Mithlesh Rai Vs. Amarnath Rai

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Court : Delhi

Decided On : Aug-20-2014

Judge : A. K. Pathak

Appellant : Mithlesh Rai

Respondent : Amarnath Rai

Judgement :

$~16 * IN THE HIGH COURT OF DELHI AT NEW DELHI + RFA4702013 Decided on 20th August, 2014 MITHLESH RAI ..... Appellant Through :Mr. Atul T. N. And Mr. Harsh Raghuvanshi, Advs. versus AMARNATH RAI Through ..... Respondent :Mr. Kedar Yadav and Mr. G.S. Upadhyaya, Advs. CORAM: HON'BLE MR. JUSTICE A.K. PATHAK A.K.PATHAK, J.(ORAL) 1. Respondent filed a suit against the appellant for specific performance of Agreement to Sell dated 29th December, 2007 and in the alternative money decree for `4,00,000/-, that is, double the amount of earnest money of `2,00,000/-. Vide judgment and decree impugned in the appeal trial court has passed a decree in the sum of `2,00,000/- in favour of the respondent with interest @ 6% p.a. Relief of specific performance has been declined.

2. Agreement to Sell Ex. PW1/1 was not disputed, inasmuch as was duly proved on record. A total sale consideration, as per the Agreement, was fixed at `6,00,000/-. It was admitted by the appellant that `2,00,000/was paid by the respondent at the time of execution of Agreement Ex. PW1/1. The balance amount

of `4,00,000/- was payable at the time of execution of sale documents on or before 28th March, 2008. The trial court has returned a categorical finding that respondent was himself not ready and willing to perform his part of obligation as contained in the agreement and failed to tender balance sale consideration of `4,00,000/-, inasmuch as was not having arrangement of this amount.

3. In para 5 of the judgment, trial court has held that appellant was not to do any further act of taking permission from any authority and the parties were to simply perform their part of obligation as contained in the Agreement simultaneously on or before 28th March, 2008. Respondent was to pay the balance amount of `4,00,000/- and appellant was to execute the documents of sale in favour of the respondent. Respondent did not have any arrangement with the financial institution for balance amount. In his crossexamination, respondent admitted that he used to earn `6,000/- per month. He further deposed that he was to arrange `4,00,000/- from his family members. He claimed that he had arranged the amount in February, 2008 but no documentary evidence in this regard could be placed on record by him, inasmuch as he did not disclose the names of such family members, who provided him financial help. Trial court has relied on the statement of respondent in his cross-examination dated 30th November, 2010 that he could have arranged the money from his family sources. Trial court has concluded that respondent was not having the balance sale consideration of `4,00,000/- with him on or before 28th March, 2008 and was not, in fact, ready and willing to perform his part of Agreement.

4. The findings returned by the trial court to the above effect, have remained unchallenged as respondent has not filed any appeal or crossappeal.

5. After having returned the above finding, trial court, in my view, was not right in passing a decree in favour of respondent in the sum of `2,00,000/- together with interest @ 6% per annum, that is, for return of earnest money with interest 6. Clause 6 of the Agreement Ex. PW1/1 reads as under:-

6. If the first party fails/denies to execute the related documents in favour of second party then he will have to refund a double amount of bayana/initial money, or if the second party will not pay all the remaining amount to the first party within

the stipulated period, then his bayana amount will be forfeited by first party.

(Emphasis laid) 7. In the Agreement, appellant has been referred as first party and respondent as second party. In view of Clause 6 of the agreement, in my view appellant was justified in forfeiting the earnest money, on failure of the respondent to tender the balance sale consideration within the stipulated period.

8. Similar clause was involved in Satish Batra vs. Sudhir Rawal, (2013) 1 Supreme Court Cases 345. A question was posed for consideration as to whether the seller is entitled to forfeit the earnest money deposit where the sale of an immovable property falls through by reason of the fault or failure of the purchaser?. The Apex Court held that the seller was justified in forfeiting the earnest money, as per the relevant clause, since the earnest money was primarily a security for the due performance of the agreement and, consequently, the seller is entitled to forfeit the entire deposit.

9. In the Satish Batra (supra), the relevant Clause reads as under:

(e) If the prospective purchaser fails to fulfil the above condition, the transaction shall stand cancelled and earnest money will be forfeited. In case I fail to complete the transaction as stipulated above, the purchaser will get DOUBLE the amount of the earnest money. In both conditions, the DEALER will get 4% commission from the faulting party.

10. In the context of aforesaid Clause Apex Court in paras 16 and 17 has held as under:

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 militates against the clauses extracted in the agreement dated 29.11.2011.

17. We are, therefore, of the view that the seller was justified in forfeiting the amount of Rs. 7,00,000/- as per the relevant clause, since the earnest money was primarily a security for the due performance of the agreement and, consequently, the seller is entitled to forfeit the entire deposit. The High Court has, therefore, committed an error in reversing the judgment of the trial court.

11. In the present case, trial court has returned a categorical finding that it is the defendant who was not ready and willing to perform his part of obligation, that is, tendering the balance sale consideration of `4,00,000/- on or before 28th March, 2008. Having arrived at the said finding, trial court ought not have passed a decree for refund of the earnest money together with interest, since appellant was well within his rights to forfeit the earnest money in terms of Clause 6 of the agreement.

12. For the foregoing reasons, impugned judgment and decree are set aside. Parties are left to bear their own costs. The amount lying deposited in this Court together with interest accrued thereon, if any, be released to the appellant. Appeal is disposed of in the above terms. A.K. PATHAK, J.

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