

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

1. RSA No.3101 of 2011 (O&M)
Date of decision : 16.05.2016

Om Parkash and others

...Appellants

Versus

M/s New Hind Enterprises and another

...Respondents

2. RSA No.3102 of 2011 (O&M)
Date of decision : 16.05.2016

Randhir Singh and others

...Appellants

Versus

M/s New Hind Enterprises and another

...Respondents

3. RSA No.3103 of 2011 (O&M)
Date of decision : 16.05.2016

Hari Ram and others

...Appellants

Versus

M/s New Hind Enterprises and another

...Respondents

4. RSA No.3215 of 2011 (O&M)
Date of decision : 16.05.2016

Smt. Kamlesh

RSA Nos.3101 to 3103, 3215 of 2011 (O&M) &
RSA No.909 of 2012 (O&M)

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...Appellant

Versus

M/s New Hind Enterprises and others

...Respondents

5. RSA No.909 of 2012 (O&M)
Date of decision : 16.05.2016

M/s New Hind Enterprises Private Ltd. and another

...Appellant

Versus

Om Parkash and others

...Respondents

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. Vikram Punia, Advocate for the appellants
(In RSA Nos.3101, 3102, 3103 and 3211 of 2011)

Mr. Ashwani Talwar, Advocate for the respondents.
(In RSA Nos.3101, 3102, 3103, 3215 of 2011)
for appellant (In RSA No.909 of 2012)

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of RSA Nos.3101, 3102, 3103, 3215 of 2011 at the instance of the Vendor and 909 of 2012 at the instance of the vendee. In the aforementioned four RSAs, the suit at the instance of the respondent-Vendee seeking specific performance of the agreement to sell dated 26.08.2004, has been decreed whereas as in RSA No.909 of 2012 trial Court

decreed the suit for specific performance for agreement to sell dated 26.08.2004 and lower Appellate Court reversed and declined the specific performance.

Mr. Punia, learned counsel appearing on behalf of appellant in four RSAs at the instance of the vendor, in support of his contention, has raised following arguments:-

1. Agreement to sell was entered into between vendor and vendee namely M/s New Hind Enterprises and another through authorized signatory T.P. Chauhan whereas suit was filed by both, but, Subhash Chand Wadhwa authorized signatory, has not stepped into the witness-box.
2. The agreement to sell has not been proved through examination of attesting witnesses namely Shamsheer Singh and Jai Bhagwan and the scribe.
3. Though signatures and thumb impression on the agreement to sell have been proved, specific plea was taken that agreement to sell had become unenforceable as both the attesting witnesses aforementioned assured that in view of the agreement to sell, some plot of 500 square yards would be given to the vendor and price was also settled and this plea was specifically taken in the written statement and rejoinder and, therefore, in view of law laid down by Division Bench of this Court in *Salig Ram and another Vs. Shiv Shankar and others, AIR 1971 Punjab and Haryana, 437*, pleadings in the written statement are deemed to be admitted.
4. Preceding to the filing of the suit, legal notice dated 01.02.2005 in this regard was sent but averments in the same was not rebutted or replied,

thus, both the Courts below have committed illegality and perversity in exercising the discretion under Section 20 of the 1963 Act and urges this Court for formulation of substantial questions of law as culled out in memorandum of appeal.

Mr. Ashwani Talwar, learned counsel appearing on behalf of respondent-Vendee submits that T.P. Chauhan was not acting in his personal capacity but was representing the company. He was duly authorized by resolution to sign the agreement to sell, and earnest money of ₹6,18,000/- was paid by way of cheque in respect of land agreed to be sold even marked his presence on the stipulated date and filed the affidavit. The suit as per resolution dated 01.05.2004 has been filed by both T.P. Chauhan and Subhas Chand Wadhwa both authorized signatory. He submits that there was no assurance with regard to the allotment of plot as mentioned above or fixing of the price. He further submits that there was no occasion for examination of the attesting witnesses once the signature and thumb impression on the agreement to sell had been admitted and thus urges this Court for affirmation of the findings rendered by both the Courts below. He further submits that RSA No.909 of 2012 arising out of filing of the civil suit bearing No.95 of 2005 where the trial Court decreed the suit but lower Appellate Court reversed the findings on the ground that the attesting witnesses have not been examined, therefore agreement to sell remained unproved and thus urges this Court for formulation of the following substantial questions of law:-

1. Whether signature and thumb impression on the agreement to sell has been admitted and does it become unenforceable owing to the stand taken in the written statement?

2. Whether the lower Appellate Court committed illegality and perversity in not referring to the terms and conditions of the agreement to sell and exceeded its jurisdiction by referring to the averments in the written statement?

Mr. Vikram Punia, learned Counsel appearing on behalf of respondent-Vendor submits that in all the suits, no specific relief of possession has been sought and, therefore, in view of law laid down by Hon'ble Supreme Court in *Adcon Electronics Private Limited Vs. Daulat and another*, 2001 AIR Supreme Court, 3712, suit was ex facie not maintainable. The aforementioned findings have been rendered while interpreting the provision of Section 22 of Specific Relief Act, 1963 and thus urges this Court for dismissing of the appeal and allowing of the appeal at the instance of the vendors.

I have heard learned counsel for the parties and appraised the paper book and of the view that judgment/ratio decidendi culled out by Hon'ble Supreme Court in *Adcon Electronics Private Limited* (Supra) has referred to the provision of Section 22 of 1963 Act but with all humility and with due respect, remained oblivious of the provision of Sub-Section 3 of Section 28 of the Act, which reads thus:-

“28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—

(1) & (2) xxx xxx

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be

entitled to, including in appropriate cases all or any of the following reliefs, namely:—

- (a) the execution of a proper conveyance or lease by the vendor or lessor;*
- (b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.”*

The aforementioned provisions of law have been interpreted by Hon'ble Supreme Court in *Babu Lal Vs. M/s Hazari Lal Kishori Lal and others AIR 1982 SC 818*. It is also settled law that where judgment of the subsequent year has not taken notice of the previous year, two views are possible, this Court can deal with the view which is applicable to the facts and circumstances of the case. Similar proposition was raised in *CR No.5255 of 2014 titled as Gurjant Singh Vs. Harbans Kaur and others, decided on 07.04.2016* where this Court after noticing the ratio decidendi culled out in *Adcon Electronics Pvt. Ltd. and Babu Lal* also referred to the provision of Sub-Section 3 of Section 28 of the Act held that in suit for specific performance, relief of possession is inherent. The legislature in the wisdom envisages the situation where the purchasers after depositing of the amount, Vendor does not come out for performance and also for compliance of the judgment and decree, therefore as per the Sub-Section (a) and (b) of sub-Section 3, Court can grant reliefs enumerated therein.

But even if possession has not been sought, Statute permits the Court to grant relief even if it has not been sought. In the present case, status-quo has been ordered, in essence, execution of the judgment and decree had been kept in abeyance as the respondent-plaintiff was precluded from seeking fruit of the judgment and decree rendered in their favour. There is another

aspect of the matter, once the signature and thumb impression on the agreement to sell have not been disputed, much less, receipt of the money paid by way of cheque encashment thereof, there was no necessity for the plaintiff to examine the attesting witnesses. The plea raised in the written statement in my view was wholly mis-conceived, for, the agreement to sell did not envisage any part performance on the part of the vendee qua allotment of 500 square yards of plot or fixing of the same price. Had it been so, nothing prevented the vendor to examine the attesting witnesses as own witnesses, in essence, circumstances sought to be explained in the notice and as well as in the written statement were not in consonance with the terms and conditions of the agreement to sell. None of the terms and conditions envisages the assurance allegedly coined and put forth in the defence. In my view, both the Courts below had rightly exercised the discretion under Section 20 of the Act as there was no delay in seeking relief as stipulated date was 25.02.2005 whereas suit was filed on 11.05.2005. As regards the findings rendered by the lower Appellate Court in Regular Second Appeal No.909 of 2012, the lower Appellate Court ought to have noticed the aforementioned facts while declining the discretionary relief.

The arguments that plaint is conspicuously absent with regard to the resolution dated 01.05.2004, is neither here and there. It is settled law that company works through authorized officer. The Director for some reasons do not appear personally and perform role of the company. Resolution authorized both T.P. Chauhan and S.C. Wadhwa to perform their part of performance on behalf of company. It is T.P. Chauhan who had entered into agreement to sell and suit has already been filed by both S.C. Wadhwa and T.P. Chauhan as T.P.

Chauhan stepped into the witness-box. Absence of non-examination of S.C. Wadhwa would not be fatal to the case as per provision of Order 29 Rule 1 of the Code of Civil Procedure.

Aforementioned provision of law has been interpreted by Hon'ble Supreme Court in *AIR 1997 Supreme Court 3 United Bank of India Vs. Naresh Kumar and others*.

Keeping in view the aforementioned facts and circumstances, the judgment and decree rendered in Regular Second Appeals Nos.3101 to 3103, 3215 of 2011 are hereby affirmed, as, no substantial questions of law arises for determination.

Same are hereby dismissed.

In RSA No.909 of 2012, substantial questions of law as noticed above are answered in favour of appellant-plaintiff and against the respondent-defendant. Judgment and decree of the lower Appellate Court is set aside and that of the trial Court is restored.

Suit is decreed.

Appeal stands allowed.

16.05.2016

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**(AMIT RAWAL)
JUDGE**