IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3081 of 2015 (O&M)
Date of Decision: 03.07.2015

Kishan Raj

... Appellant

Versus

Dularwanti ... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Jaspal Kaur Gurna, Advocate,
for the appellant.

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

RAJIV NARAIN RAINA, J.

The plaintiff's suit for possession by way of specific performance has failed in the two courts by recording concurrent findings of fact. The trial court granted alternative relief of refund of money with interest. He has approached this court in second appeal.

In defence to the suit, the defendant's case was that the transaction between the parties was one of loan. Her husband had borrowed money from the plaintiff for making payment towards buying a commercial vehicle, a Tata 407 Truck bearing registration # HNV-9259. For extending the loan, the plaintiff wanted collateral security in immovable property against the loan. It happened that the husband had no immovable property in his name but the defendant did. That is how the papers were drawn, according to the defendant, without conscious knowledge or what they meant. She signed up for securing repayment of loan but not to sell her property to the plaintiff.

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The trial court while holding due execution of the agreement to sell or insist on execution instead bifurcated the claim and believed the probability of the story of loan transaction and that is how the order of refund of money followed which is assailed in the present appeal insisting for a decree of possession by way of specific performance in toto. The suit was partially decreed.

Against the judgment and decree dated September 17, 2012 passed by the Civil Judge (Junior Division), Ludhiana the appeal preferred before the Additional District Judge, Ludhiana failed on April 16, 2014 and the findings of the trial court have been reversed with respect to the due execution of the agreement which the court of first appeal has found to be proved but on the second limb of the essential ingredient required to decree a suit for specific performance, whether the plaintiff is and was ready and willing to perform his part of the contract, the suit has failed. The court of first appeal has arrived at the conclusion that the agreement was not executed for transfer of property but was merely scribed by the plaintiff as security against loan of Rs.35,000/- advanced to the husband of the defendant through his wife, the defendant. The court has weighed the scales in the welter of preponderance of probabilities and has reached the conclusion that the plaintiff had obtained signatures of the defendant on blank papers and stamp papers as security for loan and secretly converted them into an agreement of sale. But since defendant has admitted debt of Rs.3050/- only that admission would be binding on her and she must repay the amount.

Furthermore, issue # 1 was with respect to whether plaintiff is

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entitled to possession by way of specific performance of the agreement to sell dated June 05, 2003 while issue # 2 was whether plaintiff is entitled to permanent injunction as prayed for in the second prayer against alienation and sale of the house in question pending litigation. It may be noted that a specific issue was not framed or claimed as to whether the agreement to sell dated June 05, 2003 was a valid and genuine document while on the other hand the issue framed was whether plaintiff was entitled to the relief of possession by of specific performance, may be large enough but certainly not pointed for evidence to be let in by either side specifically. The issue framed was tailored for decision whether discretionary relief of specific performance should be granted or not and, therefore, when the court of first appeal in para.16 affirmed the findings of the civil court on issue # 1 it could be read not as disbelieving the execution of the sale deed but from the point of view of whether discretionary relief should flow or not in the given circumstances since the foundation of the sale agreement as concluded by court after appreciation of evidence was not transfer of property but as security against loan and, therefore, there is no dichotomy between the two findings in the judgments of the courts below. The appeal court only took a more refined view of the evidence than the trial court on the issue.

I see nothing wrong or unfair in the judgment and decree of the learned Additional District Judge, Ludhiana dated April 16, 2014 warranting upsetting or disturbing the findings based on appreciation of evidence well within the jurisdiction and discretion of the court of first appeal. I would, therefore, dismiss the appeal as not giving rise to a substantial question of law.

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Besides, the appeal has been filed after a delay of 312 days which has not been sufficiently explained in the application under section 5 of the Limitation Act for condoning the delay in filing the appeal. Ordinarily, in suits for specific performance where readiness and willingness on the part of buyers to part with balance sale consideration is an essential ingredient to prove delay in approaching trial courts can sometimes be fatal so also delay in filing appeals because the entire fabric of the case depends, apart from other things, on equity. And delay defeats equity, especially when valuable rights in realty are at stake. Filing an appeal after long delay, such as in this case, when a suit for specific performance has failed till first appeal, then the belated approach can result in irreparable harm on the vendor who is in the meanwhile free to deal with his property and sell it. Late interference is inexpedient and may cloud rights which have settled one way or the other through court adjudication. In such a case, I am inclined to think the court has to always remain circumspect while dealing with applications under section 5 of the Limitation Act, 1963 and not treat them lightly. I would, therefore, want to dismiss the appeal on this score as well.

The only argument raised by Ms. Jaspal Kaur Gurna, learned counsel appearing for the appellant is that her client is a poor person to which I can only say if he is a poor person then he has not explained his money lending activity. Moneylenders cannot in law or in fact be presumed to be poor unless it is proved to the contrary. There is no evidence to support the submission of the counsel. Appellant is, therefore, disentitled from claiming the discretionary relief of specific performance of contract in the facts of this case even when no such intended contract was consciously

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signed by the defendant to sell her property to the plaintiff. The defendant was a wife helping out her husband to improve their lives.

On both fronts, the appeal fails and is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

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