

RSA No.1584 of 2014 (O&M)

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

RSA No.1584 of 2014 (O&M)

Date of Decision: August 31, 2015

Dharampal Singh

...Appellant

Versus

Smt. Santosh Gill

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sachin Mittal, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.3777-C of 2014

Prayer in this application is for condonation of delay of 25 days in re-filing the appeal.

For the reasons mentioned in the application which is duly supported by an affidavit of the counsel, the same is allowed. Delay of 25 days in re-filing the appeal stands condoned.

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Challenge in this appeal is to the judgment and decree dated 30.10.2012 passed by the Additional Civil Judge (Senior Division), Gurgaon, by which the suit for possession by way of specific performance of Contract dated 13.02.2006 has been decreed to the extent of double the earnest amount in terms of the agreement to sell which was executed between the appellant-

defendant and the respondent-plaintiff alongwith interest at the rate of 6% per annum from the date of passing the decree till the release thereof and appeal preferred by the appellant-defendant challenging the said judgment and decree, stands dismissed by the District Judge, Gurgaon, vide judgment and decree dated 18.09.2013.

It is the contention of the counsel for the appellant-defendant that at the time of execution of the agreement to sell which is a notarized one, certain spaces were kept blank which have been filled in at the later stage. He contends that the said agreement to sell, therefore, could not have been acted upon. Further contention is that the Stamp Vendor who had appeared in the witness-box before the Court, also stated that none of the parties had signed the register at the time of purchase the stamp-papers. That apart, he asserts that the source of ₹6,00,000/- which is alleged to have been paid to the appellant-defendant at the time of execution of agreement to sell was entered into between the parties, has not been proved and therefore, the provisions of Specific Relief Act could not have been invoked by the Courts below.

I have considered the submissions made by the counsel for the appellant-defendant and with his assistance, have gone through the judgments passed by the Courts below.

The explanation which has been given by the respondent-plaintiff with regard to the source of money which was given as earnest money at the time of execution of agreement to sell cannot

be said to be without any justification or unreasonable as it has been asserted that her husband was a Bank Manager and was getting salary of ₹40,000/- per month, out of which the expenses were only ₹20,000/- and the remaining amount was being kept by her. In this way, she has contributed ₹5,00,000/-. She had obtained ₹1,00,000/- as loan from her brother who had appeared in the witness-box and supported the assertion of the respondent-plaintiff. It cannot, thus, be said that the source of money has not been properly proved/disclosed.

As regards the assertion of the the counsel for the appellant-defendant that there was certain spaces which were left blank in the agreement to sell dated 13.02.2006 at the time of execution of the same, suffice it to say that onus was upon the appellant-defendant to prove that there were spaces left blank at the time of execution of the agreement to sell which were filled at the later stage, which onus has not been discharged. That apart, evidence which has been led by the respondent-plaintiff, proves that the document has been duly executed between the parties and no blank spaces were filled later on.

The assertion of the counsel for the appellant-defendant that the Stamp Vendor has come into witness-box and stated that none of the parties had put their signatures on his register at the time of purchase of the document, suffice it to say that the said assertion would not make any difference because the execution of the

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agreement to sell has not been disputed by the appellant-defendant.

Both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

August 31, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**