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

RSA-4855-2012 (O&M)

Date of decision : 22.04.2016

Daljit Singh

... Appellant

Versus

Mehar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. I.S. Pabla, Advocate
for the appellant.

Mr. Pritam Saini, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the dismissal of the suit seeking specific performance of the agreement to sell dated 16.07.1992 in respect of land measuring 3 kanals 10 marals agreed to be sold for a total sale consideration of ₹ 50,000/- and earnest money of ₹ 48,000/- was paid.

Mr. I.S. Pabla, learned counsel appearing on behalf of the appellant-plaintiff submits that time was not the essence of the agreement to sell. On 12.04.1999, a legal notice was sent by the plaintiff calling upon the defendant(s) to execute and register the sale deed. The aforementioned legal notice was as per the letter and spirit of the agreement. However, the said notice was not received by the defendant(s) according to the admission in the

cross-examination and thereafter the matter reached at police station and a compromise (Mark -B) was arrived at the police station on 16.07.2004. Having failed to adhere to the said compromise, the suit was filed on 24.08.2004, both the Courts below have dismissed the suit being barred by law of limitation. He submits that the limitation would start from 2004, when the compromise, aforementioned, was effected and thereafter as per the provisions of Article 54 of the Limitation Act, the suit was well within the period of limitation and urges this Court to formulate the substantial questions of law as carved out in the memorandum of appeal.

Mr. Pritam Saini, learned counsel appearing on behalf of the respondent(s)-defendant(s) submits that as per the report of postal authorities, legal notice aforementioned was received and the limitation started running from the month of April 1999. Filing of suit in August 2004 is not within the three years and therefore, the appellant-plaintiff cannot take the aid of provisions of Article 54 of the Limitation Act, much less, compromise aforementioned, has not been proved on record in accordance with law, rightly so, both the Courts below dismissed the suit and urges this Court for affirmation of the findings.

I have heard the learned counsel for the parties and appraised the paper book. No doubt that the respondent(s)-defendant(s) in cross-examination admitted the factum of non-receipt of legal notice, but the report of the postal authorities placed on record on behalf of the appellant-plaintiff shows that the legal notice had been received by the respondent(s)-defendant(s). Had it been so, limitation started running from such date. No explanation has come forth in not filing the suit within three years. The provisions of Article 54 of the

Limitation Act clearly mention that the specific performance of the agreement to sell is three years from date fixed for performance and in case, no date is fixed, then from the date when the plaintiff has noticed that performance is refused. Receipt of the notice and non-performance of the act on behalf of the defendant is a refusal and cause of action would accrue in favour of the plaintiff. The limitation, if taken from April 1999 expired on 12.04.2002, whereas the suit was filed on 24.08.2004, rightly so, the suit has been dismissed being barred by law of limitation.

Keeping in view the aforementioned facts and circumstances of the case, I do not find any illegality and perversity in the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination. Accordingly, findings rendered by both the Courts below are affirmed.

With the aforesaid observations, the appeal stands dismissed.

22.04.2016
yogesh

(AMIT RAWAL)
JUDGE