



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-391-C-2023, CM-392-C-2023
CM-393-C-2023 in/and
RSA-114-2023 (O&M)
Date of decision : 12.03.2025

Estate Officer, Haryana Urban
Development Authority

..... Appellant

versus

Surinder Kumar Garg, Advocate

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Deepak Sabherwal, Advocate
for the appellant.

PANKAJ JAIN, J. (ORAL)

CM-391-C-2023

This is an application seeking condonation of delay of 4 days in
filing the present appeal.

For the reasons recorded in the application, this Court is
satisfied that the applicant-appellant has shown sufficient cause to condone
the delay in filing the appeal.

Application is allowed. Delay of 4 days in filing the appeal is
condoned.

CM-392-C-2023

Application is allowed, as prayed for.

Main case

1 Defendant is in appeal aggrieved of judgment and decree dated
12.05.2022 passed by Addl. District Judge, Sirsa, Haryana whereby



judgment and decree passed by Civil Judge, Sr. Division, Dabwali has been upheld dismissing the appeal preferred by the appellant-defendant.

2 For convenience, parties hereinafter are referred to by their original position before the Court of the First Instance i.e. appellant as defendant and respondent as plaintiff.

3 Plaintiff filed suit seeking decree of declaration to the effect that letter bearing No.2473 of 05.09.2016 and letter bearing No.92092 of 17.10.2016 regarding cancellation of plot bearing No.165 GP Sector RA-III, M.T. Kalanwali in the name of Om Parkash Garg son of Shri Durga Dass Garg is illegal, null and void and binding on the rights of the plaintiff. Further prayer was for grant of mandatory injunction directing defendant to return earnest money of Rs.1,24,900/- with interest. Plaintiff claimed that his father Om Parkash Garg applied for allotment of plot in a reserved category of plots meant to be allotted to Advocates. He deposited an amount of Rs.1,24,900/- on 20.05.2014 along with an application. Om Parkash Garg unfortunately fell seriously ill and was hospitalized from June, 2015 till 08.10.2015. Unfortunately he expired on 21.10.2015. On the same day defendant issued allotment letter. Even though allotment letter was dated 19.10.2015, but the same was dispatched only on 21.10.2015 at 11.49 AM and he passed away at 02.45 AM. Even before the said letter could be dispatched Om Parkash Garg had already passed away. The allotment letter was followed by letter bearing No.2473 dated 05.09.2016 and letter No.92092 dated 17.10.2016 whereby the allotment has been ordered to be cancelled claiming forfeiture of the earnest money invoking covenant contained in condition No.4 of the allotment letter. Plaintiff, thus claimed



that there being no concluded contract and Om Parkash Garg having deceased even prior to the time the letter of allotment was dispatched, forfeiture of earnest money was bad.

4 Suit was contested by the defendant who defended forfeiture of earnest money relying upon the covenant as contained in condition No.4 & 5 of the allotment letter. Based upon the pleadings following issues were framed :-

- “1. Whether the plaintiff is entitled for a decree of declaration of suit detailed in head note of plaint, as prayed for? OPP*
- 2. Whether the plaintiff is also entitled to consequential relief of mandatory injunction, as prayed for? OPP*
- 3. Whether the suit of the plaintiff is not maintainable in its present form? OPD.*
- 4. Whether the suit is bad for want of prior mandatory notice under Section 80 of CPC? OPD*
- 5. Whether the court has got no jurisdiction to entertain and try the present suit? OPD*
- 6. Whether the suit of plaintiff is bad for non-joinder and mis-joinder of necessary parties? OPD*
- 7. Whether the plaintiff has no locus-standi and cause of action to file the present suit? OPD.*
- 8. Whether the plaintiffs have concealed the true and material facts from the court? OPD*
- 9. Relief.”*

5 While answering issues No.1 & 2, Court of the First instance came to the conclusion that defendant having failed to prove service of allotment letter dated 19.10.2015 upon allottee Om Parkash Garg they



cannot be allowed to forfeit the amount. The aforesaid finding has been affirmed by the Lower Appellate Court.

6 Mr. Deepak Sabherwal, Advocate for the defendant does not dispute the factual position that even prior to dispatch of letter on 21.10.2015, allottee Om Parkash Garg had left for his heavenly abode.

7 In view thereof, this Court finds that there being no concluded contract between the parties defendant erred in invoking conditions as contained in term No.4 & 5 of the allotment letter.

8 This Court does not find anything on record that can lead to any exception to the findings recorded by the Courts below.

9 Resultantly the present appeal is dismissed.

10 Pending miscellaneous application, if any, also stands disposed off.

12.03.2025

Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No