(2016) 05 P&H CK 0093

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2350 of 2015 [O&M].

Manjit Kaur — APPELLANT

Vs

The Estate Officer, Union Territory, Chandigarh and Others — RESPONDENT

Date of Decision : 13-05-2016

Acts Referred:

Chandigarh Lease Hold of Sites and Buildings Rules, 1973 — Rule 9-A
Capital of Punjab (Development and Regulation) Act, 1952 — Section 10(3), 19

Citation : (2016) 2 PLJ 236 : (2016) 4 PLR 319 : (2016) 3 RCRCivil 434

Hon'ble Judges : Shekher Dhawan, J.

Bench : Single Bench

Advocate : K.S. Khehar, Advocate, for Mr. DPS Ahluwalia, Advocate, for the Appellant; Sanjeev Sharma, Senior Advocate with Vikram Vir Sharda, Advocate, Addl. Standing Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

Shekher Dhawan, J. - Present Regular Second Appeal is directed against the judgment and decree dated 02.01.2015 passed by District Judge,Chandigarh whereby judgment and decree dated 9.10.2013 passed by Additional Civil Judge [Senior Division], Chandigarh in Civil Suit No. 48 of16.1.2013 were set-aside and the suit of the plaintiff [Smt. Manjit Kaur] was dismissed.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case for the purpose of decision of this appeal; that plaintiff filed a suit for declaration and permanent injunction on the ground that she had purchased a residential site No. 560, Sector 33-B, Chandigarh in auction sale held by Chandigarh Administration on 11.02.1989. The total price of the plot was Rs. 14,15,000/-. As per the requirement, 10% of the price i.e. Rs. 1,41,500/- was deposited by her at the time of auction. In terms of conditions of the auction, 15% of the payment was to be made within 30 days, i.e., upto 11.03.1989 and thereafter allotment letter was to be issued by defendant No.1.

However, due to some family problems, the plaintiff could not deposit the balance 15% amount within the stipulated period of thirty days and she finally deposited the amount of Rs. 2,12,250/- [15% of the bid money] vide demand draft No. 174815 dated 15.5.1989 and the same was duly acknowledged by defendant no.1 vide receipt No. 56, book No. 33251 dated 2.6.1989. Despite receipt of 25% of the amount, which was due towards the plaintiff, defendant No.1 failed to issue the allotment letter for want of condonation of delay in making the payment of 15% amount of the premium. Defendant No.1 had recommended the case of the plaintiff for condonation of delay to the Finance Secretary, U.T. Administration, Chandigarh vide letter dated 13.6.1989. Subsequently, defendant No.1 issued a notice dated 20.09.1989 intimating the plaintiff that her request for condonation of delay was not accepted and as such the plaintiff was required to show cause by 24.10.1989 as to why the lease of the said time may not be cancelled and whole part of the premium and ground rent be not forfeited under Rule 12(3) of the Chandigarh Lease Hold of Sites and Building Rules, 1973 [for short, " the 1973 Rules"]. As per the plaintiff, the allotment letter was not issued. However, on receipt of letter dated 20.9.1989, the plaintiff had written a letter dated 24.10.1989 to defendant No.1 for condoning the delay on sympathetic grounds. The said matter was decided by defendant No.1 and vide memo dated 10.9.1990 the delay was condoned in case of other allottees. Thereafter, the plaintiff filed an appeal under Section 10(3) of the Capital of Punjab [Development and Regulation] Act, 1952 [for short, "the Act"]. Defendant No.2 wrongly dismissed the appeal without going into the merits of the case. The revision petition filed by the plaintiff was dismissed vide order dated 6.10.2012 by defendant No.2. Hence, the necessity of suit.

4. Defendants contested the suit, inter alia, taking the plea that the plaintiff has no locus standi to file the suit as she failed to deposit the amount of 25% within the stipulated period. No allotment letter was issued in her favour as she is not an allottee and thus, has no locus standi to file the suit. The payment of 15% of the amount was not made within stipulated period and the request made by the plaintiff for condonation of delay was not accepted by the Finance Secretary, U.T. Administration. On 20.5.2009, the plaintiff had deposited a sum of Rs. 10,61,250/- on account of payment in respect of said plot and the said payment was returned on 17.7.2009 as 25% of the premium of the plot was not paid within the stipulated period. Thereafter, the plaintiff had filed appeal before the Chief Administrator, Chandigarh Administration after a gap of 19 years and the said appeal was dismissed on 3.3.2010 and the revision petition filed by her was also rightly dismissed vide order dated 6.10.2012.

5. On the pleadings of the parties, the Court of first instance settled the issues. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance returned the finding that the plaintiff was entitled to residential site in question and the defendants were restrained from auctioning the site in question to any other person and decreed the suit. The appeal filed by the defendants

before the Court of first Appeal was accepted and the judgment and decree dated 9.10.2013 recorded by the Court of first instance were set-aside. As such, the present Regular Second Appeal.

6. Learned counsel for the appellant while assailing the findings recorded by the Court of first Appeal submitted that admittedly, payment of 25% amount of premium was paid by the plaintiff although, there was little delay in making the payment. The reason for not making the payment by the plaintiff was that she was suffering from adverse family circumstances. She had deposited the complete payment of 25%. The defendants still cancelled the allotment although, by that date, the payment had already been deposited by the plaintiff and there was request by the plaintiff to condone the delay on reasonable grounds. The Court of first Appeal has completely ignored this fact while reversing the well reasoned judgment and decree passed by the Court of first instance.

7. Learned counsel for the appellant also submitted that the respondents had been condoning the delay of different allottees at different times but a different yardstick was taken while deciding the case of the appellant for condonation of delay. This fact has been admitted by PW-1 Gurbachan Singh, Senior Assistant from Chandigarh Administration, who was making statement on the basis of record. More so, on the basis of record, PW-1, Gurbachan Singh deposed that as per record , auction of site No.1447, Sector 40-B, Chandigarh measuring 338 sq. yards was held on 24.02.1990. There was delay in payment of complete 25% amount of fee auction. 10% of the payment was made at the time of auction and remaining 15% was to be paid within 30 days. There was delay in deposit of the amount of 15% the money and the delay was condoned under Rule 9A of the Rules vide letter Ex. PW-2/A. This witness also admitted that in number of cases, delay has been condoned by the Chandigarh Administration. Similarly, DW-1, Sunil Arora, Assistant Controller, Finance and Accounts, UT, Chandigarh admitted that no cancellation orders have been issued in respect of plot No. 560, Sector 33-B, Chandigarh and the said property still stands in the name of Smt. Manjeet Kaur, plaintiff. This witness has also admitted most important fact that the Estate Officer had condoned delay in deposit of 25% amount in number of cases, as detailed in Ex. P6 [five such cases]. Another important fact admitted by DW-1, who deposed on the basis of record, is that the file of the site in question was not traceable in the office. More so, 75% i.e., total balance payment was made by the plaintiff on 20.5.2009 and the same retained in the office for about one and a half month and thereafter the Estate Officer returned the said amount to the appellant, but the the Court of first Appeal completely ignored these facts and simply dismissed the suit on the ground that Civil Court has got no jurisdiction, whereas, on the principles of natural justice and fair play, if Chandigarh Administration had been condoning the delay of similarly situated allottees, there was no reason for not accepting the request of the plaintiff, though the required amount of 15% was deposited well within the date of consideration of her request for extension of time. So, the present appeal be accepted and the judgment and decree passed by the Court of first Appeal be set-aside and that of

the Court of first instance be restored.

8. While arguing these points, Mr. Sanjeev Sharma, Senior Advocate, learned standing counsel for Chandigarh Administration submitted that the Court of first Appeal has rightly decided the controversy that there is complete bar of jurisdiction of Civil Courts in such like cases in view of provisions of Section 19 of the Act. On this point, reliance has been placed on the judgment of Hon''ble Supreme Court in Chaman Lal Singhal v. Haryana Urban Development Authority and Ors. 2009 (2) R.C.R. [Civil] 355.

9. Learned senior counsel for the respondents also submitted that in the present case, there was no violation of principles of natural justice because the plaintiff herself failed to deposit the balance 15% of the amount due as she was required to deposit the same within stipulated period of 30 days. Her request for extension of time was declined by the competent authority. Thereafter appeal as well as revision having been filed by the plaintiff were also dismissed. So, the present appeal is without any merit and the same be dismissed.

10. Having considered the submissions made by learned counsel for the parties and appraisal of record as well as grounds of appeal, this Court is of the considered view that most of facts are not disputed in this case that auction for sale of site in dispute had taken place on 11.2.1989. As per rules, 10% of the premium was required to be deposited at the time of bid. The plaintiff actually deposited 10% of the premium at the time of auction. Thereafter she was required to deposit 15% of the premium price within 30 days i.e. upto 11.3.1989. The plaintiff certainly committed default in making the payment of 15% within stipulated period of 30 days. However, the appellant deposited the balance amount of 15% as required as per the Rules vide bank draft No. 174815 dated 15.5.1989, which was duly received by the respondents. Thereafter, defendant No.1 issued a notice dated 20.9.1989 to the plaintiff intimating that her case for extension of time had been rejected by the Finance Secretary, Chandigarh and the plaintiff was required to show cause by 24.10.1989 as to why lease of the said site may not be cancelled and whole part of the premium and ground rent paid be forfeited under Rule 12(3) of the 1973 Rules. For ready reference, Rule 12(3) of the 1973 Rules is extracted below:-

"12(3) - In case any installment is not paid by the lessee by the date on which it is payable, a notice may be served on the lessee calling upon him to pay the installment within a period of 3 months together with a penalty which may extend upto 10% of the amount due. If the payment is not made within the said period, the Estate Officer may cancel the lease and or forfeit the whole or any part of the money if paid in respect thereof which, in no case, shall exceed 10% of the total amount of the consideration money, interest and other dues payable in respect of the lease."

11. Perusal of the above quoted rule reveals that as per the enabling provision, defendants would ask the appellant to pay the installments within three months

together with a penalty which may extend upto 10% of the amount due and if the payment is not made within the stipulated period, the Estate Officer may cancel the lease and may forfeit the whole or any part of the money. Applying the same provisions of the rules to the present case, as the plaintiff had already deposited the balance amount of 15% by demand draft No.174815 dated 15.5.1989, i.e., before the issuance of notice dated 20.09.1989, there was no question of issuance of notice under Rule 12(3) of the 1973 Rules. At the best, the plaintiff could have been asked to make the payment within 3 months and in case of default, the plaintiff was required to deposit the amount together with a penalty which may extend upto 10% of the amount due, but the facts of the case in hand are entirely different and the case of the plaintiff is not covered as per the relevant Rules.

12. Thereafter, the only plea for consideration is whether the plaintiff was entitled to seek extension of period as per the Rules or not.

13. The relevant rule empowering Chandigarh Administration to extend the time for making payment is Rule 9-A of 1973 Rules and the same is being reproduced hereunder:-

"9A. Extension of period - The Chief Administrator may for sufficient cause condone the delay or extend the period of 3 days referred to in sub-rule (4) of Rule 8 on such terms and conditions as he thinks fit including payment of a penalty not exceeding 10% of the amount in default in addition to interest at the normal rate."

14. The above rule also makes it ample clear that the Chief Administrator was competent to condone the delay or extend the period. In the present case, request of plaintiff was not accepted though the same request was made before declining the request. It has been held by this Court in various judgments that in case an allottee fails to make payment of installments within the stipulated period, the resumption should be the last resort and the same should be used sparingly. Such a view was taken by Hon''ble Division Bench of this Court in Smt. Fana alias Maina Devi and others v. The Financial Commissioner and Principal Secretary to Government of Haryana and others, 2015(1) RCR [Civil] 887 and Vandana Budhiraja v. State of Haryana and others, 2016 (2) R.C.R. [Civil] 8.

15. The first Appellate Court has recorded the finding that as per Rule 9A of the Rules, there was no provision for extension of time by the Chief Administrator. However, this finding of the Court of first Appeal has no significance in view of the fact that Chandigarh Administration had been extending time in such like cases while exercising discretion in favour of other allottees as is clear from Ex. P1 and the admissions made by PW-2 - Gurbachan Singh, Senior Assistant and DW-1 - Sunil Arora, Assistant Controller, Finance and Accounts, UT Chandigarh. DW-1 also revealed important fact that the file of the plaintiff was not traceable in the office and the Estate Officer had condoned the delay for deposit of 25% amount in a number of cases, as detailed in Ex. P6. In the light of admissions

having been made by PW-1 and DW-1, who are none-else but witnesses of the defendants i.e., Chandigarh Administration, have made statements on the basis of record that the Chandigarh Administration had been extending the time for making payment of 25% of the bid money in so many cases and denial of the same to the plaintiff certainly amounts to violation of principles of natural justice and fair play. In such circumstances, the jurisdiction of the Civil Court is not barred under Section 19 of the Act as the authorities cannot be allowed to violate the provisions of the Act. Such a view was taken by Co-ordinate Benches of this Court in Devi Dayal v. Rajesh Kumar Duggal and others, 2009(2) PLR 621; Smt. Chander Kanta Bhatia v. Chief Administrator, Housing Board Haryana and another 2015(3) RCR [Civil] 225 and Haryana Urban Development Authority through its Chief Administrator and another v. Kedar Nath 2010(2) RCR [Civil] 700. Further, it is settled proposition of law that discretion vested in the competent authority should not be exercised arbitrarily with different yardsticks in the cases of similarly situated persons based on the similar facts. If the benefit of the Rule can be extended to one allottee on the same facts, the same cannot be denied to another. The said authority cannot discriminate between equals. Such a view was taken by Hon''ble Division of this Court in Harbinder Singh Dhillon and another v. Union Territory, Chandigarh and others 2007 [4] RCR [Civil] 84. The first Appellate Court has completely ignored this fact while reversing the well reasoned judgment and decree having been written by the Court of first instance and the same is against the evidence and relevant rules governing the rights of the parties and as such, the judgment and decree passed by the Court of first Appeal dated 2.1.2015 are liable to be set-aside.

16. I have also gone through the judgment referred and relied upon by learned counsel for the respondents in Chaman Lal Singhal''s case [supra] wherein Hon''ble Apex Court observed that in case of resumption of plot on account of non-payment and non-acceptance, there is no violation of principles of natural justice and the order of cancellation was held to be legal and valid. However, in view of the law laid down by this Court in cases of Devi Dayal, Smt. Chander Kanta Bhatia and Kedar Nath [supra], and as per the facts of the present case, the respondent-authorities cannot be allowed to violate the provisions of the Act and principles of natural justice and, thus, the appellant has the locus standi to maintain the suit before the Civil Court.

17. Resultantly, the present Regular Second Appeal stands allowed and the judgment and decree dated 2.1.2015 passed by District Judge, Chandigarh are set-aside and that of the Court of first instance dated 9.10.2013 are upheld and the suit of the plaintiff is decreed.

