IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4753 of 2012(O&M)
DATE OF DECISION: November 7,2016

Surjit Singh

…Appellant

versus

Mehal Singh

…Respondent

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Sandeep Khunger, Advocate with
Ms.Sukhpreet Grewal, Advocate for the appellant.
Mr.O.P.Kamboj, Advocate for the respondent.

AMIT RAWAL, J.

The appellant-plaintiff is aggrieved of the expression committed in the judgment and decree dated 21.7.2008 passed by the lower Appellate Court whereby his suit seeking specific performance of agreement to sell dated 16.11.2000 has been decreed.

Mr.Sandeep Khunger, learned counsel for the appellant-plaintiff appearing on behalf of the appellant submits that the civil suit was filed seeking specific performance of the agreement to sell dated 16.11.2000 against the total consideration of Rs.6,54,565/-. The earnest money of Rs.4,50,000/- was paid. The trial Court, though dismissed the suit qua the discretionary relief but held that the appellant-plaintiff s entitled to recover the earnest money. Both the parties assailed the findings of the trial Court. The appeal of the appellant-plaintiff has been allowed, whereas, the appeal of the respondent-defendant was dismissed. Even RSA at the instance of the vendor (defendant) has been dismissed. He submits that the land agreed to be sold was mortgaged with the Bank. The direction of the lower Appellate Court calling upon the appellant-plaintiff to clear the outstanding dues of the Bank is not in consonance with the settled proposition of law. At the best, whatever the balance sale consideration is available, the executing Court could have ordered for satisfying the afore-mentioned dues. He drew my attention to the miscellaneous application being CM No.13226-C of 2012, by submitting that there is a delay of 1460 days in filing the present appeal. He submits that the delay in filing the present appeal has occurred as the appellant-plaintiff could not understand the intricacy of the judgment of the lower Appellate Court in a correct perspective manner. The executing Court vide order dated 8.12.2011 ordered for payment of the balance sale consideration. It also insisted to comply with the judgment and decree of the lower Appellate Court. It is in that background, the delay occurred. He relies upon the judgments rendered in State(NCT of Delhi) v. Ahmed Jaan, 2008(4) RCR (Civil) 126 and N.Balakrishan v. M. Krishnamurthy, 1999(2) RCR (Civil) 578.

Mr.O.P.Kamboj, learned counsel appearing for the respondent-defendant does not dispute regarding dismissal of appeal qua discretionary relief, but submits that explanation given in the application seeking condonation of delay is lacking reasons. The application is suffering from inordinate delay and it should not be condoned.

I have heard the leaned counsel for the parties.

For the sake of convenience, the para 14 of the judgment of Lower Appellate Court is reproduced as under:

> "*The appeal preferred by the plaintiff has been found to be laden with merit, hence allowed. The impugned judgment and decree is hereby modified to the extent that plaintiff is entitled to specific performance of agreement to sell dated 16.11.2000 and as a consequence thereto a decree for possession by way of specific performance of agreement of sale dated 16.11.2000 in respect of land measuring 30 kanals 16 marlas, as detailed in heading of the plaint is*

hereby passed in plaintiff's favour and against the defendant with costs. It is further decreed that the land in question being under mortgage with bank will go along with all encumbrances thereon. The bank will have first charge over the land and can realize its amount by all means provided under law and the plaintiff will have no claim against the bank. The defendant is directed to get the sale deed executed in plaintiff's favour within a period of three months. The balance of sale consideration plus any other amount due to the bank shall either be deposited with the bank or in Court by the plaintiff within a period of three months for redemption of the land dispute…."

The word "plus" onwards shows that the appellant-plaintiff is required to clear the outstanding dues of the Bank. The plaintiff was not the signatory to the loan agreement contract and it is only the respondent-defendant who had contracted with the bank. At the best, the bank could have realized the amount, whatever the balance sale consideration is available with the Court, for satisfying the liabilities or outstanding dues. I am in agreement with the aforesaid judgments whereby the delay has been condoned.

Taking into consideration the facts of the case that not only the lapse on behalf of the litigant but the factum of interpretation of the judgment of the lower Appellate Court by an ordinary prudent man was incomprehensible ignored and, therefore, the delay in filing the present appeal is condoned. In fact, the interpreter factor of lower Appellate Court is that the balance sale consideration plus any other outstanding amount to be deposited with the Bank for discharging the liability of the defendant. Realising the aforesaid situation, the occasion has arisen to seek expunction of the aforesaid observations.

For the aforementioned reasons, the following observations of the lower Appellate Court that "….plus any other amount due to the bank" are hereby expunged and rest of the judgment and decree is upheld.

The appeal stands disposed of in the aforesaid observations.

November 7,2016 (AMIT RAWAL)
KD JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No