



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-369-2021 (O&M)

Date of Decision: 26.09.2024

SECRETARY-CUM-EO, MARKET COMMITTEE SIRSA

...Appellant

Vs.

KARTIK BANSAL AND ORS

...Respondents

2. RSA-377-2021 (O&M)

MARKET COMMITTEE ELLENABAD

...Appellant

Vs.

VIJAY KUMAR AND ORS

...Respondents

CORAM:- HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Padamkant Dwivedi, Advocate for the appellant

Mr. Khushagar Goyal, Advocate and
Mr. Ankur Dua, Advocate for respondent no. 1.

Mr. Sandeep Singh, Addl. AG, Haryana.

PANKAJ JAIN, J. (Oral)

These two appeals are directed against the impugned judgment and decree dated 25.03.2021 passed by the District Judge, Sirsa, Haryana, of even date, though in different suits. The issue involved in both the appeals is same and thus are being taken together for adjudication. For convenience, parties hereinafter are referred to in their original position in the suits i.e. defendants (herein appellants) and respondent (herein plaintiff).

2. The plaintiff is an allottee of a plot carved out by Market Committee, Sirsa, in New Grain Market, Mallekan, vide allotment letter dated 12.07.2006, pursuant to their bid dated 20.03.2006. The facts are not



much in dispute. The entire controversy relates to charging of extension fee by Market Committee, Sirsa, invoking Clause 14 of the allotment letter. The plaintiff file a suit claiming that he has been wrongly charged with the extension fee and sought refund thereof along with interest.

3. The suit was registered by the Market Committee claiming that in terms of Clause 14, allottee was required to pay extension fee and thus, there is no fault with the charging of Rs.50,000/- as extension fee. On the basis of pleadings of the parties, the suit filed by the plaintiff was put to trial for framing of issues. Both the Courts below found that since the case pleaded by the Committee was that the allottees were offered possession on 20.02.2007 vide letter dated 31.01.2007, but, they availed the possession only on 13.07.2013, thus, in terms of import of Clause 14, they were required to pay extension fee from the date of offer of possession, whereas they failed to prove any document on record, which would show that the possession was offered as claimed by the Market Committee.

4. Learned counsel for the appellant though admits that before the trial Court the letter/communication dated 31.01.2007 offering possession was not produced but the same was sought to be produced by way of additional evidence invoking Order 41 Rule 27 Cr.P.C. before the Appellate Court whereas the Appellate Court while deciding an appeal failed to pass any order in the said application.

5. Per contra, learned counsel for the allottee submits that the appeal was preferred by the Market Committee after unexplained delay of 178 days. A bare perusal of the judgment passed by the Lower Appellate



Court would reveal that the same was dismissed being time barred. Mr. Dwivedi joins issue and submits that from the bare perusal of paragraph no. 11 and 12 of the judgment, it is evident that the appeal was not only dismissed on the ground of limitation but also on merits.

6. I have heard learned counsel for the parties and have carefully gone through the records of the case.

7. There is merit in the submission made by learned counsel for the appellant that once the Lower Appellate Court was non-suited the appellant on the ground of delay, it ought not have tested the appeal and recorded findings on merits. However, keeping in view the amount involved in the present *lis*, I proceed to test the case of the appellant on merits in the present appeal instead of setting aside the judgment decree and demanding the same.

8. The entire issue involved in the *lis* is with respect to the amount of extension fee, the Market Committee has invoked Clause 14 which reads as under:

“14. The allottee shall construct the building as per approved design within a period of two years from the date of offer of possession of the plot, which may be extended further by the Market Committee, Sirsa upto a maximum period of three years on payments of extension fee Rs. 10,000/- Rs. 15,000/- and Rs. 20,000/- for the first, second and third year of extension respectively. In the event of such resumption, the Market Committee shall deduct 10% of the price of the plot and 15% interest on balance overdue installments and interest.”

9. Indeed the import of the Clause is that the allottee is required to



construct the building as per approved design within a period of two years from the date of offer of possession of the plot and not from the date he came in possession of the plot. However, admittedly, before the trial Court despite the fact that the defendant/appellant was in possession of the communication, no evidence was produced to show as to whether possession was offered to the plaintiff/allottee vide communication dated 31.01.2007 as pleaded. Thus, the trial Court rightly decreed the suit filed by the plaintiff. So far as invoking Order 41 Rule 27 before the Appellate Court is concerned, the provision reads as under:

“27. Production of additional evidence in Appellate Court.—

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or 1

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”



10. The appellant could have been granted opportunity to lead evidence only if he was able to specify that the said evidence sought to be now led by invoking Order 41 Rule 27 was not in his knowledge and could not have been produced before the trial Court. Not only that, even before this Court, ground has been raised that no order has been passed under Order 41 Rule 27, but, there is no application seeking permission to lead the evidence.

11. In view thereof, this Court does not find any reason to interfere in the finding recorded by the trial Court but whole case of the defendant was based upon date of offer of possession of the shop. However, no evidence was lead to prove the same. The appeals stand dismissed.

12. A photocopy of the order be placed on the file of other connected case.

(PANKAJ JAIN)
JUDGE

26.09.2024

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Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*