

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Regular Second Appeal No.3609 of 2011 (O&M)

Date of decision: 3.8.2015

Baljinder Singh through LRs

... Appellant

Versus

Ranjit Singh

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Liaqat Ali, Advocate,
for the appellants.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

CM No.10200-C-2011

The delay of 38 days in re-filing the appeal is condoned for the reasons stated in the application.

CM No.10201-C-2011

2. Since the deficiency of court fee is made good, it is ordered to relate back to the date of appeal which forecloses any objections.

CM No.10202-C-2011

3. The delay of 275 days in filing the appeal is condoned. The reason given in the application for condoning the delay in filing the appeal is that the learned counsel for the appellant in the lower appellate court did

not inform the appellant of the disposal of the appeal. Even the application

for certified copy was filed 4 months after the dismissal. After obtaining the certified copy, the learned counsel failed to inform the appellant or to supply him a certified copy. When nothing was heard regarding the case, the appellant personally visited the office of the learned counsel from where he came to know of the disposal of the appeal and soon thereafter filed the present appeal without delay. The application is supported by an affidavit.

4. In matters of condoning delay in presentation of appeals, this Court will remain guided by the recent pronouncement of the Supreme Court in **Antiyur Town Panchayat v. G. Arumugan (D) by LRs**; (2015) 3 SCC 569 where the huge delay of 1373 days occurred in filing of the second appeal by the government officials or public servants by duty bound. The Court observed delay should not defeat justice and a lenient view ought to be taken howsoever huge may be the delay to have the matter decided on merits. The Supreme Court relied on its previous dicta in **State of Nagaland v. Lipok Ao and others**; (2005) 3 SCC 752 guiding that when substantial justice and technical approach are pitted against each other, the former has to be preferred. Though both the cases originated in delay caused in government offices, I does not see any reason why the cardinal principle should not be applied to the application in hand. For these reasons, the delay is condoned.

Main case

5. The appeal is an old one pending motionless since the year 2011 with numerous requests made for adjournments. Meanwhile, the appellant expired and is represented through his LRs who have been substituted vide order dated 19th May, 2015. The LRs are the widow, mother

and the father of appellant Baljinder Singh.

6. Ranjit Singh filed lawsuit against Baljinder Singh on the file of the learned Additional Civil Judge, Senior Division, Khanna in 2004. The suit is for possession and permanent injunction. Ranjit Singh plaintiff and the defendant entered into a contract of sale of property on 5th February, 2003. A sum of ₹ 45,000/- was paid to the defendant vendor as earnest money. The target date was 4th February, 2004. The defendant received a further sum of ₹ 50,000/- on 3rd June, 2003 and another tranche of earnest money in a sum of ₹ 23,000/- on 4th August, 2003. A total amount of ₹ 1,18,000/- had passed as earnest money. The plaintiff visited the office of the Sub-Registrar on the appointed date and was ready and willing to perform his part of the contract but the defendant failed to turn up to perform his part of the contract. When the defendant backed out and refused to execute the sale deed, the plaintiff instituted the suit on 13.2.2004 praying for possession by way of specific performance.

7. On notice, the defendant appeared and filed written statement denying entering into the an agreement. The deal was not one of sale of property but as security of debt. The defendant was in denial mode. The replication to the written statement was filed reiterating the contents of the plaint and denying those in the written statement and from the pleadings of the parties, as many as 7 issues were framed which are as follows : -

1. Whether the defendant executed agreement to sell dated 5.2.2003 in favour of plaintiff? OPP
2. Whether the plaintiff was always ready and willing to perform his part of the contract? OPP
3. Whether the plaintiff is entitled to specific performance

of agreement to sell dated 5.2.2003? OPP

4. Whether plaintiff is entitled to injunction as prayed for ?
OPP

5. Whether agreement to sell dated 5.2.2003 is fictitious
and sham document? OPD

6. Whether suit is not maintainable in the present form?
OPD

7. Relief.

8. Parties led their oral and documentary evidence in support of their respective cases. Issues 1 to 4 were taken up together for recording findings. The plaintiff stepped into the witness box and deposed to his version in the plaint. He produced affidavit dated 4th February, 2004 regarding marking of presence before the Sub-Registrar, Payal. The marginal witnesses and the Deed Writer were produced by the plaintiff who deposed in his favour. All the material aspects were covered in the evidence adduced by the plaintiff even to show that he was ready and willing to perform his part of the contract and obtaining of earnest money and remains so. The agreement was entered by the Deed Writer in his register, the extract of which was produced as Ex.P9. There were two witnesses who supported the plaintiff that ₹ 23,000/- in cash was paid by the plaintiff to the defendant in their presence and the defendant made an endorsement overleaf the agreement acknowledging receiving money. Plaintiff closed his evidence.

9. In his defence, Baljinder Singh stepped into the witness box and deposed that he had borrowed a sum of ₹ 30,000/- from the plaintiff, upon which, the plaintiff had obtained signatures of the defendant on some stamp papers as security by mentioning ₹ 45,000/- therein stead of ₹

35,000/-. He denied receiving money on 3rd June, 2003 and 4th August, 2003. He never had the intention to alienate his property. However, the defendant did not deny his signatures on the sale agreement. Rather he admitted his signatures on the written agreement dated 3rd June, 2003 Ex.P2 and the writing dated 4th August, 2003 on the reverse of Ex.P2.

10. To wriggle out of the contract, the defendant made up the story of a loan and the documents were executed in recognition of that arrangement. Having admitted his signatures, the burden lay heavily on the defendant to prove his story but he has failed to do so or dislodge the sale agreement. Learned trial court held that except for the bald statement of the defendant, there is no corroborative evidence to prove the fact that the plaintiff had obtained his signatures on the blank papers claiming those to be for securing a loan and had thereby deceived him. If something was really remiss in the transaction, the defendant did not report the matter to any authority at any stage during the long gestation period from the date of sale agreement to the target date or thereafter when he backed out of the deal just as a reasonably prudent person might have to stave an injury upon his property. It was also not the defendant's case that the witnesses examined by the plaintiff were inimical to him for them to have made false depositions against his interest. It is also not the defendant's case that he ever repaid the loan or offered to do so. If he admitted receiving ₹ 23,000/-, then he did not explain that it was towards adjustment of any transaction other than the sale agreement signed between the parties. There was little to doubt that the plaintiff remained ready and willing to perform his part of the contract since he appeared on the appointed day and marked his presence before the Sub Registrar, Payal and that was all that he could do in the

circumstances. On these premises, the court found that the case was an eminently fit one to grant specific performance of contract. The suit was decreed on 26th September, 2008 by the court of first instance. A direction has been issued to the defendants to execute and get the sale deed registered in favour of the plaintiffs and to hand over vacant possession of the property in dispute within three months from the date of decree. In the meanwhile, the defendant stands restrained from alienating the suit property to any other person except the plaintiff by an injunction.

11. The appeal carried to the court of the learned District Judge, Ludhiana in Civil Appeal No.103 of 16th December, 2008 failed on 26th April, 2010. The court of first appeal revisited the pleadings and evidence and found nothing remiss or erroneous in the findings of the learned trial court. The court *a quo* is correct in reasoning on the evidence that the sale agreement was a valid and legal document. The evidence on record clearly suggests that the story of security for loan was made up by the defendant to wriggle out of the contract and is of no moment. The appeal court noted that the evidence on record did not suggest the sale agreement to be taken as a promissory note, a cheque or draft which are the usual modes for advancing loans. The signatures of the defendant on the document were genuine and proved by corroborating testimonies of the witnesses produced by the plaintiff. No handwriting expert was produced by the defendant to disprove his signatures of the contract of sale of corpus. I have no reason whatsoever to interfere in the second appeal side against the findings of fact recorded by the courts below for good and proper reasons on appreciation of evidence. No question of law much less a substantial one arises in this appeal fit enough for any further consideration or admission.

12. Accordingly, the appeal which has no life is ordered to stand dismissed in limine.

(RAJIV NARAIN RAINA)
JUDGE

August 3, 2015
Paritosh Kumar