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

RSA No.2309 of 2014 (O&M)
Date of decision:16.11.2015

Gian Chand ... Appellant

Vs.

Smt. Bimla 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. K.S.Dadwal, Advocate
for the appellant.

<u>AMIT RAWAL J. (Oral)</u>

<u>C.M.No.5585-C of 2014</u>

For the reasons stated in the application, duly supported by an affidavit, delay of 1435 days in filing the appeal, is condoned.

C. M. stands disposed of.

<u>RSA No.2309 of 2014 (O&M)</u>

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby, relief of specific performance of the agreement to sell dated 28.07.1999 in respect of land measuring 5 ½ marlas, has been declined but has been held entitled to refund of earnest money of ₹2,50,000/- along with interest @ 12% per annum.

Mr. K.S.Dadwal, learned counsel appearing on behalf of the appellant-plaintiff submits that once the Courts below gave the finding that agreement to sell had been proved, the discretionary relief as per Section 20 of the Specific Relief Act was required to be granted. The case set up by the plaintiff is that earlier there was a loan transaction but since defendants failed to pay debt, agreement to sell, *ibid*, aforementioned was entered into. The property was mortgaged by the predecessor-in-interest of the defendants in favour of the plaintiff, thus, both the Courts below have committed illegality and perversity in rendering the findings.

I have heard learned counsel for the appellant-plaintiff and appraised the impugned judgments and decrees of the Courts below.

No doubt the Courts below rendered a finding that agreement to sell had been proved but the fact remains that plaintiff in his cross-examination admitted that it was a loan transaction and the trial Court rightly ordered for refund of earnest money along with interest. It is settled law that in such circumstances, rate of interest @ 6% per annum has to be granted. The factum of mortgage deed has not been proved as no witness of the mortgage has been examined. The lower Appellate Court, being the last Court of facts and law, after examining the cross-examination of the appellant-plaintiff found that it was a loan transaction.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below, which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises to be adjudicated by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 16, 2015
savita