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SLP(C)No. 19126 OF 2000

ITEM No.32

Court No.10

SECTION IVB
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.19126/2000

(From the judgement and order dated 11/10/2000 in CR 6298/99
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

RAVINDER PAL

Petitioner (s)

VERSUS

ASHWANI KUMAR & ANR.

Respondent (s)

Date : 26/03/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.B. SHAH
HON'BLE MR. JUSTICE S.N. VARIAVA

For Petitioner (s) Mr. Sarvish Bisaria, Adv.
Mrs. Nidhi Bisaria, Adv.
Mr. K.R. Nagaraja, Adv.

For Respondent (s) Mr. Manoj Swarup, Adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.J.
.SP2

Leave granted.

The appeal is disposed of in terms of the
signed order. There shall be no order as to
costs.

.SP1

(K.K. Chawla)
Court Master

(K.K. Chadha)
Court Master

[Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2001@@
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RAVINDER PAL ... APPELLANT

VERSUS

ASHWANI KUMAR AND ANOTHER ... RESPONDENTS

O R D E R@@
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.SP2

Leave granted.

Heard learned counsel for the parties.

By judgment and order dated 29th November, 1999, the trial court allowed the amendment application filed by the plaintiff. That order was challenged by respondent No.1 by filing Revision Application before the High Court. The High Court arrived at the conclusion that under the garb of application under Order VI Rule 17 C.P.C., mutually destructive plea and not alternative plea is taken by the plaintiff. Hence, Revision Application was allowed and the order passed by the trial court was set aside by the impugned order dated 11th October, 2000. That order is challenged in this appeal.

In short, it was the case of the plaintiff that alleged agreement for transfer of plot was void and unenforceable and prayed for cancellation of the said agreement. By the amendment application it was prayed that in case the Court arrives at the conclusion that the document was genuine, then in the alternative plaintiff was only liable to pay damages to the defendant as per clause (9) of the agreement to sell. Clause (9) reads thus:-

.....L.....I.....T...T.....T.....T.....J.

.SP1

"Clause 9 - That it is given clear understanding to the said seller that his general power of attorney, will and other documents are irrevocable, in case he cancels or revokes the said documents at any later stage or backs out of the bargain, he shall also be liable to return to the said purchaser a sum of Rs.55,000/- (Rs. Fifty five thousand only) plus another equated amount as liquidated damages plus double the cost of construction of the building, to be got assessed at that time by some technical expert without any hesitation and delay."

.SP2

.....L.....I.....T.....T.....T.....T.....T.....T.....J.

In view of the aforesaid clause in the

agreement, it cannot be said that the alternative plea raised by the plaintiff is mutually destructive. He only seeks relief of declaration on the basis of facts which are on record by contending that as per the terms of the agreement to sell, if held to be valid as contended by the defendants, defendants are, at the most, entitled to liquidated damages.

Hence, the impugned order passed by the High Court is set aside and the order passed by the trial court is restored. The appeal stands disposed of accordingly. There shall be no order as to costs.

.SP1

.....J.
(M.B. Shah)

.....J.
(S.N. Variava)

New Delhi,
March 26, 2001.