157 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1351-2021 (O&M)
Date of decision: 16.02.2024

Maharaja Land Developer Pvt. Ltd.

....Appellant

Versus

Hardial Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vijay Lath, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

1. In this Regular Second Appeal, the plaintiff assails the correctness of the concurrent findings of fact arrived at by the courts below while dismissing his suit for the specific performance of the agreement to sell. The appellant is a colonizer. He entered into an agreement to sell with a farmer on 24.02.2006, with respect to the land measuring 1 kanal 13 marlas for a total sale consideration of Rs.6,80,625/- on payment of an earnest money of Rs.10,000/-. As per the agreement to sell, the remaining payments were to be made by the appellant to respondent no.1, in the following manner:-

" *On or before 01.08.2006 10% i.e Rs.68,062.50/-*

On or before 18.08.2007 50% i.e Rs.3,40,312.50/-

On or before 18.08.2008 100% i.e Rs.6,80,625/-"

2. As stipulated in the agreement to sell, 10% of the total sale consideration was payable on the date, the appellant would get license for developing the colony and the license was issued to him on

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17.08.2006, whereas the appellant paid Rs.1,00,000/- on 18.09.2006. The next payment of Rs.3,40,312.50 was due and payable on 18.08.2007 whereas the final payment was payable on 18.08.2008. It is the case of the appellant that he offered to pay the amount, however, respondent no.1 did not receive it. The suit was filed on 08.12.2009. Both the courts, on appreciation of evidence, have found that the plaintiff was not ready and willing as there is no explanation for delay of nearly more than 2 years from 18.08.2007, when allegedly defendant no.1 refused to receive the payment. It is evident that the plaintiff has failed to comply with the terms of the agreement.

3. The correctness of the judgment has been challenged in this appeal. Learned counsel representing the appellant submits that defendant no.1 and 3 were proceeded ex-parte. He further submits that appellant's project will stand jeopardized if the suit is not decreed. Moreover, the First Appellate Court has failed to decide all the issues.

4. This Court has considered the submissions made by the learned counsel representing the appellant.

5. The plaintiff's case is required to stand on its own legs. As per Section 16 of the Specific Relief Act, 1963 the plaintiff has to prove that it was always ready and willing to perform the essential terms of the contract. On appreciation of the evidence, both the courts have concluded that the appellant never offered the amount, which was payable on 18.08.2007. There is no explanation with regard to delay of more than 2 years in filing the suit, particularly when as per plaintiff's case, defendant no.1 refused to receive the amount on 18.08.2007.

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Hence, even if defendant no.1 did not contest the suit, defendant no.2 to 4 who did contest the suit have purchased the property by a registered sale deed dated 14.09.2007, have contested the suit.

6. While deciding the suit for the specific performance of the agreement to sell, this Court is not expected to facilitate the completion of appellant's project when it had not complied with the material terms of the contract.

7. As regards the last argument of the learned counsel representing the appellant, it may be noted that substantive issue between the parties was with regard to readiness and willingness on the part of the plaintiff to comply with the essential terms of the agreement. The First Appellate Court has dealt with aforesaid aspect in an elaborate manner while examining and analysing all the contentions put forth by the appellant and the judgment of the First Appellate Court is not perverse and arbitrary.

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

9. Hence, dismissed.

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

16.02.2024 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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