IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 5487 of 2015(O&M)
Date of decision : October 12, 2015

Bhudev

.... Appellant

Versus

Dev Dutt Sharma and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sushil Bhardwaj, 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. 13138-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 117 days in filing the appeal is condoned.

The application stands disposed of.

RSA No. 5487 of 2015(O&M)

The appellant-defendant is in Regular Second Appeal against the concurrent finding of fact assailing the judgment and decree of the lower appellate court, whereby trial court while awarding interest at the rate of 18% per annum on the decretal amount also granted damages to the extent of ₹50,000/-, has been partly allowed.

Learned counsel for the appellant-defendant submits that the respondents-plaintiffs had filed a suit for specific performance of the agreement to sell dated 31.8.2001 in respect of suit land for a total consideration of ₹5,50,000/- and the appellant-defendant received the entire sale consideration and in that regard endorsement dated 31.8.2001 was made on the stamp paper. The trial court found that the respondents-plaintiffs were not ready and willing to perform their part of the agreement and instead of granting the discretionary relief under Section 20 of the Specific Relief Act, 1963 held them entitled to refund of earnest money and interest at the rate of 18% determined damages to the tune of ₹50,000/-. The appellant-defendant assailed the aforementioned finding and the lower appellate court has partly allowed the appeal by setting aside the relief of damages.

He further submits that awarding of interest at the rate of 18% per annum from 31.8.2001 till the date of realization is too phenomenal and in support of his contentions he has relied upon the judgment of this Court in **Mohan Singh Vs. Jarnail Singh 2004 (3) RCR (Civil) 752 and Sarita Dokania and another Vs. Krishna Dey and another 2014 (13) SCC 522**.

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

This court while interfering with the awarding of interest at the rate of 12% per annum in the aforementioned judgments held that since the transaction in question was a simple agreement to sell and by no stretch of imagination can be categorized as commercial, thus, accepted the plea of the appellant therein, for awarding the interest @ of 6% per annum. However, the facts and circumstances of the present case are entirely different, for, the plaintiff-vendees paid the entire sale consideration of ₹5,50,000/- to the appellant-defendant. The aforementioned amount had been retained by the defendant till date, as the suit for specific performance was filed in the year 2004. The defendant has enjoyed the retention of money for such long period. There is no evidence on record, to show that he did not incur any benefit or interest on the said money, much less whether he had invested the same money in some profit making scheme or not. Once the appellant-defendant has enjoyed the entire sale consideration, I do not deem it appropriate to apply the ratio decidendi culled out in **Mohan Singh's case (supra)** that the interest should have been confined to only 6%.

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

October 12 , 2015
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