

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

**RSA No.3581 of 2013 (O&M)
Date of decision: 05.10.2015**

Balkar Singh

... Appellant

Vs.

Mohinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Nakul Sharma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.9621-C of 2013

For the reasons stated in the application, duly supported by an affidavit, delay of 184 days in re-filing the appeal is condoned.

C.M. stands disposed of.

RSA No.3581 of 2013 (O&M)

Appellant-defendant is in Regular Second Appeal against the concurrent finding rendered by both the Courts below, whereby, in suit for specific performance of agreement to sell dated 19.10.2000, respondent-plaintiff has been held entitled for refund of earnest money of ₹ 5,00,000/- (Rupees five lacs).

Mr. Nakul Sharma, learned counsel for the appellant-

defendant No.1 submits that once the Court has rendered finding that respondent-plaintiff was not ready and willing to perform his part of contract and even expert examined, by the appellant, has given a categorical view that signature of the vendor-appellant, on the agreement to sell cannot be ascertained to be his own, in view of such evidence on record, therefore, plaintiff was/is not entitled to refund of earnest money.

I have heard learned counsel for the appellant-defendant No.1 and appraised the impugned judgments and decrees of the Courts below.

Both the attesting witnesses of the agreement to sell, *ibid*, proved the exchange of earnest money. The trial Court found, that it was not a case of exercising discretion under Section 20 of the Specific Relief Act (hereinafter referred to as the Act) as respondent-plaintiff was not found to have complied with the provisions of Section 16(c) of the Act, i.e., for want of readiness and willingness. Once the payment of the earnest money has been proved, in my view, the trial Court has rightly ordered for refund of earnest money. The lower Appellate Court being the last Court of fact and law, after appreciating the oral and documentary evidence, found that there were no points of determination to be adjudicated and accordingly dismissed the appeal. The aforementioned finding does not suffer from any illegality, much less, perversity and cannot be said to be devoid of merit, much less, no substantial question of law arises for

determination of the present appeal.

There is another aspect of the matter. The appellant has not made good the deficiency in the Court fee and only paid part of the same, the application, i.e., C.M.No.9622-C of 2013 seeking time for complying with deficiency of Court fee, is hereby rejected.

In view of what has been observed above, the appeal is accordingly dismissed.

(AMIT RAWAL)
JUDGE

October 05, 2015
savita