

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

**RSA No.1732 of 2013  
Date of decision: 1.9.2016**

Karnail Singh

**... Appellant**

**Versus**

Krishan Lal

**... Respondent**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

**Present:** Mr.S.S.Rangi, Advocate,  
for the petitioner.

Mr.Krishan respondent Lal in person

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**AMIT RAWAL, J. (Oral)**

The appellant-defendant is aggrieved of the concurrent findings of fact whereby the suit for recovery of an amount of ₹ 2 lac along with interest @ 9% per annum from 30.1.2008 till the filing of the suit with pendentelite and future interest @ 6% per annum on the principal amount has been decreed.

Mr.S.S.Rangi learned counsel appearing on behalf of the appellant submits that agreement to sell dated 29.1.2008 Ex.D1 was entered into between the parties and in lieu thereof the appellant had taken a sum of ₹ 2 lac, which was given to him by way of cheque. The stipulated date for registration and execution of the sale deed was 30.7.2008. The appellant approached the office of Sub Registrar but the plaintiff did not appear and

thereafter sent notice on 12.8.2008. The appellant had already filed suit for cancellation of the agreement seeking forfeiture of the amount. He submits that the case set out in the plaint that the plaintiff paid a sum of ₹ 2 lac vide cheque in question but it was a separate transaction yet the courts below erroneously decreed the suit, though the defendant did not deny payment of the earnest money of ₹ 2 lac. He further submits that earlier target date was 30.7.2008 but was extended to 8.12.2008 and ₹ 2 lac was required to be referred in that extension, this aspect, has escaped to the notice of the Court and, therefore, there is illegality and perversity in the impugned judgment and decree.

Krishan Lal respondent in person, present in court submits that on the front page of the agreement to sell, there is a receipt of Rs.2 lac in the essence that a sum of Rs.2 lac was paid in cash and other amount of Rs.2 lac was paid vide cheque No.631841 of 29.1.2008. Both were two separate transactions. It is in this background that the courts below decreed the suit and urges this court that there is no illegality and perversity. He prays for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper-book and of the view that there is no merit in the submission of Mr.Rangi, for, in the first page of the agreement to sell dated 29.1.2008, there is a recital of having received a sum of ₹ 2 lacs. Had the earnest money been paid in cheque, it would have been reflected in the agreement. Receipt of the cheque, its encashment has been admitted. In my view, the defendant has not been able to dispel the averments in the plaint regarding two separate transaction. Even the argument of Mr.Rangi regarding mentioning of amount at the time of extension of time is wholly misplaced,

that already a sum of ₹ 2 lac had been paid and there was no additional payment and there was no question of referring to the earnest money. In my view, learned courts below correctly treated both the transactions separate. Once having admitted encashment of cheque, in my view, by indicating transaction to be one by taking advantage of common date i.e. 29.1.2008 for ₹ 2 lac, I do not find any illegality or perversity in the impugned judgment and decree. There is no ground for interference. Dismissed.

**(AMIT RAWAL)**  
**JUDGE**

**September 1, 2016**

*Paritosh Kumar*

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No