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

+ **RSA 71/2023 & CM APPL. 17115/2023**

DELHI DEVELOPMENT AUTHORITY

.....Appellant

Through: Mr. Bharat Gupta, Ms. Akshita Harjai
and Mr. Saurabh Khanijon, Advs.

versus

SMT. SAVITRI DEVI

.....Respondent

Through: Mr. Ranjit Singh Daler and Mr.
Rahul, Advs.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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10.12.2024

1. This appeal has arisen out of the impugned judgment and decree dated 05.12.2022 passed in RCA No.23/2014 dismissing a regular first appeal filed by the appellant/defendant against the judgment and decree passed by Civil Judge, West, Tis Hazari Courts dated 04.07.2013 in CS 100/2006 decreeing the civil suit filed by the respondent/plaintiff.
2. Learned counsel appearing for the appellant submits that the impugned judgment and decree suffer with material illegality inasmuch as the Courts below had gravely erred in decreeing the civil suit for possession without there being proper payment of the Court fees by the respondent/plaintiff. According to learned counsel, the court fees of Rs.130/- was paid and the suit was not valued for the possession.
3. In addition, learned counsel also tries to find various factual



inaccuracies and inconsistencies in the view taken by the Courts below.

4. The Court has considered the submissions made by learned counsel appearing for the parties and perused the record.

5. A perusal of the judgment and decree passed by the trial court would indicate that the trial court has essentially placed reliance on the case of **Arun Gupta v. Delhi Development Authority**¹ and has held that so long as the possession of the flat in question was not handed over to the respondent/plaintiff, the DDA ought not to have insisted for the payment of installments. It is, thus, held that the cancellation by the DDA on account of non-payment of the installment suffers with material illegality, and, therefore, the suit came to be decreed.

6. The aforesaid findings have been affirmed by the first Appellate Court by the impugned judgment and decree. Paragraph Nos. 11 to 17 where the first Appellate Court deals with the submissions made by the appellant, reads as under:-

"11. I have perused the impugned judgment of the Ld. Trial Court as well as the citation referred above. In the opinion of this court, the interpretation done by the Ld. Counsel for the defendant is misconceived. It is an admitted case of the parties that the flat was allotted by the defendant to the plaintiff on a hire purchase basis. The Hon'ble High Court has held as under in the Arun Gupta case (supra):

"The expression "hirer" has been defined to mean "the person who obtains and has obtained the possession of goods from a owner under a hire purchase agreement.....". "Hire Purchase Agreement" is defined to include an agreement under which "possession of the goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical instalments...

12. Hence, when a flat is allotted on hire purchase, delivery of possession is a condition pre requisite to the said agreement. Unless the possession is delivered, the hire purchase agreement does not come into effect. This was also the intention of the defendant while issuing the

¹2008 SCC OnLine Del 930.



allotment letter Ex.PW1/2, as is apparent from the conditions, which are reproduced as under:

“2. Payment Terms: You shall be liable to pay instalment indicated in column no. 1 together with Fire Risk, Service Charges, Ground Rent for 2 years and Share Money to become member of Registered Agency after adjusting Registration Deposit and Interest accrued thereon.

3. You would be required to pay monthly installments at the rate indicated below. During hire purchase tenancy period, your status shall be that of tenant. In addition to payment of stipulated installments, you shall be liable to pay ground rent arrears specified below.”

13. The said conditions are mentioned in the allotment letter Ex.PW1/2 itself. Perusal of the same shows that the status of the allottee was that of a tenant at the beginning of the hire purchase tenancy. Further, it is very clearly mentioned that the allottee was to pay rent along with the monthly installments. Delivery of possession of a property which is given on tenancy is a requisite condition for the creation of a tenancy. Till the possession of the property is not delivered to the tenant, he cannot be made liable to pay the rent, and in this case, the monthly installments as well. This has been fortified by the observations of the Hon'ble High Court in the Arun Gupta case (supra) as under:-

“the allottee takes a flat on hire purchase basis since he is not in a position to make payment of the full price of the flat as a lump sum. Normally, an allottee who is possessed of the requisite funds to pay the entire price of the flat allotted to him, would accept the allotment on cash down basis or would get the allotment converted to one under the cash down payment scheme, if permissible. This is so because under the hire purchase scheme the allottee has to pay the instalments which have the inbuilt element of interest. The purpose of granting the facility to the allottee of taking a flat under the hire purchase scheme is to provide comfort to the allottee of making payment in easy instalments, though with interest, since he may not be possessed of the entire funds to make a lump sum payment. The allottee may, by obtaining possession of the flat, by making the initial deposit either use and occupy the flat himself, and thereby save on rent on other charges that he may be incurring by residing in some other premises, or may let out the same and derive income from the flat. In either case he would augment his resources to be able to make payment of the monthly instalments under the hire purchase scheme. However, if the DDA itself fails to offer possession of the flat to the allottee, thereby depriving the allottee the right to occupy, use and exploit the allotted flat, and then demands that the allottee makes payment of 50% of the overdue instalments in a lump sum alongwith the penal interest before possession is offered, in my view, the DDA



strikes on the fundamental premise of the hire purchase scheme. Moreover, by requiring payment of 50% of the overdue instalments and penal interest thereon, the respondent DDA, in fact, seeks to take advantage of its own wrongs and failure which cannot be permitted, and is highly unjust.”

14. The Hon'ble High Court referred to judgment titled as *Prabha Arora v. DDA (2002) V AD Delhi 290*, where the facts were similar to the facts before this court. While relying on that judgment, it was held that:

“In *Prabha Arora v. DDA (2002) V AD Delhi 290*, the petitioner had duly paid the amount as to when payable under the allotment-cum-demand letter. The petitioner was required to pay only the hire purchase instalments. The DDA wrongfully cancelled the allotment and hence the petitioner could not make payment in respect of the instalments. The respondent subsequently accepted their error and made allotment of flat to the petitioner. However, the respondent claimed interest on the overdue instalments @ 12% p.a. The Court rejected this claim of the respondent by holding that in the circumstances of the case the petitioner could not be burdened with interest as there was no unpaid amount when the allotment was cancelled. In the present case as well, there is no unpaid amount, since the respondent had failed to offer possession to the petitioner for no fault of hers.”

15. In fact, in the said judgment, the Hon'ble Court refused to grant interest to the DDA. Hence, in the opinion of the court, the Ld. Trial Court has correctly relied upon the said judgment while decreeing the suit of the plaintiff. It is argued that the cancellation of allotment vide letter dated 25.09.2002 was never challenged by the plaintiff. Though no separate relief of declaration was sought by the plaintiff, the whole suit of the plaintiff was based on the premise that the cancellation was unjustified. The reliefs have been sought by the plaintiff for the enforcement of the allotment letter Ex.PW1/2. Hence, in the opinion of the court, this ground is also of no consequence.

16. Another ground which has been taken is that the defendant did not issue any allotment letter in respect of Flat no. C-110, Pocket G & J (U), Pitampura, Delhi in favour of the plaintiff. Perusal of record shows that indeed no allotment letter was issued by the DDA in respect of Flat no. C-110. The allotment letter was for Flat no. C-86. The plaintiff has mentioned in the plaint that when the allotment of flat no. C-86 was cancelled by the defendant, she was orally informed that the Flat no. C-110 would be allotted to her, but the same was not done. In view of the same, as discussed above, the defendant was in the wrong to cancel the allotment of the Flat no. C-86. Hence, even if the said flat is now not available with the defendant, another flat similar in dimensions, locality and facilities be allotted to the plaintiff. 17. Another ground which has been taken is that the Ld. Trial Court has not considered the fact that suit was barred under Section 53B, DD Act. However, the same has been duly



considered by the Ld. Trial Court and the said issue has been decided by the Ld. Trial Court in the favour of the plaintiff. Hence, in view of the above discussion, this court is of the opinion that the Ld. Trial Court has rightly decreed the suit of the plaintiff. The impugned judgment requires no interference from this court. Hence, the said judgment is upheld. The appeal is dismissed. 18. As directed by the Ld. Trial Court, the defendant is directed to immediately hand over the possession of the suit property i.e. flat no. C- 86, G-8 Pocket, Pitampura, New Delhi to the plaintiff. In case, the said flat is now not available with the defendant, another flat similar in dimensions, locality and facilities be allotted to the plaintiff, on the same terms as the allotment letter Ex.PW1/2. Further, the defendant shall also comply with the observations of the Hon'ble High Court in the judgment comply with the observations of the Hon'ble High Court in the judgment titled as Prabha Arora v. DDA (2002) V AD Delhi 290.”

7. It is thus seen that the fact that the cancellation of the flat has taken place only on account of non-payment of installment remains undisputed and, accordingly, the findings are unassailable.

8. With respect to the Court fees and the valuation concerned, the Court finds that the aforesaid argument has not been raised neither before the first Appellate Court nor efforts were made by the appellant before the Trial Court for framing the issues on the said issue.

9. The Supreme Court in the case of **Chandrabhan (Deceased) Through Lrs. and Others v. Saraswati and Others**² has clearly held that the substantial question of law must arise under the facts of the case. The substantial question of law cannot be of general importance as held under:-

“32. To be ‘substantial’, a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law “involving in the case” there must be first, a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High

² 2022 SCC OnLine 1273



*Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case or not, the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis. (See **Santosh Hazari v. Purushottam Tiwari**)."*

10. It is thus seen that under the aforesaid circumstance, no substantial question of law arises to be adjudicated before this Court.
11. Accordingly, the appeal fails and shall stand disposed of.

PURUSHAINDRA KUMAR KAURAV, J

DECEMBER 10, 2024/P/AM