

(2022-3)207 PLR 374

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Anil Kshetarpal.

SATNAM SINGH (SINCE DECEASED) THROUGH HIS LEGAL REPRESENTATIVE – Appellant,

Versus

PARAMJIT SINGH and others – Respondents.

Regular Second Appeal No. 1915 of 2016 (O&M)

Set Off – The plea of set off can be availed in a suit for recovery of money where the defendant claims that he has also to recover certain amount from the plaintiff and therefore, if any amount is payable by the defendant to the plaintiff, then he is entitled to set off that amount from the amount recoverable from him – In the present case, the position is entirely different. By reason of a special [contract](#) between the parties, the amount of earnest money has been forfeited – It is well settled that for forfeiting the amount of earnest money, the defendant is not required to prove damages. [Para 8]

Cases referred to:-

1. (2019-2)194 PLR 618, *Ran Singh v. M/s Capex Projects Pvt. Ltd.*
2. RSA No. 4698 of 2017, decided on 22.01.2020, *Om Parkash v. M/s Ganga Developers Private Limited.*
3. (2015)2 SCC (Civil) 502, *Kailash Nath Associates v. Delhi Development Authority*
4. (1969)3 SCC 522, *Shree Hanuman Cotton Mills v. Tata Air Craft Ltd.*
5. (2013)1 SCC 345, *Satish Batra v. Sudhir Rawal.*
6. (1969)2 SCC 554, *Maula Bux v. Union of India.*

Mr. Vijay Lath, for the appellant(s). *Mr. Amit Jhanji*, Senior Advocate with *Ms. Nikita Garg*, for the respondents.

Anil Kshetarpal, J. – (19th April, 2022) –

CM-2503-C-2022

1. In view of the prayer made in the application, which is supported by an affidavit, the

same is allowed, subject to all the just exceptions. The proposed legal representatives, named in para 2 of the application, are the Class-I heirs of appellant-Satnam Singh, who is stated to have died on 03.04.2021. Tirath Kaur is permitted to be brought on record as the legal heir of the appellant-Satnam Singh, for the purpose of prosecuting the present appeal, as the remaining legal heirs are already impleaded as defendants in the suit (respondents in the present regular second appeal).

RSA-1915-2016

2. While assailing the concurrent findings of fact, arrived at by both the Courts below, the plaintiff has filed the present regular second appeal. Some facts are required to be noticed.

3. The plaintiff claimed to be the holder of an agreement to sell dated 21.03.2006, which was executed by the defendants. He filed a suit for possession by way of specific performance of the agreement to sell. He claimed that the defendants agreed to sell 8 acres, 5 kanals and 9 marlas of land in favour of the plaintiff @ 12,00,000/- per acre on receipt of an amount of 24,00,000/-. It was asserted that the defendants have failed to perform their part of the contract. While filing the reply, the defendants claimed that the plaintiff did not have the money despite two extensions given to the plaintiff to perform his part of the contract. It was asserted that the defendants sent a notice dated 27.06.2006, which was received by the plaintiff on 26.07.2006. In the aforesaid notice, the plaintiff was called upon to come for execution of the sale deed on 03.08.2006, but the plaintiff did not come forward.

4. Both the Courts below, on appreciation of evidence, have recorded the concurrent findings of fact that the plaintiff was not ready and willing to perform his part of the contract because he did not arrange for payment of the balance amount. Both the Courts below have also found that the plaintiff has also failed to prove that he paid additional payment of 10,00,000/-.

5. Heard the learned counsel representing the parties and with their able assistance, perused the judgments passed by both the Courts below and the record, which was requisitioned.

6. The learned counsel representing the appellant contends that the plaintiff had asserted in his plaint that he was always ready and willing to perform his part of the contract. He submits that in any case, in the absence of set off for counter-claim, the plaintiff was entitled to refund the earnest money i.e. ₹24,00,000/-.

7. In the present case, the parties had agreed to get the sale deed executed and registered on or before 09.06.2006, which was extended upto 19.06.2006. Thereafter, it was again extended upto 23.06.2006. There were holidays on 23.06.2006, 24.06.2006 and 25.06.2006. The defendants visited the office of the Sub-Registrar in order to prove their readiness and willingness to perform their part of the contract. However, the plaintiff has failed to turn up to the Sub-Registrar's office for performing his part of contract. Thereafter, the defendants sent a notice to the plaintiff and called upon him to come for execution and registration of the sale deed on 03.06.2006. However, the plaintiff did not come forward to

honour his part of the contract. Once again, a fresh notice was sent by the defendant to the plaintiff on 30.08.2006. The plaintiff has further failed to prove his plea with regard to additional payment of 10,00,000/- on 20.11.2006. The plaintiff filed the suit on 21.04.2008 i.e. after a gap of merely 18 months. The plaintiff has also failed to prove that he was having wherewithal to pay the balance sale consideration of 96,00,000/-, approximately. Hence, there is no error in the findings of fact arrived at by both the Courts below while declining the relief of specific performance.

8. The next argument of the learned counsel representing the appellant is with respect to the absence of plea of set off for counter-claim by the defendants. The plea of set off can be availed in a suit for recovery of money where the defendant claims that he has also to recover certain amount from the plaintiff and therefore, if any amount is payable by the defendant to the plaintiff, then he is entitled to set off that amount from the amount recoverable from him. In the present case, the position is entirely different. By reason of a special contract between the parties, the amount of earnest money has been forfeited. It is well settled that for forfeiting the amount of earnest money, the defendant is not required to prove damages. This aspect has already been discussed in detail in *Ran Singh v. M/s Capex Projects Pvt. Ltd.* ¹ (2019-2)194 PLR 618. The Special Leave Petition against the aforesaid judgment has been dismissed on 14.10.2020. This matter was again examined in detail in *Om Parkash v. M/s Ganga Developers Private Limited* ² (Regular Second Appeal No. 4698 of 2017, decided on 22.01.2020). After discussing the various judgments passed by the Supreme Court including *Kailash Nath Associates v. Delhi Development Authority* ³ (2015) 2 SCC (Civil) 502, *Shree Hanuman Cotton Mills v. Tata Air Craft Ltd.* ⁴ (1969) 3 SCC 522 and *Satish Batra v. Sudhir Rawal* ⁵ (2013) 1 SCC 345, the Court held as under:-

“Learned First Appellate Court has first relied upon the judgment passed in the case of *Satish Batra* (Supra). This Court has carefully read the aforesaid judgment. The aforesaid judgment is rather helps the defendants-appellants and not the plaintiff-respondent company. In the aforesaid judgment, Hon’ble the Supreme Court was examining the correctness of the Division Bench judgment of the Delhi High Court, in which out of total earnest money of Rs. 7,00,000/-, 50,000/- was permitted to be forfeited whereas 6,50,000/- was ordered to be refunded. The Supreme Court after examining the contract found that earnest money was paid on two different dates i.e. Rs. 4,00,000/- on 29.11.2005 and 3,00,000/- on 30.11.2005. The Supreme Court held after discussing various judgments of the Court that intended seller was justified in forfeiting the amount of 10% i.e. 7,00,000/-, therefore, the trial Court as well as First Appellate Court have not applied the aforesaid judgments in correct perspective. The First Appellate Court has further relied upon a judgment passed by Hon’ble the Supreme Court in the case of *Videocon Properties Ltd.* (Supra). In the aforesaid judgment, the Supreme Court was examining the order passed by a Division Bench of Bombay High Court arising from interim order passed by the learned Single Judge. In the aforesaid case, earnest money had been refunded. Suit for recovery was filed by the intended purchaser who was a builder for grant of interest. In the aforesaid circumstances, learned Single Judge ordered creation of charge under Section 55(6)(b) of the Transfer of Property Act, 1882 which order was modified by the Division Bench. The Supreme Court reversed the judgment of the Division Bench and restored the order of the learned Single Judge. The aforesaid judgment nowhere lays down that the earnest money

as per the contract cannot be forfeited”.

9. Moreover, the Larger Bench of the Supreme Court in *Maula Bux v. Union of India* ⁶ (1969) 2 Supreme Court Cases 554, held that forfeiture of the earnest money in a contract for sale of property does not fall within the scope of Section 74 of the Indian Contract Act, 1872 if the amount is reasonable.

10. In the present case, the amount of earnest money of Rs. 24,00,000/- cannot be said to be unreasonable, particularly when the total sale consideration, agreed to between the parties, was more than Rs. 1,00,00,000/-.

11. In view of the aforesaid discussion, no ground is made out to interfere. Hence, the present appeal is dismissed.

12. The miscellaneous application(s) pending, if any, shall stand disposed of.

R.M.S. – Appeal dismissed.