

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

RSA No.933 of 2015 (O&M)

Date of Decision: 04.05.2015

Rattan Lal

.....Appellant

Versus

Jitender Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

- | | |
|--|-----|
| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present:- Mr. Mahabir Singh Sandhu, Advocate,
for appellant.

SHEKHER DHAWAN, J

Present regular second appeal filed against judgment and decree dated 20.11.2014 passed by the Court of District Judge, Narnaul whereby appeal against the judgment and decree dated 28.08.2012 passed by Additional Civil Judge (SD), Narnaul was dismissed.

2. For the sake of convenience the parties are being referred as per their status before the Courts of first instance.

3. Detailed facts of the case have already been recapitulated in the judgments of the Courts below for the purpose of decision of present appeal.

4. Relevant facts for the purpose of decision of appeal that plaintiff Jitender Kumar filed suit for specific performance on the basis of agreement of sale dated 01.10.2003. As per plaintiff, suit land was agreed to be sold

for a sum of ₹4,50,000/- and a sum of ₹4,00,000/- was given as earnest money. Balance amount was to be paid at the time of registration of sale deed i.e. on or before 10.01.2004. Thereafter defendant failed to perform his part of contract whereas the plaintiff was always ready and willing to perform his part and as such suit for specific performance before Court of first instance.

5. Defendant contested the suit taking the plea that suit is not maintainable. As per defendant, he had taken a loan of ₹4,00,000/- from the plaintiff which was to be repaid along with interest @ 6% per annum whereas no agreement of sale was ever executed. A sum of ₹2,00,000/- has already been repaid by the defendant against total loan of ₹4,00,000/-. Defendant was having faith upon plaintiff and by misusing the said fiduciary relationship, plaintiff might have got signatures of defendant on some documents which were not read over to him. The agreement to sell is based on fraud and misrepresentation of fact and the same is not binding upon the defendant and suit be dismissed.

6. Court of first instance framed issues and after recording and appreciating the evidence decreed the suit for specific performance. Defendant challenged the said judgment and decree before Court of first appeal but remained unsuccessful. Hence the present regular second appeal by the defendant.

7. Mr. Mahabir Singh Sandhu, learned counsel for appellant took the plea that the suit was filed by plaintiff before Court of first instance just before the expiry of three years i.e. period of limitation and that fact establish that plaintiff was not ready and willing to perform his part on the agreement. More so, out of total sale consideration of ₹4,50,000/-, a sum of

₹4,00,000/- had already been paid on 01.10.2003 and a small portion of the agreed amount remained to be unpaid.

8. Having considered the submissions made by learned counsel for appellant and perusal of record, this Court is of the considered view that both the Courts below have recorded concurrent findings of fact. There is absolutely no substantial question of law involved in this case. The plea regarding readiness and willingness on the part of the parties has already been discussed in detail in the judgments of both the courts below. This Court while taking up regular second appeal does not find any ground to interfere in the concurrent findings of facts recorded by both the Courts below and there are no substantial questions of law involved in this case.

9. The present appeal being without any merit and the same stands dismissed.

**(SHEKHER DHAWAN)
JUDGE**

May 04, 2015
msd