

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4008 of 2014 (O&M)

Date of Decision.28.09.2015

Sureya and others

.....Appellants

Versus

Poona

.....Respondent

Present: Ms. G.K. Mann, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. There is enormous delay of 1330 days in filing the appeal.

The explanation given was that although the judgment copy was obtained on 13.09.2010, the appeal papers had been entrusted to the advocate's clerk and he had misplaced the papers and it was searched only 3 ½ years later and the appeal was filed with an application for condonation of delay. I wanted to satisfy for myself that party has a tenable case to put forth and did not want to knock off the appellant at the threshold without addressing the issue on merits. I have, therefore, allowed for arguments also to be made by the counsel with reference to the merits of the case.

2. It is a suit for enforcement of an agreement of sale executed by the defendant in favour of the plaintiff on 1.3.1999 for consideration of ₹1,20,000/-. As per the terms of the agreement, an amount of ₹37,000/- was paid on that day and the balance of amount was to be

paid before 25.02.2001. According to the plaintiff, he was ready and willing to pay the amount but the defendant did not turn up to execute the sale deed.

4. The defendant took up a defence that in respect of the very property which was subject of agreement, the defendant had executed a mortgage in favour of the plaintiff's son for ₹80,000/-. The mortgage debt was still due and payable and the plaintiff had brought about this agreement only as a measure to secure the loan which he had availed through the mortgage. The Court below have declined the relief and the plaintiffs come up on appeal to state that he does not compel the defendant to discharge the mortgage or adjust the sale consideration for discharge of the said mortgage. If the mortgage in favour of the plaintiff's son is an admitted fact, the plaintiff ought to have known about the same. It was inconceivable that there was an agreement of purchase by the plaintiff without a provision for discharge of the mortgage. If the plaintiff would make an argument that he was prepared to purchase the property without reference to the mortgage and he would not also compel the defendant to discharge the same, it would mean that he has literally purchased the property without any provision for discharge of mortgage obtained by his son. This is another way of saying that the sale consideration itself cannot be adequate, for, if the plaintiff is now trying to give up an enforcement of the mortgage at the instance of the son and would not seek the defendant for discharge of the loan, the plaintiff was trying to take an advantage of the fact that the defendant had already been indebted to his son and there was a sure extraordinary hardship caused to the defendant being

compelled to execute the sale in respect of the property. The trial court had dismissed the suit but the appellate Court had allowed for the return of the advance recited in the document.

5. A right of specific performance is relief that will have to be tempered by Court's discretion on adequate and proper grounds. Section 20 of the Specific Relief Act contains several circumstances when the Court will relieve a party of the obligation to execute the sale for adequate and proper reasons. There was surely a hardship caused to the defendant by virtue of previous indebtedness and the plaintiff's concession that he will not press for return of the money for the mortgage must only be taken as an illustration of the plaintiff trying to secure an unfair bargain and the Appellate Court had correctly allowed for only the return of money. I do not think that there is any error in the judgment passed for intervention in the second appeal.

6. Although the delay of 1330 days in filing the appeal itself is not appropriate, I have also considered the case on merits. Both the application for condonation of delay and the second appeal would require to be dismissed and accordingly dismissed.

(K. KANNAN)
JUDGE

September 28, 2015
Pankaj*