

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

RSA No.3413 of 2013 (O&M)

Date of Decision: 12.05.2015

Harjit Singh

.....Appellant

Versus

Kundan Lal

.....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present:- Mr. Karanjit Singh, Advocate,
for appellant.

SHEKHER DHAWAN, J

Present appeal is against concurrent findings of both the Courts below in a suit for possession by way of specific performance of agreement of sale dated 05.05.2003.

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

3. Detailed facts of the case already recapitulated in the judgments of Courts below. However, relevant facts for the purpose of decision of appeal are that Harjit Singh-plaintiff filed suit on the ground that the above mentioned agreement was executed in presence of witnesses and a sum of ₹2,00,000/- was paid as earnest money. Target date for execution of sale

deed was 04.08.2003. On the date fixed defendant did not turn up. The

plaintiff got the legal notice issued but defendant was not ready and willing to perform and as such suit before the Court.

4. Defendant contested the suit taking the plea that plaintiff executed the agreement of sell dated 05.05.2003 by misrepresentation and there was no intention on the part of the plaintiff to purchase the property in question. In fact plaintiff is a property dealer. Plaintiff was not having sufficient money at any point of time for purchase of the property. On 05.05.2003, plaintiff had paid only a sum of ₹1,00,000/-. On 09.05.2003 defendant entered into an agreement of sale with Narinder Kumar for purchase of house for a total sale consideration of ₹12,00,000/- and at that time he had paid ₹1,00,000/- which he had received from the plaintiff by way of earnest money. The defendant was to execute the sale deed in favour of the plaintiff on 04.08.2003 and plaintiff did not turn up. Whatever money the defendant was to receive, the same was to be paid for the subsequent deal with Narinder Kumar. However, defendant took the plea that there was no agreement dated 05.05.2003 and as such he is not liable to perform the agreement.

5. Court of first instance after considering the material and evidence available on file recorded finding of facts that plaintiff failed to prove his case and as such suit was dismissed. Plaintiff preferred first appeal before Additional District Judge, Amritsar but remained unsuccessful and as such appeal before the Court.

6. At the time of arguments Mr. Karanjit Singh, learned counsel for appellant urged that both the Courts below have ignored the material facts available on the file even the execution of agreement has been admitted by the defendant and he has also admitted the receipt of earnest

money to the extent of ₹1,00,000/-. Plaintiff-appellant appeared as PW-2 and proved his case and still the Courts below did not appreciate the facts of the case and evidence available on file and returned the findings which are perverse. The same finding be reversed and appeal be accepted and the suit of the plaintiff be decreed.

7. Having considered the submissions made by learned counsel for appellant, this Court is of the considered view that both the Courts below have recorded concurrent findings of fact that plaintiff has not been able to prove that he was willing to perform his part of the agreement. For that purpose Courts below scrutinized the documentary evidence regarding availability of fund. Needless to mention that for seeking relief for possession by way of specific performance of agreement, parties seeking such a relief shall have to prove at the first instance that he was willing to perform his part of the agreement on the date fixed for execution of sale deed but that has not been done in the present case. The finding recorded by Courts below are to the effect that plaintiff was neither ready nor willing to get the sale deed executed. Both the Courts below already recorded the findings of fact that time was of essence in the present agreement and as such the contract stood rescinded as plaintiff failed to get the sale deed executed even after two years and even plaintiff entered into agreement to sell with one Wailaiti Ram but still plaintiff failed to come forward to perform his part of the agreement.

8. As the evidence available on file has already been scrutinized minutely by both the Courts below there is no substantial question of law involved in this case. In such circumstances no interference is called as per

Santosh Hazari Vs. Purushottam Tiwai (Dead) by LRs., 2001(2) JT 407,

later has been reiterated by Hon'ble Apex Court in case **Narayanan Rajendran Vs. Leskhmy Sarojni 2009(2) RCR (Civil) 286** that in second appeal filed under Section 100 Code of Civil Procedure, High Court cannot interfere with the findings of fact of the first appellate Court, and it is confined only in question of law without formulating substantial question of law. High Court has no jurisdiction to interfere with findings of fact arrived by the Courts below even if Judge honestly believed and satisfied that Courts below committed an error in the recording the findings. Lastly, Hon'ble Apex Court lays down that first appeal is necessary for satisfaction of defeated litigation – second appeal is more in nature of luxury.

9. In view of the above, the present appeal being without any merit stands dismissed.

(SHEKHER DHAWAN)
JUDGE

May 12, 2015
msd