

Regular Second Appeal No.4312 of 2011 (O&M) { 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.4312 of 2011 ((O&M)
Date of Decision: September 01, 2016

Rakesh Bansal

...Appellant

Versus

Jinder Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.P.S.Dhaliwal, Advocate,
for the appellant.

Mr.H.S.Rakhra, Advocate,
for respondent Nos.1 to 6.

AMIT RAWAL, J. (Oral)

CM Nos.12453-C & 12454-C of 2016

For the reasons mentioned in the applications, which are supported by affidavits, delay of 33 days in re-filing and 77 days in filing the appeal is condoned.

Applications stand disposed of.

RSA No.4312 of 2011

Appellant is aggrieved of the dismissal of the suit seeking

specific performance of the agreement to sell dated 24.2.2004 in respect of a plot by paying earnest money of ₹30,000/- against total sale consideration of ₹40,000/-.

Mr.P.S.Dhaliwal, learned counsel for the appellant submits that the target date of execution and registration of the sale deed was 24.5.2004. However, it was extended to 24.7.2004. In the meantime, vendor had on 21.7.2004 died and the date was extended to 21.9.2004. Both the extensions could not be exhibited on record owing to the fault of the counsel and in this manner, the Courts below had dismissed the suit being barred by law of limitation. He further submits that in this regard, an application for additional evidence was filed, but the same was also rejected. In this backdrop of the matter, the present appeal has been filed and, thus, urges this Court that the impugned judgments and decrees, much less the order declining additional evidence be set-aside.

Per contra, Mr.H.S.Rakhra, learned counsel for respondent Nos.1 to 6 submits that the readiness and willingness on the part of the plaintiff was conspicuously absent as even if the additional evidence is taken on record, the suit was filed on 17.7.2007 and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties, appraised

the paper book and of the view that the Lower Appellate Court ought to

have sought the report from the trial Court vis-a-vis the additional evidence qua two extensions as noticed above in order to effectually adjudicate the controversy as to whether the suit was within the period of limitation before adverting to the objection of the defendants qua readiness and willingness. It is settled law that the party cannot be made to suffer for the lapse of the counsel, whereas both the extensions were in the shape of agreement and at the back of agreement to sell. The same could have been proved on record.

Keeping in view the aforementioned facts, I am of the view that the matter is required to be remitted back to the Lower Appellate Court, who would further seek report qua the documentary evidence intended to be proved on record by way of additional evidence within a time frame and thereafter decide the appeal afresh keeping in view the observations made herein below.

Accordingly, the judgments and decrees of both the Courts below are set-aside. The matter is remitted back to the Lower Appellate Court to seek report from the trial Court with regard to documents intended to be proved by way of additional evidence within a period of six months from the date of receipt of certified copy of this order.

The parties, through their counsel, are directed to appear

before the Lower Appellate Court concerned on 23.9.2016.

Regular Second Appeal No.4312 of 2011 (O&M)

{ 4 }

Appeal stands allowed.

Records of the Courts below be sent forthwith.

September 01, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No