IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3816-2023(O&M)
Reserved on : 08.04.2025
Date of decision: 24 .04.2025

Bhoop Singh
..Appellant

Versus

Vijender Singh and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arpandeep Narula, Advocate and
Ms. Upasna Gandhi, Advocate for the appellant

Mr. Mani Ram Verma, Advocate for the respondents

ANIL KSHETARPAL, J.

1. Facts of the case:-

1. The defendant assails the correctness of the judgments passed by the courts below while partly decreeing the plaintiff's suit for recovery of Rs.1,05,00,000/- but refusing to pass a decree for the specific performance of the agreement to sell in favour of the plaintiffs.

2. Execution of the agreement to sell on 15.02.2012 with respect to 29 kanals 3 marlas land on receipt of Rs.50,00,000/- out of total sale consideration of Rs.2,83,65,000/- is admitted between the parties. From a bare perusal of the agreement to sell, it is evident that possession of the property was delivered to the proposed purchasers and it was agreed that upto 26.03.2012, on payment of 1,20,00,000/- sale deed of half share of 29 kanals 3 marlas land would be executed in favour of the proposed purchasers

or their nominees whereas sale deed of the remaining part shall be executed on receipt of the balance sale consideration on 15.05.2012. It was provided that if the proposed purchasers fail to make the remaining payment, the earnest money shall stand forfeited.

3. It is further an admitted fact that Rs.22,00,000/- was paid on 13.03.2012 by the proposed purchasers to the defendants (appellants) and Rs.38,00,000/- was paid on 26.03.2012.

4. On 21.01.2013, the plaintiffs filed a suit claiming that on 15.03.2012, they visited the office of the Sub-Registrar alongwith balance sale consideration, however, defendant did not come forward to honour the agreement to sell. It was also asserted that defendant no.1 failed to deliver the possession, although, it was recorded in the agreement to sell. Plaintiffs also sent a notice on 23.05.2012 to the defendant to which they replied. However, defendant failed to honour the agreement. He also failed to get the property redeemed. It was also asserted by the plaintiff that defendant no.1 had previously also executed an agreement to sell on 14.07.2011 with respect to the suit property but due to technical reasons, the aforesaid agreement was cancelled and with mutual consent a new agreement on 15.02.2012 was executed.

5. Defendant no.1 contested the case while alleging that previously also defendant entered into an agreement to sell in favour of the plaintiff on 12.07. 2011 for a total sale consideration of Rs.2,83,65,000/-. He had received Rs.50,00,000/- as earnest money from the plaintiff and the sale deed was to be executed on 05.04.2012. The sale deed of half share of the property was to be executed and registered on 30.12.2011 on payment of

Rs.1,20,00,000/-, however, plaintiff did not honour the agreement whereas defendant no.1 remained present in the office of the Sub-Registrar on 30.12.2011. Defendant no.1 got his presence marked by swearing an affidavit duly attested by the Sub-Registrar. On 03.01.2012 notice was sent to the plaintiff informing that the agreement stands cancelled and their earnest money stands forfeited. On 04.01.2012 the notice sent by plaintiffs was received by defendant no.1 to which reply was sent by the defendant on 11.01.2012. Again plaintiffs sent notice on 03.01.2012, which was replied on 13.01.2012. Thereafter, the plaintiffs filed a suit for permanent injunction, which was dismissed as withdrawn on 05.12.2012. During the pendency of the suit, a settlement was arrived at and a fresh agreement to sell was executed on 15.02.2012. On 26.03.2012, the defendant remained present in the office of the Sub-Registrar but the plaintiffs did not turn up. Ultimately, the defendant got his presence marked by swearing an affidavit duly attested by the Executive Magistrate on 26.03.2012. In the evening, the plaintiffs came to the house of the defendant and stated that they could not arrange the remaining sale consideration, hence, they did not appear before the Sub-Registrar. They offered to pay Rs.38,00,000/- as guarantee money for due performance of the contract which was received by defendant no.1 and it was orally settled that the date of execution of the sale deed of half share is extended to 31.03.2012, but the plaintiffs did not come forward. The defendant again remained present in the office of the Sub-Registrar on 31.03.2012. On the plaintiffs' request once again the date was extended to 02.04.2012, which was a holiday. On 03.04.2012 the defendant again remained present in the office of the Sub-Registrar but the plaintiffs did not come forward. Various other events which took place in between have been stated. Ultimately, the defendant sent notice to the plaintiffs on 13.04.2012 calling upon them to come on 24.04.2012. The defendant remained present in the office of Sub-Registrar but the plaintiffs did not turn up. On 26.04.2012 once again the defendant sent notice to the plaintiffs forfeiting the earnest money. On 15.05.2012 defendant was present but plaintiffs did not turn up.

6. Upon appreciation of evidence, both the courts came to a conclusion that the plaintiffs have failed to prove that they were ready and willing to perform their part of the contract. However, the trial court as well as the First Appellate Court have held that the defendant is entitled to forfeit Rs.5,00,000- while decreeing the recovery of Rs.1,05,000/- on the following grounds:-

a) Defendant has failed to prove damages of Rs. 1,10,00,000/-.
b) Section 74 of Indian Contract Act, 1872 is applicable and the defendant is required to prove the loss.
c) Defendant was also at fault because he had taken a wrong stand.

<u>II. Discussion & Analysis:-</u>

7. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook alongwith the scanned copy of the requisitioned record.

8. On a careful study of the agreement to sell, it becomes evident that Rs.50,00,000/- was the amount of earnest money. It was also provided that Bhoop Singh (appellant) proposed seller will get the sale deed of half share of 29 kanals 3 marlas land on receipt of the total earnest money of

Rs.1,20,00,000/- on 26.03.2012. With respect to the remaining land agreed to be sold, the sale deed was to be executed and registered upto 15.05.2012 on receipt of the balance sale consideration. It was specifically provided that if the proposed purchaser commits default, the amount of the earnest money shall stand forfeited. The agreement to sell is scribed in Devnagri script and there are two important words used in the agreement one is "peshagi" which means earnest money which is quantified as Rs.50,00,000/-. Then there is another word used "majeeb peshagi" which means the total earnest money. In the default clause, it is provided that amount of the earnest money shall be forfeited which was less than 25% of the total sale consideration.

9. In **Satish Batra vs. Sudhir Rawal 2013 (1) SCC 345,** the Supreme Court after discussing the various judgments passed by the courts, held as under:-

> "*15. The law is, therefore, clear that to justify the forfeiture of advance money being part of "earnest money" the terms of the contract should be clear and explicit. Earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the depositor to be forfeited in case of non-performance by the depositor. There can be converse situation also that if the seller fails to perform the contract the purchaser can also get double the amount, if it is so stipulated. It is also the law that part-payment of purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract. In other words, if the payment is made only towards part-payment of consideration and not intended as earnest money then the forfeiture clause will not apply.*

16. When we examine the clauses in the instant case, it is amply clear that the clause extracted hereinabove was included in the contract at the moment at which the contract was entered into. It represents the guarantee that the contract would be fulfilled. In other words, "earnest" is given to bind the contract, which is a part of the purchase price when the transaction is carried out and it will be forfeited when the transaction falls through by reason of the default or failure of the purchaser. There is no other clause that militates against the clauses extracted in the agreement dated 29-11-2011"

10. This Court in **Ran Singh and others vs. M/s Capax Projects Pvt. Ltd. 2019(2) PLR 618** examined the aforesaid aspect and in para 18 held as under:-

"*18. Clause 4 of the agreement to sell in the present case is clear and specific. The earnest money can be forfeited in case the indended purchaser fails to perform his part of the contract. There is no distinction in the agreement to sell and there is no stipulation that out of Rs.60,00,000/- how much is the earnest money and how much is the part payment. Earnest money is a payment made towards part of the price of the property and it represents a guarantee that the contract will be fulfilled."*

11. Section 74 of Indian Contract Act, 1872 also provides that if an amount is mentioned in the contract as the amount to be paid in case of such breach, the same shall be payable. Thus, the judgments passed by the courts below are erroneous and run contrary to the judgment passed in **Satish Batra's case (supra)**. In this case, it is proved that the proposed seller has been willing to honor the agreement from 2011 because the previous

agreement to sell was entered into on 14.07.2011. He has sent repeated notices and has shown his willingness.

12. The contract has quantified the amount of liquidated damages. Consistently, the plaintiffs have defaulted. Once it is stipulated in the agreement that the amount of earnest money would be forfeited, the plaintiffs cannot now take a stand that the amount is excessive. On a careful reading of the agreement to sell, it is evident that the plaintiffs were to carve out colony in the agricultural land. In other words, the plaintiffs have planned to develop the land into a colony. They were also delivered possession of the property including constructed portion. Hence, the plaintiffs not only defaulted pursuant to the agreement to sell dated 14.07.2011 but also defaulted in the subsequent agreement dated 15.02.2012.

13. The defendant was not required to prove actual damages suffered by him once there were liquidated damages specified in the contract. In **Satish Batra's case (supra)** this aspect has been explained.

14. The courts below have also erred to deny the forfeiture of the entire amount on the ground that the defendant has also taken a wrong stand in the court. In the opinion of the Court, such stand would not deprive the defendant from forfeiture of the amount. Once the plaintiffs filed a suit making incorrect allegations, the defendant only defended the case.

15. Keeping in view the aforesaid discussion, the judgment passed by the courts below is modified and it is declared that the appellant (defendant) shall be entitled to forfeit Rs.50,00,000/- and he shall refund the remaining amount of Rs.60,00,000/- to the plaintiffs.

16. With these observations, the appeal is partly allowed.

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

(ANIL KSHETARPAL)
JUDGE

24.04.2025
rekha

Whether speaking/reasoned Yes/No
Whether reportable Yes/No