

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

RSA-1104 of 2016 (O&M)

Date of decision: 06.04.2016

Sanjay Kumar

...Appellant

Versus

Smt. Maya and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Naveen Gupta, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

CM-3040-C-2016

This is an application for condonation of delay of 24 days in refiling the appeal. It is averred that the appeal was filed on 24.12.2015 within limitation but the same was returned with objections on 05.01.2016. Thereafter, delay was caused as the clerk to the counsel wrongly counted the period of delay in refiling the appeal.

Keeping in view the averments made in the application and the accompanying affidavit, and the fact that the objections were minor in nature, there appears to be sufficient cause for

allowing the same. The delay of 24 days in refiling the present appeal is hereby condoned subject to all just exceptions.

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The suit for possession by way of specific performance of agreement to sell filed by the plaintiff/appellant (for short 'the appellant') was partly decreed for refund of earnest money by the trial Court, vide judgment and decree dated 19.08.2014.

2. Aggrieved against the findings of trial Court, the appellant filed an appeal which was dismissed by the learned Appellate Court, vide judgment and decree dated 21.09.2015.

3. The Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant appeal has been filed by the appellant.

4. The brief facts of the case are that the plaintiff filed a suit for possession by way of specific performance of an agreement to sell dated 24.09.2008 for land measuring 02 kanals and 09 marlas which was required to be sold by the respondent No.1 being owner of the said land for a sale consideration of Rs.12 lacs. The appellant had paid an amount of Rs.10,70,000 as earnest money to the respondent and the respondent agreed to execute the sale deed in favour of the appellant on 27.03.2009, on receipt of balance sale

consideration of Rs.1,30,000/-. On 27.03.2009, the appellant further paid Rs.30,000/- against a separate receipt.

5. It is contended that the plaintiff/appellant has always been ready and willing to perform his part of contract and it is the respondent No.1 who backed out to execute the agreement. Defendant No.1 herself had admitted that she had agreed to sell the suit land measuring 02 kanals and 09 marlas in favour of the appellant, for a consideration of Rs.12 lacs and received Rs.10,70,000/- from the appellant as earnest money. The target date for execution and registration of sale deed was fixed as 27.03.2009. She had also admitted that on 27.03.2009, the sale deed could not be executed as she could not obtain the necessary 'No Objection Certificate' and the date for execution of sale deed was extended upto 27.06.2009. As 27.06.2009 and 28.06.2009 were holidays, therefore, the appellant went to the office of Sub Registrar, Sonapat to get the sale deed executed, however, the respondent No.1 did not turn up to perform her part of contract and this fact has been duly proved from the affidavit of the appellant Ex.P6, duly attested by the Executive Magistrate, Sonapat. Thereafter, the respondent No.1 had executed sale deed dated 15.05.2009 Ex.P9 qua the suit land in favour of respondent No.2 and respondent No.2 was very much aware about the agreement to

sell dated 24.09.2008. But both the Courts below have failed to consider the above facts and circumstances of the case.

6. Heard, the learned counsel for the appellant and perused the record.

7. It is admitted fact of the case that respondent No.1 had executed an agreement to sell dated 24.09.2008 in favour of the appellant qua the suit property measuring 2 kanals 9 marlas for a total consideration of Rs.12 lacs and she had received Rs.10,70,000/- as earnest money from the appellant. The agreed date for execution of sale deed was 27.03.2009, which was further extended to 27.06.2009. A sum of Rs.30,000/- was also paid by the appellant on 27.03.2009, vide receipt Ex.P5. As 27.06.2009 and 28.06.2009 were holidays, therefore, the appellant went to the office of Sub Registrar, Sonapat to execute the sale deed and got recorded his presence marked by executing an affidavit Ex.P6, duly attested by the Executive Magistrate, Sonapat but respondent No.1 did not turn up. The appellant had duly proved on record the agreement to sell dated 24.09.2008 qua the property in dispute. The readiness and willingness of the appellant is also not in dispute. Therefore, the trial Court had rightly decreed the suit of the appellant qua respondent No.1 and dismissed qua respondent No.2. The respondent No.2 had also claimed that she is a bona fide

purchaser of the suit land and she was not having any knowledge of agreement to sell dated 24.09.2008. The appellant had not pleaded in the plaint that respondent No.2 was having any knowledge regarding the agreement to sell dated 24.09.2008. The appellant had only taken the plea that the agreement to sell dated 15.05.2009 entered between respondent No.1 and respondent No.2 is without any sale consideration and same is null and void, whereas, in his cross examination he admitted that Devender (PW2) had disclosed the fact of execution of sale deed by respondent No.1 in favour of respondent No.2, which clearly proves that appellant was having knowledge about execution of sale deed dated 15.05.2009. Furthermore, appellant had also stated in his cross examination that he did not know who is in possession of the suit land, whereas, perusal of Ex.P2 shows that respondent No.1 had delivered the actual physical possession of the suit land to respondent No.2. The appellant had already admitted in his cross examination that he was aware about execution of sale deed dated 15.05.2009. It is the settled position of law that grant of a decree for specific performance of contract is not automatic and is one of the discretion of the Court and the Court has to consider whether it will be fair, just and equitable. Court is guided by principle of justice, equity and good conscience. Reference in this

regard can be made to **Gobind Ram** Vs. **Gian Chand**, AIR 2000 SC 3106. In the instant case, respondent No.2 is a transferee for value who has paid his money in good faith and without notice of the original contract. Therefore, this Court has no hesitation in holding that respondent No.2 is indeed a bonafide purchaser for consideration and without notice. Both the Courts below have rightly dismissed the suit of the appellant qua respondent No.2.

8. In view of the facts and circumstances discussed above, this Court finds no merit in the instant appeal. There is no illegality or perversity in the impugned judgments passed by both the Courts below. No question of law, much less substantial question of law, arises in the present appeal. Hence, no inference is called for.

Dismissed in limine.

06.04.2016

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(JITENDRA CHAUHAN)
JUDGE