

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

Date of decision: 29.10.2015

1. RSA No.4313 of 2014 (O&M)

Balbir Singh ... Appellant
Vs.

Jagir Singh ... Respondent

2. RSA No.4307 of 2014 (O&M)

Jagir Singh ... Appellant
Vs.

Balbir Singh ... Respondent

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. A.S.Khinda, Advocate
for the appellant (in RSA No.4313 of 2014).

Mr. Munish Gulati, Advocate
for the appellant (in RSA No.4307 of 2014).

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two Regular Second Appeals bearing No.4313 of 2014 filed by the plaintiff and 4307 of 2014 filed by the defendant as the common questions of law and fact

involved in both the appeals are same.

The grievance of the plaintiff in Regular Second Appeal No.4313 of 2014 is that both the Courts below have committed illegality and perversity in not granting the discretionary relief under Section 20 of the Specific Relief Act (for short “the Act”) on the premise that plaintiff had not been ready and willing to perform his part of the contract. Though the trial Court dismissed the suit in toto, however, the lower Appellate Court ordered for refund of earnest money of ₹ 4,00,000/- along with interest @ 9% per annum.

The grievance of the defendant in other Regular Second Appeal No.4307 of 2014 is that though the trial Court dismissed the suit, but did not order for refund of earnest money as the plaintiff failed to perform his part of the contract and, therefore, earnest money was forfeited.

Learned counsel appearing on behalf of the appellant in RSA No.4313 of 2014 submit that both the Courts below have committed illegality and perversity for ordering refund of earnest money along with interest, as well as, not granting the discretionary relief under Section 20 of the Act.

I have heard leaned counsel for the appellants and appraised the impugned judgments and decrees of the Courts below.

Vis-a-vis claim of the plaintiff, in my view, the trial Court has rightly declined the discretionary relief under Section 20 of the Act on the ground that plaintiff did not able to step into witness box.

Instead his General Power of Attorney has stepped into witness box, thus, defendant, in my view, has been deprived of right to put a specific question vis-a-vis readiness and willingness. In view of settled law by the Hon'ble Supreme Court in **Man Kaur (dead) by Lrs vs. Hartar Singh Sangha 2011(1) RCR (Civil) 189**, principal, who had the personal knowledge, cannot delegate the same to the agent by executing the General Power of Attorney. Thus, there is no substantial question of law arises in appeal bearing No.4313 of 2014 filed at the behest of the plaintiff and accordingly, the same is dismissed.

Vis-a-vis claim of the defendant, in challenging the finding rendered by the lower Appellate Court, whereby, the plaintiff has been held entitled to refund of earnest money to the tune of ₹ 4,00,000/- along with interest @ 9% per annum. I am of the view that defendant has failed to discharge the onus by proving that it was not sale transaction but was for the purpose of obtaining loan. No evidence has come on record to prove whether alleged loan amount has been disbursed or repaid. The agreement to sell has been proved through the testimony of attesting witnesses and scribe also. In my view, the lower Appellate Court has rightly ordered for refund of earnest money as there was no occasion for the defendant to forfeit the amount, who denied the execution of the agreement to sell.

There is no illegality and perversity in the finding rendered by both the Courts below, based upon the appreciation of oral and

documentary evidence, much less, no substantial question of law arise to be determined by this Court. The appeal bearing No.4307 of 2014, being devoid of merit, is hereby, dismissed.

(AMIT RAWAL)
JUDGE

October 29, 2015
savita