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

Date of decision : 08.11.2016

1.

RSA-3145-2012 (O&M)

Jagrup Singh @ Roop Singh

... Appellant

Versus

Gurjant Singh and another

... Respondents

2.

RSA-4976-2012 (O&M)

Gurjant Singh

... Appellant

Versus

Jagrup Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aakash Singla, Advocate and
Ms. Gurpal Kaur Dulat, Advocate
for the appellant in RSA No.3145 of 2012 and
for the respondent(s) in RSA No.4976 of 2012.

Mr. Rajan Bansal, Advocate
for the respondent in RSA No.3145 of 2012 and
for the appellant in RSA No.4976 of 2012.

AMIT RAWAL, J. (ORAL)

CM-8384-C-2012 IN RSA-3145-2012

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the delay of 133 days in filing the appeal is condoned.

CM stands disposed of.

MAIN CASES

This order of mine shall dispose of two appeals one bearing

RSA No.3145 of 2012 titled as **“Jagrup Singh @ Roop Singh V/s Gurjant Singh and another”** at the instance of the appellant-defendant against the judgment and decreed of the Courts below, whereby in the suit seeking specific performance of the agreement to sell dated 18.12.2004, an alternative relief of refund of earnest money of ₹ 2,00,000/- along with interest @ 12% p.a. has been ordered and the other appeal bearing **RSA No.4976 of 2012** titled as **“Gurjant Singh V/s Jagrup Singh and another”** at the instance of the appellant-plaintiff is against the declining of the discretionary relief.

The facts are being taken from the appeal bearing **RSA No.3145 of 2012.**

Mr. Aakash Singla and Ms. Gurpal Kaur Dulat, learned counsel appearing on behalf of the appellant-defendant submits, that the respondent-plaintiff had entered into the aforementioned agreement to sell in respect of land measuring 52 kanals approximately 6.5 acres @ ₹ 2,05,000/- per acre and total of which comes to ₹ 13,32,500/- and earnest money of ₹ 2,00,000/- is stated to have been paid. The stipulated date according to the respondent-plaintiff was 24.01.2005. The plaintiff is stated to have appeared before the Office of Registrar on the said date and produced on record affidavit (Ex.P3). However, upon receipt of notice of the suit, the appellant-defendant denied the agreement to sell by stating that it was only a loan transaction, but yet fixed the date for registration and execution of the sale deed as 27.10.2005. However, the respondent-plaintiff did not appear. The terms and conditions of the agreement to sell as per the provisioners of Section 91 of the Indian Evidence Act are sacrosanct.

The amount of earnest money is deemed to have been forfeited. This aspect

has not been appreciated/considered by the Courts below, thus, urges this Court for setting aside the judgment and decree under challenge.

He further submits that even the interest @ 12% is too phenomenal as it was not a commercial transaction and at the best the refund could have been @ 6%.

Per contra, Mr. Rajan Bansal, learned counsel appearing on behalf of the respondents-plaintiffs submits, that the readiness and willingness has been proved to the hilt. Once the matter was subjudiced before the Court, the factum of non-appearance before the Registrar on 27.10.2005 would be pales into insignificance. The defendant admitted the execution of the agreement to sell, much less, his signatures by accepting to be a loan transaction, therefore, it does not lie in his mouth to seek the forfeiture, rather the Court below should have exercised the discretion under Section 20 of the Specific Relief Act, 1963, thus, urges this Court for modification of the judgment and decree under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Aakash Singla viz-a-viz the forfeiture of the amount, for, the plea taken in the written statement would not only incoherent, but mutually destructive. Once, there is a categoric admission with regard to obtaining of the loan, it does not lie in the mouth of the defendant to forfeit the aforementioned amount.

However, there is a force and substance in the submissions of Mr. Aakash Singla with regard to the refund of amount with the element of interest @12%, for, it was not a commercial transaction. I am of the view that the Courts below ought to have ordered for interest @ 6%.

As regards the submissions of Mr. Rajan Bansal viz-a-viz the discretion, I am of the view that the readiness and willing has to be proved throughout from the date of the agreement to sell, till filing of the suit and during the pendency of the suit upto passing of the decree. Once the readiness and willingness is lacking during the pendency of the suit, in my view, the Courts below have rightly not granted discretionary relief, therefore, the appellant-plaintiff is not entitled for the same. The aforesaid view of mine is fortified by the *ratio decidendi* culled out by the Hon'ble Supreme Court in “Sita Ram and others V/s Radhey Shytam” 2007 (4) RCR (Civil) 533.

For the foregoing reasons, the appeal bearing RSA No.3145 of 2012 at the instance of the appellant-defendant is hereby partly allowed and the judgment and decree of the Courts below viz-a-viz the interest @ 12% is modified and the same is reduced as 6%. Rest of the findings are affirmed, whereas the other appeal bearing RSA No.4976 of 2012 at the instance of the appellant-plaintiff is hereby dismissed.

08.11.2016

Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No