IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2552-2022 (O&M)
Reserved on : 21.02.2024
Pronounced on : 14.03.2024

AMIT KUKREJA ....Appellant

VERSUS

SHWETA SACHDEVA ....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Jhanji, Senior Advocate with
Mr. Gurmohan Singh Bedi, Advocate
Mr. Divanshu Jain, Advocate
Ms. Priyanka Kansal, Advocate and
Mr. Pawandeep Singh, Advocate for the appellant.

Mr. Gautam Khazanchi, Advocate
Mr. Viraj Gandhi, Advocate and
Mr. Vinayak Chawla, Advocate for the respondent.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the defendant-appellant challenging the judgment and decree dated 31.03.2016 passed by the Trial Court and judgment and decree dated 24.08.2022 passed by the First Appellate Court.

2. The plaintiff-respondent in the present case had put in appearance on 29.11.2022, thus, waiving service.

3. With the consent of learned senior counsel appearing on behalf of the defendant-appellant and learned counsel appearing on behalf of the plaintiff-respondent, the matter is being taken up for final hearing. Photocopies of the records of the Courts below were called for vide order dated 02.05.2023.

4. The brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for specific performance, mandatory injunction and permanent injunction. Relief of specific performance was sought qua the agreement to sell dated 26.10.2010. Mandatory injunction was sought directing the defendant-appellant to furnish the original documents of title pertaining to the suit property. Consequential relief of permanent injunction was sought restraining the defendant-appellant from alienating the suit property in any manner to any other person except the plaintiff-respondent. Alternative relief of recovery of Rs.1,34,40,000/- along with interest @ 12% per annum from the date of payment till realization was also sought. It was averred in the plaint that the plaintiff-respondent is a proprietor-business woman of M/s Ozone Steam Sauna and Pools, Gurugram which she handles along with her husband, namely, Sh. Rakesh Sachdeva. In all their dealings with the defendant-appellant, the plaintiff-respondent has been helped by her husband, who had been present with her throughout. It was averred that in the year 2010 the plaintiff-respondent was introduced to the defendant-appellant through the proforma defendants (given up on 05.09.2014). The defendant-appellant projected that he was the owner in possession and having absolute rights of the land and residential construction being No.260, Deer Wood, Block-S, Nirvana Country, South City-II Phase-II, Gurugram (hereinafter referred to as the 'suit property'). The defendant-appellant expressed his desire to sell the suit property to the plaintiff-respondent. Accordingly, an agreement to sell was entered into by the defendant-

appellant in favour of the plaintiff-respondent on 26.10.2010. The total sale consideration was settled at Rs.2,60,00,000/-. The plaintiff-respondent paid an amount of Rs.15,00,000/- as earnest money by way of two cheques and the balance sale consideration of Rs.2,45,00,000/- was to be paid in the following manner :

a) Rs.45,00,000/- on or before 28.10.2010

b) Rs.15,00,000/- on or before 28.03.2011

c) Rs.1,85,00,000/- at the time of signing of the final documents for sale.

It was further averred that the schedule of payment could not be adhered to strictly and the defendant-appellant accepted payments not strictly as per the schedule without any protest and, therefore, the schedule was waived by the defendant-appellant. It was further averred that since the plaintiff-respondent was taking some time to arrange for the funds, therefore, though the contract date was 11.04.2011 for registration of the sale deed, however, it was agreed by the defendant-appellant that he would give some more time to the plaintiff-respondent in case she was unable to arrange the funds by 11.04.2011. However, vide clause 4 of the agreement to sell, the defendant-appellant agreed to keep the agreement to sell in effect till such time the plaintiff-respondent was able to arrange the funds provided that she would pay interest @ 18% per annum on the delayed payment. It was further averred that the plaintiff-respondent paid an amount of Rs.1,34,40,000/- on different dates as mentioned in para No.7 of the plaint.

It was further averred that by 11.04.2011 the plaintiff-respondent was able to pay the principal amount of R.1,29,00,000/- to the defendant-appellant. Since there was no specific extension, the plaintiff-respondent could take more time to conclude the agreement but she would have to pay interest @ 18% per annum on the delayed payment, as agreed. It was further averred that a sum of Rs.5,40,000/- was paid between 11.04.2011 to 30.06.2011 as interest on the delayed payment. The last installment of the interest was paid on 30.06.2011. It was further averred that it was the requirement as per clause 7 of the agreement to sell that the defendant-appellant would execute all such documents as may be required and necessary in connection with the suit property. It was further the case that the plaintiff-respondent told the defendant-appellant that she had applied for a bank loan so as to pay for the purchase of the suit property and the plaintiff-respondent's further stand was that the defendant-appellant had not given any receipt qua the cash payments stating that he would give the same shortly. However, only one receipt dated 16.05.2011 was given to the plaintiff-respondent to the effect that he had received a sum of Rs.3,50,000/- 'as discussed'. It was further the case set up that the defendant-appellant accepted the sum of Rs.5,50,000/- as interest between 16.05.2011 to 30.06.2011 on the sum of Rs.1,31,00,000/- i.e. the balance payable, @ 18% per annum. It was further averred that after taking the money the defendant-appellant was delaying the paper work. On 09.07.2011, in their efforts of performing due diligence for advancing loan to the plaintiff-respondent, defendant No.2- Ravi Kant Parnani in the suit, asked the plaintiff-respondent to show the original documents, however, the defendant-appellant refused to show the documents thereby jeopardizing the loan of the plaintiff-respondent. It was further averred that the plaintiff-respondent was still ready and willing to perform her part of the contract.

5. On notice the defendant-appellant filed his written statement. In the written statement the factum of the agreement to sell was admitted, however, it was stated that the same stood terminated on account of commission of intentional and willful breaches. It was further the stand taken that the sale consideration was Rs.3,00,00,000/- and that there was an agreement of cancellation dated 24.12.2010 and that the plaintiff-respondent had omitted any reference to the same. It was further the stand taken in the written statement that after the agreement of cancellation was prepared on 24.12.2010, the plaintiff-respondent conveyed to the defendant-appellant that by 11.04.2011 she would discharge her entire financial obligation and make payment of the entire sale consideration. It was under these circumstances that the defendant-appellant conveyed to the plaintiff-respondent that he would be compelled to terminate the contract on 11.04.2011 in case she failed to make the payment of the entire sale consideration. It was further averred that at that time the attention of the plaintiff-respondent was drawn to clause 4 of the agreement to sell in which the purchaser was liable to pay interest @ 18% per annum for the delay period in making the payment of the sale consideration. It was further the stand taken that after waiting for considerable time, it was categorically

communicated to the plaintiff-respondent that in case she failed to make the payment by 30.06.2011 then the defendant-appellant would proceed to terminate the contract. Accordingly, on 01.07.2011, due to intentional and willful failure, the agreement to sell dated 26.10.2010 was terminated.

6. Replication was filed by the plaintiff-respondent reiterating her pleas taken in the plaint and controverting those stated in the written statement.

7. On the basis of the pleadings of the parties, the following issues were framed :

(i) Whether the plaintiff remains ready and willing to perform her part of the contract dated 26.10.2010 ? OPP

(ii) Whether the plaintiff is entitled to relief of mandatory injunction for issuance of directions to defendant No.1 to furnish original documents so required by defendant No.3 for completion of loan formalities? OPP

(iii) Whether the plaintiff is entitled to a decree of permanent injunction restraining the defendants from alienating the suit property to any other person except the plaintiff ? OPP

(iv) Whether the plaintiff has no neither locus standi and nor cause of action to file the present suit ? OPD

(v) Whether the plaintiff is bound by his own act and conduct, omission, commission acquiescence and latches ? OPD

(vi) Whether the suit of the plaintiff has not been properly valued for the purposes of Court fee and jurisdiction ? OPD

(vii) Relief.

8. The Trial Court vide judgment and decree dated 31.03.2016 decreed the suit of the plaintiff-respondent for alternative relief of recovery of Rs.1,34,40,000/- along with interest @ 8% per annum from the date of the last payment i.e. 30.06.2011 till final payment. Aggrieved by the said judgment and decree an appeal was preferred by the defendant-appellant which appeal was dismissed vide judgment and decree dated 24.08.2022. Hence, the present regular second appeal.

9. Learned senior counsel appearing on behalf of the defendant-appellant would contend that in the present case there is no challenge to the cancellation of the agreement to sell vide cancellation agreement dated 24.12.2010 (Ex.X-2). It is further the contention that there is no receipt regarding the cash payment and that only an amount of Rs.61,20,000/- was paid by cheque/RTGS and that the defendant-appellant was even till today

willing to pay the said amount. It is further the contention of the learned senior counsel that the agreement to sell dated 26.10.2010 (Ex.P-3) was cancelled vide cancellation agreement (Ex.X-2), which is an admitted fact. That being so, the present suit itself was not maintainable as held by the Hon'ble Supreme Court in the case of **I.S. Sikandar (D) By LRs Vs. K. Subramani & Ors. [2014 (1) RCR (Civil) 236]**. Learned senior counsel has further relied upon the judgment of this Court in the case of '**Padmawati & Ors. Vs. Kulwant Rai & Ors. [2008 (1) RCR (Civil) 605]** to contend that pleadings have to be read as a whole and the intention of the party has to be gathered, primarily, from the tenor and term of his pleadings taken as a whole. Learned senior counsel has further relied upon the judgment of the Hon'ble Supreme Court in the case of **Mangala Waman Karandikar (Dead) through LRs Vs. Prakash Damodar Ranade [(2021) 6 SCC 139]** on interpretation of deeds and documents and to contend that the intention of the party is to be gathered from the recital contained in the agreement deed. Further reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Placido Francisco Pinto (D) by LRs & Anr. Vs. Jose Francisco Pinto & Anr. [2021 SCC Online SC 842]** to contend that oral evidence of a written agreement is excluded except when it is sought to be alleged the document as a sham transaction. Reliance has also been placed on the judgment of this Court in the case of **Rakesh Vs. Suresh Chand [2021 (1) RCR (Civil) 557]** to contend that the Appellate Court has to critically examine the reasons given in the impugned judgment before reversing it. Reliance has also been placed on the judgment of this Court in the case of **Kullu Ram Vs. Punjab Wakf Board & Ors. [2016 (3) RCR (Civil) 977]** to contend that the plaintiff has to stand on his own legs and he cannot take the benefit of the weakness of the defendant.

10. *Per contra*, learned counsel appearing on behalf of the plaintiff-respondent has contended that in the written statement there is no specific denial to para No.7 of the plaint wherein the payments made have been stated. It is further the contention that in the said paragraphs it has been stated that as far as the last payment of Rs.70,000/- in cash is concerned, the same was made on 13.06.2011 along with a cheque of Rs.1,20,000/- and no cash payment was made on 30.06.2011. Learned counsel has further contended that there was no question of challenging the cancellation agreement (Ex.X-2) since the said agreement was never acted upon. Infact, even as per the written statement the stand taken by the defendant-appellant was that he would convey to the plaintiff-respondent that he would be compelled to terminate the contract on 11.04.2011 in case the plaintiff-respondent failed to make the payment of the entire sale consideration. It is further the contention of the learned counsel for the plaintiff-respondent that the defendant-appellant in his cross-examination has clearly admitted the payment of the amount as stated by the plaintiff-respondent in the plaint. In support of his arguments, learned counsel for the plaintiff-respondent has relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Sushil Kumar Vs. Rakesh Kumar [(2003) 8 SCC 673]** to contend that

non-specific or an evasive denial to the contents of the plaint are deemed to be an admission as per Order VIII Rules 3, 4 and 5 CPC. Reliance has also been placed on the judgment passed by the Hon'ble Supreme Court in the case of **Satish Batra Vs. Sudhi Rawal [(2013) 1 SCC 345]** to contend that advance money paid towards purchase of a property cannot be forfeited in the absence of an express term of the contract to that effect. Reliance has also been placed upon the judgments in the cases of **Harpreet Kanwar Vs. State of Punjab [2016 SCC Online P&H 11094]; Chamkaur Singh Vs. State of Punjab [2016 SCC Online P&H 8758]; Ravi Chaudhary Vs. Kanta Ahuja [2017 SCC Online Del. 8525]; Naveen Garg Vs. Rajrani Garg [2015 SCC Online Del. 11259] and Karan Dem Vs. Jyoti Gandhi [2021 SCC Online Del. 4654]** to contend that mere response as "matter of record" by a defendant amounts to an admission.

11. I have heard the learned counsel for the parties.

12. In the present case the execution of the agreement to sell dated 26.10.2010 is admitted. According to the plaintiff-respondent she is entitled to specific performance or refund of the amount paid by her while as per the defendant-appellant he has forfeited the amount received since the plaintiff-respondent did not complete the transaction. The plaintiff-respondent in para No.7 of the plaint referred to the payments made on various dates towards principal as well as interest which according to her totalled Rs.1,34,40,000/-. In the amended written statement, in reply to para No.7 of the plaint, there is no denial by the defendant-appellant to the amount paid by the plaintiff-

respondent and the amount received by the defendant-appellant. Only the date of receipt of Rs.70,000/- in cash was disputed as being 13.06.2011 and not 30.06.2011. The defendant-appellant has taken a plea of forfeiture on account of termination of the agreement to sell.

13. There is no forfeiture clause in the agreement to sell dated 26.10.2010 (Ex.P3). Learned senior counsel appearing on behalf of the defendant-appellant has laid much stress on the document termed as an agreement for cancellation dated 24.12.2010 (Ex.X-2) to contend that the transaction stood cancelled and the amount was validly forfeited by the defendant-appellant. However, the facts disclose that this agreement for cancellation was never acted upon by the parties. The said agreement for cancellation is dated 24.12.2010 but thereafter, admittedly, payments were received by the defendant-appellant even on 13.06.2011 as stated in para No.7 of the written statement. The defendant-appellant in his cross-examination also admitted the receipt of Rs.70,000/- in cash along with cheque of Rs.1,20,000/-, though on 13.06.2011 and not on 30.06.2011. In his cross-examination the defendant-appellant also admitted that he had received approximately Rs.1,00,00,000/- (rupees one crore) from the plaintiff-respondent. Thus, it cannot be accepted that the agreement to sell stood cancelled and there was therefore a necessity for the plaintiff-respondent to challenge the cancellation of agreement dated 24.12.2010. The decision in the case of **I.S. Sikandar** (supra) relied upon by the learned senior counsel for the defendant-appellant is distinguishable as in that case

the agreement of sale was terminated as per a notice dated 28.03.1985 and it was thus held that there was a termination of the agreement of sale between the parties. However, in the present case even after the agreement of cancellation dated 24.12.2010 payments were made by the plaintiff-respondent and accepted by the defendant-appellant without demur.

14. The agreement to sell dated 26.10.2010 (Ex.P3) itself does not have any clause for forfeiture. The agreement for cancellation dated 24.12.2010 (Ex.X-2), though was never acted upon, also has no forfeiture clause and rather the defendant-appellant agreed to return to the plaintiff-respondent the amount received by him, after selling the suit property. Thus, there was never any covenant between the parties that the defendant-appellant could forfeit or retain the amount received by him from the plaintiff-respondent. The decisions in **Mangala Waman** (supra) and **Placido Francisco** (supra) relied upon by the defendant-appellant are therefore not applicable to the present case.

15. The second argument of the learned senior counsel for the defendant-appellant is that the entire pleadings have to be read as a whole and the intention of the party has to be gathered primarily from the tenor and term of the pleadings taken as a whole. With this argument it is submitted that a conjoint reading of the written statement, the agreement to sell and the cancellation of agreement make it clear that the defendant-appellant rightly forfeited the amount. There can be no quarrel with the proposition of law as laid down in the case of **Padmawati** (supra). However, a perusal of the

written statement read as a whole conjointly with the pleadings in the plaint and the evidence on the record, makes it amply clear that the receipt of money totaling Rs.1,34,40,000/- has not been denied by the defendant-appellant. The defendant-appellant has failed to point out a single clause in the two deeds (agreement to sell and cancellation of agreement) whereunder he could forfeit the amount received. It is trite that evasive denials are deemed to be an admission. In view of the admissions in the written statement as well as the admissions made in the cross-examination by the defendant-appellant, it is amply clear that the amounts, as stated in the plaint, were received by him.

16. The Hon'ble Supreme Court in the case of **Thangam & Anr. vs. Navamani Ammal [2024 SCC OnLine SC 227]** has held as under :

> *"35. Order VIII Rules 3 and 5 CPC clearly provides for specific admission and denial of the pleadings in the plaint. A general or evasive denial is not treated as sufficient. Proviso to Order VIII Rule 5 CPC provides that even the admitted facts may not be treated to be admitted, still in its discretion the Court may require those facts to be proved. This is an exception to the general rule. General rule is that the facts admitted, are not required to be proved.*
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> *36. The requirement of Order VIII Rules 3 and 5 CPC are specific admission and denial of the pleadings in the*

plaint. The same would necessarily mean dealing with the allegations in the plaint para-wise. In the absence thereof, the respondent can always try to read one line from one paragraph and another from different paragraph in the written statement to make out his case of denial of the allegations in the plaint resulting in utter confusion.

37. In case, the defendant/respondent wishes to take any preliminary objections, the same can be taken in a separate set of paragraphs specifically so as to enable the plaintiff/petitioner to respond to the same in the replication/rejoinder, if need be. The additional pleadings can also be raised in the written statement, if required. These facts specifically stated in a set of paragraphs will always give an opportunity to the plaintiff/petitioner to respond to the same. This in turn will enable the Court to properly comprehend the pleadings of the parties instead of digging the facts from the various paragraphs of the plaint and the written statement.

38. The issue regarding specific admission and denial of the pleadings was considered by this Court in Badat and Co. Bombay v. East India Trading Co. While *referring to Order VIII Rules 3 to 5 of the CPC it was opined that the aforesaid Rules formed an integrated Code dealing with the manner in which the pleadings are to be dealt with. Relevant parts of para '11' thereof are extracted below:*

> *"11. Order 7 of the Code of Civil Procedure prescribes, among others, that the plaintiff shall give in the plaint the facts constituting the cause of action and when it arose, and the facts showing the court has jurisdiction. The object is to enable the defendant to ascertain from the plaint the necessary facts so that he may admit or deny them. Order VIII provides for the filing of a written-statement, the particulars to be contained therein and the manner of doing so;*
>
> *XXXXXXXXX*
>
> *These three rules form an integrated code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. The written statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so*

evasively, but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary."

39. The matter was further considered by this Court in Lohia Properties (P) Ltd., Tinsukia, Dibrugarh, Assam v. Atmaram Kumar after the 1976 Amendment Act in CPC whereby the existing Rule 5 of Order VIII of the CPC was numbered as sub-rule (1) and three more sub-rules were added dealing with different situations where no written statement is filed. In paras 14 and 15 of the aforesaid judgment, the position of law as stated earlier was reiterated. The same are extracted below:

"14. What is stated in the above is, what amount to admit a fact on pleading while Rule 3 of Order 8 requires that the defendant must deal specifically with each allegation of fact of which he does not admit the truth.

15. Rule 5 provides that every allegation of fact in the plaint, if not denied in the written statement shall be taken to be admitted by the defendant. What this rule says is, that any allegation of fact

> *must either be denied specifically or by a necessary implication or there should be at least a statement that the fact is not admitted. If the plea is not taken in that manner, then the allegation shall be taken to be admitted."*

17. In **Sushil Kumar's** case (supra) it was held that *"The pleadings in an election petition must likewise be construed strictly. The provisions of the Code of Civil Procedure apply to an election petition. The election petition is not an action at law or a suit in equity. It is a special proceeding and even withdrawal of an election petition may not be permitted"*. In terms of Order 8 Rule 5 CPC, as has been noticed above, every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant is to be taken to be admitted except as against a person under disability. Therefore, there has to be a specific denial of allegation of fact made in the plaint.

18. The Trial Court declined the relief of specific performance to the plaintiff-respondent on the ground that she was not in a position to pay the balance sale consideration. No loan from the bank was also proved to have been sanctioned in her favour. The Trial Court found that :

> *"20. It is also worth considering that the plaintiff did not adduce and prove the copy of her loan application or any other document to show that she indeed applied for any loan for purchasing the suit property.*

21. Though, the plaintiff tendered a copy of letter Ex.-P6 purported to be issued by S.B.I, New Delhi to plaintiff qua the suit property, but this letter Ex.-P6 has not been proved as no bank official was examined.

22. Thus, the corollary is that the plaintiff would not have been able to pay the complete balance sale consideration to defendant in the absence of any Bank loan. No such bank loan has yet been sanctioned to the plaintiff, neither in this case the plaintiff has been able to prove that she had applied for such a bank loan. Nor it is the case of plaintiff that he had any other source from which he would have arranged money for payment of sale consideration. Thus, doubts appear on the plaintiff's financial capacity to pay entire balance sale consideration on the date of filing of the suit.

23. In view of the above discussion, I am of the opinion that the discretionary relief of specific performance of agreement to sell dated 26.10.2010 (Ex.P3) is not made out in the present case. However, the Plaintiff would still be entitled to seek refund of payment of any money made by him to defendant pursuant to agreement to sell dated 26.10.2010 (Ex.P3).”

The plaintiff-respondent did not challenge these findings of the Trial Court and did not prefer any appeal before the First Appellate Court. The suit was decreed to the extent that the defendant-appellant was directed to pay to the plaintiff-respondent an amount of Rs.1,34,40,000/- along with interest at the rate of 8% per annum from the date of last payment i.e. 30.6.2011 till full payment.

19. Reliefs in a suit for specific performance are founded on the principle of good conscience and grant of effective relief. Both the Courts have directed the defendant-appellant to pay to the plaintiff-respondent an amount of Rs.1,34,40,000/- along with interest at the rate of 8% per annum. This amount of Rs.1,34,40,000/- was computed in the plaint, without any denial in the written statement, as Rs.1,29,00,000/- towards principal and Rs.5,40,000/- towards interest. Further, out of this total amount of Rs.1,34,40,000/- only Rs.61,20,000/- was paid by cheque/bank transfer. More than 50% was paid in cash. By allowing interest on this cash component the Court would be putting a premium on violation of the law by the parties. The plaintiff-respondent cannot be allowed to unjustifiably get enriched. Huge, unaccounted cash transactions in property dealings need to be curbed.

20. Thus, this Court deems it appropriate to modify the judgements and decrees of the Courts below to a limited extent that though the defendant-appellant shall be liable to pay Rs.1,34,40,000/- to the plaintiff-respondent, he shall be liable to pay interest at the rate of 8% per annum

from the date of last payment i.e. 30.6.2011 till full payment only on the amount of cheque payments received by him. No interest shall be payable by the defendant-appellant on the cash component received by him though he shall pay the same to the plaintiff-respondent. With this modification, the present regular second appeal is disposed off.

14.03.2024 **(ALKA SARIN)**
Aman Jain **JUDGE**

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No