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IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3516 of 2015 (O&M)
Date of decision : November 19, 2015

Surinder Kumar

..... Appellant

Versus

Kabul Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashish Aggarwal, Advocate
for the appellant.

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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?

Amit Rawal, J (oral).
CM No.8530-C of 2015

This is an application under Section 5 of Limitation Act seeking condonation of delay in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 97 days in filing the appeal is condoned.

The application stands disposed of.

RSA No. 3516 of 2015 (O&M)

The appellant-defendant is in Regular Second Appeal against the concurrent finding of fact whereby the suit for specific performance of the agreement to sell dated 2.7.2010 in respect of house measuring 130 sq.yards agreed to be sold for a total consideration of ₹9 lacs against earnest money of ₹3,28,000/-

has been decreed.

Learned counsel appearing on behalf of the appellant-defendant submits that the agreement was forged, false and fabricated as the appellant had signed the blank papers for the purpose of obtaining loan of ₹1 lac and had already paid a sum of ₹50,000/- but yet the respondent-plaintiff had converted the same into agreement to sell. Both the parties to the lis are immediate neighbours.

He further submits that it is only residential house of the appellant-defendant where he is residing with his family, therefore it would be a great hardship in case decree of specific performance is not upset, thus, submits that both the courts have committed illegality and perversity, therefore substantial question of law arise for determination by this Court.

I have heard learned counsel for the appellant and appraised the paper book.

The appellant-defendant has not been able to discharge the onus viz-a-viz re-payment of loan. Had it been a case of loan and the respondent-plaintiff would not have converted it into an agreement to sell. Respondent-defendant did not lodge any complaint for such breach of trust. The target date for registration and execution of the sale deed was 2.6.2011 and the suit has been filed on 8.6.2011 with promptitude. Explanation I to Section 20 of the Specific Relief Act, 1963 provides with that plea of hardship cannot be a ground for declining discretionary relief.

In view of what has been observed above, I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the appellate court.

No substantial question of law arise for determination by this Court.

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

(AMIT RAWAL)
JUDGE

November 19 , 2015
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