

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

R.S.A.No.895 of 2012 (O&M)

Date of Decision: October 18th, 2016

Smt.Rekha Rani

...Appellant

Versus

Amardip Singh & others

...Respondents

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

**Present: Mr.Munish Gupta, Advocate,
for the appellant.**

**Mr.Akshay Bhan, Senior Advocate with
Mr.Rohit Sood, Advocate,
for respondent Nos.1 & 2.**

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the concurrent findings, whereby the suit seeking specific performance of the agreement to sell dated 29.5.1992 in respect of land measuring 305 kanals 6 marlas, has been partly decreed holding her entitled to recovery of earnest money of ₹25,000/- by declining the discretion under Section 20 of the Specific Relief Act.

Mr.Munish Gupta, learned counsel for the appellant-plaintiff submits that both the Courts have committed illegality in not appreciating the very vital fact that the judgment and decree dated 8.1.1994 suffered in favour of defendant No.4 by defendant Nos.1 to 3-vendors is nothing but an act of collusion. Though the suit for specific performance of the agreement to sell dated 9.5.1992 was filed on 13.10.1992 by defendant No.4, but it was only with an intention to defeat plaintiff's right. The signatures on the

agreement to sell have not been belied/disproved. No doubt, there is a reduction in the spacing while writing the agreement to sell, but the fact remains that the signatures are genuine. The appellant-plaintiff had to pay a sum of ₹75,000/- on the next date. He prepared the draft and sent it by post but the same was refused. As a part performance of the terms and conditions of the agreement, the appellant-plaintiff had to pay 50% of the total sale consideration of ₹25.00 lacs. The plaintiff approached the defendants on 31.8.1992 that she was ready with the cash, but the defendants refused. All these factors have escaped the notice of the Courts below and, thus, there is gross illegality and perversity. Even the decree in favour of the appellant-plaintiff does not contain element of interest.

Per contract, Mr.Akshay Bhan, learned Senior Counsel assisted by Mr.Rohit Sood, representing respondent Nos.1 and 2 submits that a cursory glance of the agreement to sell, *prima-facie*, proved that the same had been filled with the blank signatures of the parties. Had it not been so, it would have been executed in the manner and mode. No doubt, the judgment and decree dated 8.1.1992 had been challenged, but the appellant-plaintiff has not been able to prove ingredients of collusion. In the absence of the same, rightly so, the Courts below have declined the discretionary relief. There is no illegality and perversity 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 there is no force and merit in the submission qua exercise of discretion under Section 20 of the Specific Relief Act, for, the judgment and decree dated 8.1.1994 is in respect of the agreement to sell dated 9.5.1992. The appellant-plaintiff has failed to prove

that the agreement to sell was anti dated. Having failed to discharge the onus as per the provisions of Section 101 Evidence Act, rightly so, the Courts below have ordered for refund of the earnest money and in such circumstances, the discretionary relief could not have been granted as a valuable right in favour of the defendants had accrued. Even on perusal of the agreement to sell (Ex.P2), it reveals that there is a lot of difference in the spacing while concluding the agreement to sell, which shows that it was typed on the blank signed paper.

Be that as it may, the fact remains that the Courts below have rightly declined the discretion in view of the fact noticed above.

In view of the position explained above, I am in agreement with the submission of Mr.Munish Gupta with regard to the granting of interest from the date of payment till passing of the decree or realisation as it was not a commercial transaction. The Courts below ought to have granted the interest at the rate of 6%. Accordingly, the judgment and decree vis-a-vis refund of the earnest money is upheld with modification to the extent that it will contain the element of interest at the rate of 6% from the date of payment till realisation and costs of ₹10,000/-, including payment of court fees stated to have been paid.

The appeal is partly allowed. Decree sheet be prepared accordingly.

October 18th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No