

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

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Regular Second Appeal No.6178 of 2014 (O&M)
Date of Decision: October 15, 2015

Rachna Ram

...Appellant

Versus

Man Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Saurabh Bhardwaj, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.14721-C of 2014

Prayer in this application is for condonation of delay of 248 days in re-filing the appeal.

It is the contention of the learned counsel for the applicant-appellant that after the filing of the appeal, the same was returned by the Registry with certain objections. By mistake, the paper book was kept in a different case file i.e. Criminal Miscellaneous No.7504 of 2014 titled as Narinder Singh @ Binder Singh Versus State of Haryana, decided on 18.03.2014. When the client came to collect the records of that criminal case, the present file was traced and on tracing of the same, the objections, which were raised by the Registry, were removed and the case was re-filed, which has resulted in the delay of 248 days in re-filing the appeal.

For the reasons mentioned in the application, which is duly supported by the affidavit of the Clerk of the counsel, the same is allowed.

Delay of 248 days in re-filing the appeal stands condoned.

Challenge in this appeal is to the judgment and decree passed by the Additional District Judge, Kurukhetra, dated 13.12.2013, by which the appeal preferred by the respondent No.1-plaintiff against the judgment and decree dated 17.01.2012 passed by the Additional Civil Judge (Senior Division), Kurukshetra, partly decreeing the suit, where the relief of specific performance of the contract dated 02.07.2004 was declined but the refund of amount of ₹1,30,000/- along with interest at the rate of 9% was granted, has been accepted.

2. It is the contention of the learned counsel for the appellant-defendant No.1 that the learned Lower Appellate Court has not appreciated the evidence, which has been brought on record, which proves that the appellant-defendant No.1 had not actually entered into an agreement to sell but has only taken a loan of ₹30,000/- from respondent No.1-plaintiff and for the said purpose his thumb impression was taken on blank papers, which were later on converted into an agreement to sell dated 02.07.2004 of the land in dispute. He submits that an agreement to sell was actually entered into on 22.06.2004 with one Shri Hira Singh, respondent-defendant No.2 and the earnest money was also received from him and the learned trial Court has rightly appreciated the evidence and, therefore, keeping in view the earlier agreement to sell dated 22.06.2004, which was entered into between the appellant-defendant No.1 and respondent-defendant No.2 declined the relief of specific performance of the agreement to sell dated 02.07.2004 and only granted the refund of the alleged earnest money along with interest. Further ground which was taken by the learned trial Court was that the appellant-defendant No.1 was owner of only 3 kanals and 14 marlas

of land, whereas the agreement to sell was for the land measuring 4 kanals 8 marlas. He, thus, contends that the impugned judgment and decree passed by the learned Lower Appellate Court, deserve to be set aside.

3. This contention of the learned counsel for the appellant-defendant No.1 cannot be accepted as respondent No.1-plaintiff has been able to prove the execution of the agreement to sell dated 02.07.2004 on the basis of cogent evidence, which has been brought on record, which includes the two attesting witnesses, scribe of the agreement and the Handwriting and Fingerprint Expert, who have not only proved the execution of the agreement to sell but have also established that the thumb impression on the document was that of the appellant-defendant No.1, which was denied by him to be his. That apart, as regards the readiness and willingness to perform his part of the contract, the respondent-plaintiff has produced Sukhdev Singh, Advocate as PW-4, who has proved the issuance of legal notice dated 29.06.2005 Exhibit P-5 and the reminder dated 23.07.2005 Exhibit P-7. The execution having been duly proved and the readiness and willingness also established, the only thing, which could have been gone against the respondent No.1-plaintiff, was the agreement to sell dated 22.06.2004. The learned Lower Appellate Court has in detail gone into the evidence, which has been produced on record and has come to the conclusion that there was no sale consideration, which has passed hands as per the statement/cross-examination of respondent-defendant No.2, who appeared as DW-2. That apart, it would not be out of way to mention here that the appeal preferred by respondent-defendant No.2-Hira Singh i.e. Regular Second Appeal No.911 of 2014 titled as Hira Singh Versus Maan Singh and another, against this very impugned judgment, stands dismissed

on 22.04.2014 by this Court.

4. In view of the above, the contentions as raised by the counsel for appellant-defendant No.1, cannot be accepted, specially when the learned Lower Appellate Court has rightly returned the findings after properly appreciating the pleadings/evidence in detail and the same, thus, do not call for to be interfered with as there is no perversity or illegality in the same.

5. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

6. In the light of the dismissal of the appeal itself, the application for stay i.e. CM No.14722-C of 2014 stands disposed of as infructuous.

October 15, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE