

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3408 of 2013 (O&M)

Date of Decision.27.08.2015

Kartar Singh

.....Appellant

Versus

Kewal Krishan and others

.....Respondents

Present: Mr. Jai Bhagwan, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

C.M. No.9144-C of 2013

For the reasons stated in the application, delay of 262 days
in refiling the appeal is condoned.

Application is allowed.

C.M. No.9147-C of 2013

For the reasons stated in the application, delay of 8 days in
filing the second appeal is condoned.

Application is allowed.

RSA No.3408 of 2013 (O&M)

1. The appeal is by the defendant who resisted an action for specific performance by the plaintiff on the ground that there had been no relationship of vendor and vendee but he had only borrowed a sum of ₹ 90,000/- at the time when the plaintiff obtained signatures on blank stamp papers. According to the defendant, the agreement which was

sued upon namely a document dated 4.11.1999, had been got from him at the time when he borrowed some money and his signatures taken on the blank papers had been filled up to suit the plaintiff for the recitals for specific performance.

2. The plaintiff attempted to prove the agreement by examining the document writer who had brought entries from his own register to show that the stamp papers were purchased by the plaintiff and the document was written by him and when the amount was paid, the defendant had offered to sell the property in favour of the plaintiff.

3. At the trial, the plaintiff examined not merely himself but also put in evidence an employee with him who was his *Munim* in view of the fact that the defendant was taking up a defence that he had borrowed some money and repaid the same and repayment had been receipted by the *Munim* himself, that would discharge his liability under the agreement. The *Munim* admitted in evidence that he had paid ₹ 90,000/- and had issued a receipt and that there were no outstanding due upon the defendant. This, according to him, constituted discharge of liability on the part of the defendant. The defendant would also rely on the answer elicited in the cross-examination of the plaintiff that he would be satisfied if the alternative relief of recovery of the amount paid as earnest was granted to him. The counsel would say that if the plaintiff's *Munim* would admit to having received ₹ 90,000/- and that there was no outstanding due and the plaintiff was pleading only for the alternative relief, the Court must have seen that even for the alternative relief, the alleged existing liability was actually discharged and the Court could not have granted alternative relief also . I will

discard this argument, for, the evidence of *Munim* must be understood in the context for which he was brought as a witness. If the plaintiff is pleading for contention that there was an agreement of sale and the defendant was trying to show that the money which he had borrowed, had also been paid back and the *Munim* had admitted, it cannot take away effect of recital in the agreement itself unless the plaintiff by his witness had admitted that apart from ₹ 90,000/- which he repaid and made receipt in the agreement was not supported by consideration and the document itself must be taken as a loan transaction. The Court did not find that it was merely a loan transaction. It was relying on the evidence of the scribe who spoke about payment of consideration and the circumstances under which the defendant had offered to sell the property. The Courts below have, therefore, taken that these two transactions are distinct and while allowing for plea taken by the defendant that some money which had been due, he had repaid, still allowed for a decree for the earnest money that was stated as having been received by the defendant under the agreement. I would find that such a finding is perfectly consistent with the nature of evidence which was brought before it. I must also observe that if the defendant had received ₹ 90,000/- on 4.11.1999 and that was when the signatures on blank stamp papers were taken, it will be inconceivable that a person can receive ₹ 90,000/- again in cash only one year later. That amount is due unless it is a case of independent transaction where a monetary liability undertaken by the defendant could be discharged. The recital in the agreement that ₹ 90,000/- was said to have been paid cannot be taken as referring only to the amount which was returned by the

defendant.

4. I find no error for interference, for, the case raises no substantial question of law for consideration. The point of fact of return of ₹ 90,000/- was seen as an independent transaction and I find no scope for interference in the second appeal. The second appeal is dismissed.

(K. KANNAN)
JUDGE

August 27, 2015
Pankaj*