2025:PHHC:044938

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5980 of 2019 (O&M)
Date of decision: 19.03.2025

Inderjeet and others ....Appellants

V/s

M/s Pivotal Infrastructure Pvt. Ltd. ....Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Vishal Satija, Advocate, for the appellantss.

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VIKRAM AGGARWAL, J.(ORAL)

This is plaintiffs' appeal against the judgment and decree dated 26.07.2019 passed by the Court of learned Additional District Judge, Gurugram, dismissing the appeal preferred against the judgment and decree dated 06.09.2016 passed by the Court of learned Civil Judge (Sr. Divn.), Gurgaon, vide which the suit for recovery of Rs.72,64,924/- along with *pendente lite* and future interest @ 12% per annum, filed by them was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The facts, in brief, are that plaintiffs (Inderjeet, Anil Kumar and Mukesh Kumar) filed a suit for recovery of Rs.72,64,924/- against the defendant (M/s Pivotal Infrastructure Pvt. Ltd.). The case set up was that the plaintiffs were co-owners in possession of land measuring 32 *kanals* 7 *marlas* to the extent of 2583/5823 share and land measuring 24 *kanals* 2 *marlas* to the extent of 1998/4338 share (fully described in the plaint) situated within the revenue estate of Village Kheri Majra, Dhankot, Tehsil and District Gurgaon (hereinafter referred to as the "suit land"). It was

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averred that in 2013, on having been approached by the defendant, it was agreed that the plaintiffs would collaborate with the defendant to develop a proposed commercial project over the suit land. As a consequence thereof, vide sale deed dated 16.09.2013, the suit land was sold to the defendant for a total sale consideration of Rs.35,17,60,000/-. The share of the plaintiffs was Rs.15, 64, 09,245/- and the remaining amount was to be paid to the other co-owners. Payments were made by way of various post dated cheques drawn on Oriental Bank of Commercial, Sector 32, Gurugram, the details of which were given in the plaint.

4. It was averred that as per the terms and conditions of the sale deed, it was assured that the cheques would be encashed on their presentation and in case any of the cheques were dishonoured, the sale deed and consequent mutations would be deemed to have been cancelled and the payments would stand forfeited and that further the defendants would be liable to revert the possession of the land to the plaintiffs. Certain cheques were cleared, whereas others were dishonoured. Cheques amounting to Rs.9,83,60,625/- which were due on 16.03.2014 were dishonoured as a result of which a memorandum of understanding dated 13.06.2014 was executed between the parties. In the memorandum of understanding, fresh post dated cheques were given with an assurance that the said cheques would be encashed. The details of the cheques given to the plaintiffs were mentioned in the plaint.

5. Again cheques amounting to Rs.1,35,93,000/- were cleared, whereas three cheques dated 16.08.2014 for Rs.82 lakhs each were dishonoured. Ultimately, the cheques were encashed on 28.08.2014 after a delay of 10 months. Thereafter, some more cheques were dishonoured and were subsequently encashed. It was also averred that since the defendant

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had been assuring the plaintiffs, the plaintiffs entered into an agreement to sell dated 10.10.2014 for purchase of agricultural land measuring 20 *kanals* 9 *marlas* situated within the revenue estate of Village Kalanaur, Tehsil Kalanaur, District Rohtak with one Dev Raj and paid a sum of Rs.30 lakhs as earnest money. The sale deed was agreed to be executed on 31.10.2014. However, as said sale deed with the defendant was not honoured and the full amount was not received, the sale deed pursuant to the agreement dated 10.10.2014 could not be registered. The sum of Rs.30 lakhs paid by the plaintiffs as earnest money was forfeited and a penalty of Rs.5 lakhs was also imposed upon the plaintiffs. Under the circumstances, the suit for recovery claiming interest of Rs.37,64,924/-, Rs.30 lakhs on account of advance/earnest money and Rs.5 lakhs as penalty making a total Rs.72,64,924/- was filed.

6. The suit was opposed by the defendant. In the written statement, certain preliminary objections with regard to maintainability, *locus standi*, cause of action, *estoppel*, the plaintiffs not having approached the Court with clean hands etc. were raised. A stand was taken that the suit land was free from all encumbrances and there was no encroachment, whereas after the execution of the sale deed, when the defendant applied for obtaining a license for setting up a 'Group Housing Colony' vide application dated 03.09.2013, the licence was granted only for land measuring 49 *kanals* 11 *marlas*, whereas the application was moved for land measuring 56 *kanals* 3 *marlas*. Licence with respect to land measuring 7 *kanals* 12 *marlas* was declined as the title of the plaintiffs was found to be defective. It was stated by the authorities that the said land was covered by Gurgaon-Farrukhnagar Road and therefore, the plaintiffs had misrepresented to the defendant. It was averred that on account of the same, the defendant had suffered a loss of

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Rs.10 crores, which was liable to be compensated by the plaintiffs. On merits also, a similar stand was taken. A stand was also taken that the cheques were not dishonoured but the plaintiffs had themselves requested the defendant not to release the amount as they were having a rift with their co-owners. As regards the agreement to sell dated 10.10.2014 entered into by the plaintiffs with one Dev Raj, it was submitted that no information about the same was given to it by the plaintiffs. The execution of memorandum of understanding dated 13.06.2014 was admitted but it was averred that the same had been executed as per the sweet will of the plaintiffs. A stand was also taken that the interest had been also received by the plaintiffs in cash for the delayed payment from the defendant company but they had concealed the same.

7. Replication was filed, in which the contents of the written statement were denied and those made in the plaint were reiterated.

8. From the pleadings of the parties, following issues were framed by the trial Court:-

> ***"1. Whether the plaintiff is entitled to decree for recovery of Rs.72,64,924/- along with pendentlite and future interest at the rate of 12% per annum as prayed for?OPP***
>
> ***2. Whether the suit of the plaintiff is not maintainable in the present form?OPD***
>
> ***3. Whether the plaintiff has no cause of action and locus standi to file the present suit?OPD***
>
> ***4. Whether the plaintiff is stopped to file the present suit by his own act and conduct?OPD***
>
> ***5. Whether the suit of the plaintiff is false, frivolous and vexatious?OPD***
>
> ***6. Whether the plaintiff has concealed the true and material facts from the Court?OPD***
>
> ***7. Relief."***

9. Parties led their respective evidence. The trial Court dismissed

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the suit filed by the plaintiff and the appeal preferred against the said judgment and decree was also dismissed by the first appellate Court leading to the filing of the present second appeal.

10. I have heard learned counsel for the appellants.

11. Learned counsel for the appellants submits that both the Courts erred in dismissing the suit for recovery filed by the plaintiffs. Reference was made to the oral and documentary evidence led on the record of the case. Learned counsel also referred to the judgments passed by the learned trial Court and the first appellate Court and submits that the same are not sustainable.

12. I have considered the submissions made by learned counsel for the appellants but find the same to be devoid of merit.

13. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through* LRs and others V/s Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the case of* ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317*** *and* ***Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

14. The execution of the sale deed dated 16.09.2013 is admitted. It is also an admitted fact that certain cheques were dishonoured. There are rival claims as to the said dishonour of cheques. Whereas the plaintiffs claimed that the cheques were dishonoured on account of insufficiency of funds, the defendant claimed that the plaintiffs themselves had requested to

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withhold the payment. Be that as it may, memorandum of understanding dated 13.06.2014 (Ex.D1) was executed between the parties. The same very clearly says that certain cheques, the details of which were mentioned in the said memorandum of understanding had been cleared, whereas cheques amounting to Rs.21,33,49,137/- had not been presented by the vendors except for Smt. Shakuntla Devi, whose entire amount had been paid. It was also stated that the vendee was unable to cash the uncleared cheques as a result of which new cheques against the uncleared cheques were issued and the details were given in the said memorandum of understanding. It was also categorically stated that the amount paid as consideration would remain the same as it was in the sale deed and that there was no change in respect of the area, sale consideration in any manner, other than the replacement of the uncleared cheques. Clearly there was no stipulation as regards the payment of interest. Had there been some agreement as regards the payment of interest, the same would have been incorporated in the memorandum of settlement. Even otherwise, the memorandum of settlement clearly states that the cheques had not been presented by the vendors and accordingly new cheques were issued.

15. As regards the amount of earnest money pursuant to agreement to sell dated 10.10.2014 that was stated to have been forfeited, there would be no liability of the defendant to pay the same. Even if the fact was taken to be correct, both Courts correctly found that it was remote damage which could not be recovered. In any case, keeping in view the fact that there is nothing on record that the defendant was remiss in making the payments, no interest would be payable and once that is so, there is no question of the defendant paying for Rs.30 lakhs as earnest money and Rs.5 lakhs as penalty, which the plaintiffs claimed to have paid to a third party, which a

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third party is stated to have forfeited from the amount paid by the plaintiffs pursuant to an agreement to sell dated 10.10.2014.

16. In view of the aforesaid facts and circumstances, I do not find any merit in the instant regular second appeal and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

March 19, 2025
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

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