

LPA no.185 of 2016 (O&M) 1

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

**LPA no.185 of 2016 (O&M)
Date of Decision : 19.10.2016**

Sushila Nagpal and another

....Appellant(s)

Versus

The State of Punjab and others

...Respondent(s)

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE DR. SHEKHER DHAWAN**

Present : Mr.B.S.Sehra, Advocate for the appellants

MAHESH GROVER, J.

This appeal is directed against the judgment of the learned
Single Judge dated 28.10.2015.

Appellant no.2 Sh.Puneet Aggarwal supposedly executed indirect sale with the original allottee Ms. Sushila Nagpal contrary to the rules of the society. He faced cancellation of the allotment which was subsequently allotted to some other eligible member. The appellant no.2 has been agitating his right since then by pleading that he had transacted this sale with the original allottee on the basis of General Power of Attorney. The appellant no.2 pleads this to be a valid power of attorney but its authenticity is questioned by the respondents who plead that it is a false and fabricated document. It is then that the appellant no.2 was directed to produce appellant no.1 so as to establish the veracity of the document as also the transaction. The Writ Court before whom the proceedings were being agitated directed the appellant no.2 to produce the appellant no.1 or face adverse inference.

Having put the appellant no.2 on notice, an order to this effect was passed on 28.10.2015 by the writ Court which is now the cause of grievance to the appellant who pleads that merely because he could not produce the appellant no.1 would not ipso facto lead to a conclusion that the power of attorney was either false or transaction bad on that score.

After hearing learned counsel for the appellants, we are of the considered view that there is no cause warranting interference in the judgment of the learned Single Judge as the power of attorney has been questioned on the basis of fraud and even otherwise the terms of the general power of attorney would stand extinguished if the executor was no longer alive, which are facts which need to be verified.

Be that as it may we are of the opinion that the appeal is sans merit and is dismissed but with an observation that nothing said by the learned Single Judge including the adverse inference derived for the purposes of disposing of the writ petition would stand in the way of the appellant to establish the correctness of general power of attorney in a Court of competent jurisdiction. Similarly if a plea of document being false and fabricated is raised by the other side they would be at liberty to establish it in appropriate proceedings.

Hence, dismissed. However, in the given set of circumstances, we condone the delay of 35 days in filing the present appeal.

(Mahesh Grover)
Judge

(Shekher Dhawan)
Judge

19.10.2016

rekha

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No