required to see the obligation and its breach and enforcement, while in a suit for specific performance Court is to see the existing valid enforceable contract. Since plaintiffs are coming on the basis of the contract, hence, they should have filed suit for specific performance of a contract and suit for mandatory injunction is not at all maintainable”. Accordingly, present suit filed by plaintiff is barred under section 41(h) of Specific Relief Act, 1963 and also not maintainable in present form. Further it is pertinent to mention that during cross examination by Ld. counsel for defendants, PW1 has admitted suggestion put to him that permission of HSIDC is required for taking property on lease at Udyog Vihar and for that purpose project report has to be submitted with application for permission to take property on lease. He further has deposed that plaintiff has not given any project report to defendants”.

The First Appellate Court also affirmed the said finding of the Trial Court. Learned counsel for the plaintiff-appellant has been unable to convince this Court that the provisions of Section 41(h) of the Specific Relief Act, 1963 were not applicable to the facts and circumstances of the present case. A

**RSA-2583-2019****8**

specific objection was taken by the defendant-respondents in their written statement regarding maintainability of the suit for mandatory injunction. The plaintiff-appellant had ample opportunity to file a suit for specific performance but failed to do so. A duty is cast on a plaintiff to show and satisfy the Court that the suit as brought by him is properly constituted and maintainable in law. In this view of the matter, there is no error in the decisions of both the Courts. No other point was argued.

9. There is no illegality or irregularity in the impugned judgments and decrees while deciding the question with respect to Section 41(h) of the Specific Relief Act, 1963 along with the other issues. There are concurrent findings of fact recorded by both the Courts and this Court is of the view that these findings, in the established facts and circumstances of the case, cannot be disturbed in this second appeal.

10. In view of the above, no question of law, much less any substantial question of law, arises in the present case. The present appeal is devoid of any merit and is dismissed. Pending applications, if any, also stand disposed off.

06.05.2024
Ankur

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO