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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **RSA 15/2023 and CM APPL. 2096/2023**

USHA RANI ALIAS DEVI .....Appellant

Through: Mr. Dileep Kr. Mishra, Adv.

versus

RAJ KUMAR GUPTA & ANR. .....Respondents

Through: Mr.Girish Kumar and Mr.R.S. Bind, Advocates.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% 04.10.2024

1. The appellant in the instant appeal is aggrieved by the judgment and decree dated 01.09.2022 passed in Regular Civil Appeal No. 26/2022, by the learned Addl. District Judge-01, South West, Dwarka Courts, New Delhi.

2. The facts of the instant case would show that the plaintiff/appellant instituted the suit for recovery of Rs. 2,00,000/- (Rupees Two Lakhs) alongwith with an interest @ 18% p.a. and future *pendente lite* interest against the respondent/defendant. The said Civil Suit came to be dismissed *vide* judgment and decree dated 22.03.2022 by the trial court.

3. Being aggrieved by the judgment and decree of the trial court, the plaintiff/appellant had preferred an appeal which was decided *vide* the impugned judgment and decree dated 01.09.2022. The first appellate court set aside the trial court judgment/decree and modified its finding to the extent of holding the defendant/respondent liable to return the amount of

Rs.1,80,000/- (Rupees One Lakh Eighty Thousand) to the plaintiff/appellant after forfeiture of nominal amount Rs. 20,000/- .

4. Learned counsel for the plaintiff/appellant submits that the impugned judgment and decree is illegal and improper, in as much as, the suit of the plaintiff/appellant has not been decreed in its entirety and, instead, only a part decree has been granted in his favour.

5. Learned counsel while taking this Court to the proposed substantial question of law submits that the trial court as well as the first appellate court has not considered the fundamental aspect of legality of the agreement to sell executed between the parties. According to the learned counsel, the defendant/respondent was not legally entitled to execute the agreement to sell and accordingly, the trial court and the first appellate court, both have failed in not fully decreeing the civil suit. He also submits that the defendant/respondent, in the instant case, has committed a fraud by executing the agreement to sell when he was not legally entitled to do so.

6. I have considered the submissions made by learned counsel appearing on behalf of the parties and also perused the record.

7. The First Appellate Court in its impugned judgment and decree dated 01.09.2022 *vide* paragraph nos. 27 to 29 has held as under:-

> *"27. It may be noted that the language of Section 74 of the Contract Act that "whether or not actual loss or damage is proved to have been caused thereby" means only that where it is difficult or impossible to prove loss caused by the breach of contract then the liquidated damages/amount can be awarded but where nature of contract is such that loss caused because of breach can be assessed and so proved then in such cases loss suffered must be proved to claim the liquidated damages of earnest money. The liquidated damages are awarded where it is difficult to prove exact loss or damage caused as a result of breach of contract. Even where liquidated damages can be awarded under section 74 of the Act because loss or damages cannot be proved in a contractual*

breach yet if the liquidated damages (earnest money) are a penalty by its nature then for the liquidated damages amount or earnest money amount forfeiture cannot be granted and that only reasonable amount is allowed as damages with the figure of liquidated damages being the upper limit.

28. As a sequel to the above said discussion, it can be safely concluded that neither the plaintiff, nor the defendant has performed their part of the contract as per the terms and conditions of the said agreement, therefore, the defendant only would have been entitled to forfeit the nominal amount of the advance money/earnest money as per the dicta of the law laid down in ***Fateh Chand (supra).*** *Plaintiff, in the present case, has paid Rs. 2,00,000/- as earnest money and, thereafter, paid Rs. 1,80,000/- as advance money, as discussed in the foregoing paras of this judgment, defendant is, therefore, entitled to forfeit the nominal amount only.*

29. From the above discussion, this court is of the opinion that the ld Trial Court has not rightly approached the material on record as well as proportions of law as per the mandate of section 73 & 74 of the Act read with dicta of law laid down by the superior courts, However, as regards to the forfeiture of the bayana amount, the defendant can only forfeit the nominal amount of Rs, 20,000/- only, as per the mandate of law laid down in ***Fateh Chand (supra),*** *as stated above, therefore, the defendant is liable to return the amount of Rs, 1,80,000/- to the plaintiff. The impugned judgment/decree is set aside and the finding recorded by ld. Trial court is modified to the extent as stated above. This appeal is partly allowed and disposed off accordingly."*

8. The Court has clearly found that the forfeiture of the bayana amount of Rs. 20,000/- was rightly forfeited by the defendant/respondent. However, on account of failure of both the parties to honour their respective parts in the execution of the sale deed, the plaintiff/appellant has been held entitled for return of amount of Rs.1,80,000/- after deduction of the bayana amount. The reasoning given by the first appellate court is found to be in terms of the provisions of Section 74 of the Indian Contract Act, 1872.

9. The Court, therefore, does not find any material perversity in the

impugned judgment/decree. The, appeal therefore, does not raise any substantial question of law to be adjudicated upon.

10. Accordingly, the appeal stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J

OCTOBER 4, 2024
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