

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).8976/2017

(Petition(s) for Special Leave to Appeal (C) No(s).3774/2015)

SANTOSH BATRA (SINCE DECEASED) THROUGH LRS. APPELLANT(s)

VERSUS

M/S GOLDEN FOREST (INDIA) LTD.
MANI MAJRA (UT), CHANDIGARH, THR. RESPONDENT(s)
ITS DIRECTOR & ANR.

O R D E R

Leave granted.

Heard learned counsel for the parties.

Suit for specific performance of an agreement dated 05.01.1990 filed by the respondent/company, was dismissed by the Trial Court. However, in the first appeal filed by the respondent under Section 96 of the Code of Civil Procedure, 1908, the learned Additional District Judge reversed the judgment of the Trial Court and decreed the suit. The second appeal of the appellants before the High Court failed as the High Court vide impugned judgment dated 19.08.2014 has upheld the judgment and decree passed by the First Appellate Court.

Brief facts which need to be noted for deciding the present appeal are that the agreement to sell dated 05.01.1990 was entered into between the appellants and the respondent vide which the appellants agreed to sell land measuring 13 Bighas, 2 Biswas,

Khewat No. 24 Min, Khatoni No. 36 Min. Khasra No. 652 (4-15), 653(2-8), 654(2-1), 655 (3-16), 657/1(0-2), situated at village Sonti, Tehsil Thanesar, District Kurukshetra, Haryana, for a sum of Rs. 2,30,000/-. There is no dispute between the parties insofar as execution of this agreement is concerned. At the time of entering into the said agreement a sum of Rs.10,000/- was paid by the respondent to the appellants in cash as earnest money. Since the respondent/company was accepting fixed deposit amounts from the public on payment of interest, it was also agreed between the parties that the respondent shall issue Fixed Deposit Receipt(FDR) of Rs.1,30,000/- in favour of the appellants which will be treated as part payment towards sale consideration. This FDR was to be issued by 31.03.1990 and after receipt of the same, the appellants were required to execute the sale deed in favour of the respondent and on the execution of the sale deed the balance amount of Rs. 90,000/- was to be paid by the respondent to the appellants before the Sub-Registrar at the time of registration of the sale deed. It was also agreed that till the date of execution of the sale deed, the respondent would pay interest @ 18% per annum on the aforesaid amount of Rs. 90,000/- till its actual payment, which was to be made before the Sub-Registrar, as mentioned above. The vacant possession of the suit land was to be delivered to the respondent at the time of registration of the sale deed. The agreement to sell also provided that in case there is a breach of agreement by the appellants, the respondent shall be entitled to get the specific performance of the agreement through court. On the other hand, if the respondent was to commit the breach, the appellants were

entitled to forfeit the earnest money and agreement to sell was to be treated as cancelled.

FDR in the sum of Rs. 1,30,000/- was given by the respondent/company to the appellants on 11.01.1990 with the maturity value of Rs.1,40,000/-. Appellant No.1 had also realised 13 cheques of the amount of Rs.2,100/- each on different dates from the respondent and further monthly cheques of Rs.2,100/- from March, 1991 onwards. The same was on account of profits in the scheme under which Rs.1,30,000/- were deposited with the respondent for a period of two years. Thereafter, two cheques for Rs. 3,375/- dated 01.11.1990 were given.

As per the agreement, last date for execution of the sale deed was 30.01.1991. There is some dispute as to whether the date was extended upto 31.01.1991. However, this aspect need not be looked into by this Court. The fact remains that the sale deed was not executed even by 31.03.1990. As per the appellants, it is the respondent which defaulted whereas the respondent claims that though the respondent was ready to perform its part of the agreement by making balance payment, it is the appellants who did not come forward. Be that as it may, the respondent filed the suit for specific performance, which was contested by the appellants on the ground that the respondent failed to perform its part of the agreement by stipulated dated 31.01.1990. It was further pleaded that though in these circumstances the appellant could have forfeited the entire money paid by the respondent, with mutual understanding the agreement to sell was cancelled and the amount was refunded by the appellants to the respondent by way of banker's

cheque which was duly encashed by the respondent. On the pleadings, issues were framed by the Trial Court and the first issue, which is relevant for our purposes, reads as under:

"(1) Whether the agreement dated 05.01.1990 was cancelled and earnest money has already been refunded by the defendants, if so to what effect?"

The evidence was read. In support of the aforesaid issue, onus thereof was upon the appellants. The appellants produced a letter dated 18.05.1991 which was sent along with the cheque wherein the appellants had maintained that even though the case of the respondent was quite weak as it had failed to perform its part by 31.03.1990, yet in order to keep harmonious relation the appellants had accepted the offer and enclosed a cheque bearing no. 337185 dated 18.05.1991 amounting to Rs.61,434/- as per the terms settled on 25.04.1991. The appellants also proved on record that the said cheque was duly encashed by the respondent. The Trial Court, after discussing the evidence so produced, decided the aforesaid issue in favour of the appellants holding that the agreement dated 05.01.1990 stood cancelled and the money had been refunded to the respondent. On that basis, suit of the respondent was dismissed.

The First Appellate Court, however, reversed the aforesaid finding primarily on the ground that the total amount paid by the respondent to the appellants was Rs.62,500/- whereas the appellants had returned the amount of Rs.61,434/- and no interest was also refunded and, thus, in the absence of refund of full amount it could not be said that the agreement was cancelled. The suit was

accordingly decreed. The aforesaid reasoning is accepted by the High Court while affirming the decree passed by the Additional District Judge.

We have heard the learned counsel for the parties primarily on the issue as to whether the agreement stood cancelled and whether the finding of the Trial Court on the Issue No. 1 is rightly reversed by the High Court. We find that the approach of the First Appellate Court as well as the High Court in reversing the finding on Issue No. 1 is clearly erroneous. As mentioned above, main reason for not accepting the plea of the appellants that the agreement dated 05.01.1990 stood cancelled was that full amount of Rs. Rs.62,500/- was not refunded and only a sum of Rs.61,434/- was given by the appellants to the respondent and the contention of the appellant that on payment of Rs.61,434/- nothing more remains due. While coming to such a conclusion, the two courts below have conveniently failed to peruse the covering letter dated 18.05.1991 along with which a cheque of Rs.Rs.61,434/- was enclosed. This letter mentions about the agreement to sell and also mentions about the meeting which took place between the parties on 25.04.1991 at about 12.30 hours at the residence of Mr. V.K. Gupta, Executive Director of the respondent/company wherein purported agreement was arrived at as per which it was agreed to cancel the contract. Last two paragraphs of this letter are material for the purposes of this case and we reproduce the same herein under:

"Even though the case of company was quite weak in as much as the sale deed had to be got registered on 31.03.90 by paying the balance amount to the first party to which the company (GFIL) had failed to perform its part of the agreement by the said

date. Yet in order to keep harmonious relation and considering the matter on compassionate grounds, we (Smt. Santosh Batra, GPA, for Smt. Santosh Batra and Smt. Asha Doda) accepted the offer.

In order to perform our part of new contract dated 25.04.91, we enclosed herewith a cheque no. 337185 dated 18.5.91, amounting to Rs.61,434/- (Rupees sixty one thousand four hundred thirty four only) as per terms settled on 25.4.91. Consequently the matter stand settled and no dispute thus remains between parties. We also enclosed (return) herewith 9 no. Cheques of Rs.2,100/- each, and 1 No. Cheque of Rs. 1.40 lacs of dated 5.1.92, and not Rs.1.30 lacs(FDR) as stated by the company in the agreement dated 5.1.90."

This letter thus clearly demonstrates the following aspects:

- A) As per the appellants the respondent/company had failed to perform its part of the contract.
- B) Notwithstanding the same, offer of the respondent to refund the money was accepted in order to keep harmonious relation between the parties.
- C) It was agreed between the parties that the amount of Rs.61,434/- is to be given as per the terms settled on 25.04.1991.
- D) A cheque for the said amount was enclosed with categorical assertion that "consequently the matter stands settled and no dispute thus remains between the parties." Other cheques towards interest were returned (9 in number) including the cheque dated 05.01.1992 in the sum of Rs.1,40,000/- (which was towards the payment of FDR).

It is important to note that on the receipt of the said cheque of Rs.61,434/-, along with the aforesaid letter not only the said cheque was encashed by the respondent, there is no reply to the aforesaid letter dated 18.05.1991 by the respondent refuting the

averments contained in the said letter. This overt conduct of the respondent would clearly demonstrate that it accepted that there was a settlement and even received the payment in terms of the settlement. The settlement was for annulling the agreement. The amount of Rs.61,434/- was paid as full and final payment and there was no question of any balance payment thereafter.

In these circumstances, We are of the view that the respondent was not entitled to seek specific performance of the agreement which stood cancelled by the parties. The appeal is allowed and the decree passed by the First Appellate Court and as affirmed by the High Court is set aside restoring the judgment and decree passed by the Trial Court dismissing the suit of the respondent.

.....J.
[A.K. SIKRI]

.....J.
[ASHOK BHUSHAN]

NEW DELHI;
JULY 04, 2017

