

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.3949 of 2023 (O&M)

Date of Order:04.01.2024

Ram Kanwar

.Appellant

Versus

Rajesh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vipin Pal Yadav, Advocate
Mr. J.S.Sohal, Advocate
for the appellant.

ANIL KSHETARPAL, J

1. In this regular second appeal, the defendant assails the correctness of the concurrent findings of fact arrived at by the courts below while dismissing his counter claim for refund of Rs.50,00,000/- which was paid pursuant to the agreement to sell with respect to the land measuring 4 acres @ Rs.1,10,00,000/- per acre.

2. Both the courts on appreciation of the evidence have come to a conclusion that the amount of Rs.50,00,000/- which was paid at the time of execution of the agreement to sell at once was in the form of earnest money and the same was liable to be forfeited as per the terms of the agreement to sell.

3. In fact, the appellant never filed any suit for specific performance of the agreement to sell. The plaintiffs (vendors) filed a suit for grant of decree of permanent injunction restraining the defendant from demanding the amount of earnest money which stood forfeited. It has come in evidence that the plaintiffs visited the office of Sub Registrar on 25.02.2011, the date on which the sale deed was to be registered as per the

agreement to sell. Thereafter, they sent notice to the appellant dated 26.02.2011, requesting him to come to the office of Sub Registrar on 08.03.2011. The respondent-proposed vendors again visited the office of Sub Registrar, however, the appellant did not turn up. On 09.03.2011, the proposed vendors sent a notice to the appellant specifying that the amount of earnest money of Rs.50,00,000/- stands forfeited. Even thereafter, the appellant did not file any suit. On 14. 03.2013, the proposed vendors filed the suit for grant of permanent injunction. Then it was only in response to the aforesaid suit, the appellant (defendant) filed the counter claim.

4. Both the courts, as already noticed, have found that the amount of Rs.50,00,000/- was paid as earnest money which was liable to be forfeited in case the proposed purchaser, namely, the appellant fails to perform his part of the agreement.

5. The learned counsel representing the appellant contends that Rs.50,00,000/- cannot be the earnest money because the earnest money can at the most be Rs.5,00,000/- or Rs.10,00,000/-. He submits that forfeiture of such huge amount of Rs.50,00,000/- is not justified.

6. This court has considered the submissions of the learned counsel representing the appellant.

7. It is evident that the amount of Rs.50,00,000/- in the present case only constitutes 12% of Rs.4,40,00,000/-the total sale consideration. It is not excessive. Moreover, Rs.50,00,000/- was paid at once at the time of the execution of the agreement to sell. Both the courts have found that in the agreement to sell, the amount of Rs.50,00,000/- was the specified amount of earnest money which was liable to be forfeited at once, if the proposed purchaser failed to perform his part of the agreement to sell.

8. The Hon'ble Supreme Court in Satish Batra vs. Sudhir Rawal, 2013(1) CCC 200, after reviewing the case law on the subject explained the expression "earnest money" in the following manner:-

"From a review of the decisions cited above, the following principles emerge regarding "earnest""

1) It must be given at the moment at which the contract is concluded.

2) It represents a guarantee that the contract will be fulfilled or, in other words, "earnest" is given to bind the contract.

3) It is part of the purchase price when the transaction is carried out.

4) It is forfeited when the transaction falls through by reason of the default or failure of the purchaser.

5) Unless there is anything to the contrary in the terms of the contract, on default committed by the buyer, the seller is entitled to forfeit the earnest."

9. It is evident that in the facts of the present case, the amount of Rs.50,00,000/- was the earnest money.

10. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

11. Dismissed accordingly.

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

January 04, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO