

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

RSA No.2456 of 2016 (O&M)

Date of decision:17.05.2016

Smt. Roshni Devi and another

... Appellants

Vs.

Smt. Santosh Devi

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Kul Bhushan Sharma, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

Appellant-plaintiffs are aggrieved of the judgment and decree rendered by the Lower Appellate Court reversing the findings of the trial Court, whereby, suit seeking specific performance of the agreement to sell dated 31.10.2005 was decreed.

Mr. Kul Bhushan Sharma, learned counsel appearing on behalf of the appellant-plaintiffs submits that the trial Court decreed the suit by holding that plaintiffs have been ready and willing to perform their part of contract. Agreement in respect of plot measuring 512 square yards (suit property) was entered into on 31.10.2005. The total sale consideration was ₹1,33,330/-. A sum of ₹83,330/- was paid in cash and ₹50,000/- by cheque, thus, entire payment was made. The filing of the suit in October, 2013 was on account of the fact that there was a ban qua registration of the sale deed.

Since time was not essence of the agreement and therefore, suit as per the provisions of Article 54 of the Limitation Act is within limitation. The Lower Appellate Court has erroneously held that there was no readiness and willingness and allegedly failed to prove the loan and re-payment and thus, urges this Court to formulate the substantial questions of law as culled out in the memorandum of appeal. In support of his aforementioned contention, he relies upon the judgment of the Hon'ble Supreme Court in **Rathnavathi and another vs. Kavita Ganashamdas 2014 (4) RCR (Civil) 904** to contend that this Court in Regular Second Appeal may not take cognizance of Limitation Act.

I have heard learned counsel for the appellant-plaintiffs and appraised the judgments and decrees of the Courts below and of the view that there would have been force in the arguments of Mr. Sharma, for, had in the agreement to sell, execution not envisage the condition of lifting of the ban, for, Article 54 of the Limitation Act prescribes that the period of limitation would start from the date of refusal. Admittedly, suit was filed on 17.10.2013. No explanation, much less, evidence has come forth when the ban was lifted giving cause of action to his claim of specific performance, rightly so, the Lower Appellate Court discarded the plea. Even did not order for refund of earnest money as suit ex facie was barred by law of limitation. Point of limitation can always be taken at any stage, in view of the provisions of Section 3 of the Limitation Act.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by the Lower Appellate Court which are

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based upon the appreciation of oral and documentary evidence, much less,
no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 17, 2016
savita