

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

RSA No.2997 of 2016 (O&M)

Date of decision:20.09.2016

Gurbachan Singh

Vs.

... Appellant

Harbhajan Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Harsh Aggarwal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

Appellant-plaintiff is aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby, the suit for possession by way of specific performance of the agreement to sell dated 20.01.2004 has been partly allowed, in essence, the plaintiff has been held entitled to recover the earnest money along with interest @ 4% per annum.

Mr. Harsh Aggarwal, learned counsel appearing on behalf of the appellant-plaintiff submits that agreement to sell had been proved through the testimony of attesting witnesses and scribe, much less, the payment of earnest money of ₹65,000/- and ₹30,000/- on 20.04.2004 when both the parties had extended the date of execution and registration of the sale deed upto May, 2004. The trial Court on the basis of the aforementioned evidence decreed the suit but the Lower Appellate Court

declined the discretionary relief. He further submits that the discretionary relief granted by the trial Court should not have been interfered with until and unless there is gross illegality and perversity, much less, misreading of the evidence. In fact, the appellant has been able to comply the provisions of Section 16(c) of the Specific Relief Act. The defendants have not taken the plea of readiness and willingness, much less, hardship and therefore, the Court ought not to have declined the discretionary relief.

I have heard learned counsel for the appellant-plaintiff and appraised the judgments and decrees of the Courts below and of the view that no explanation has come forth in filing the suit on 24.05.2007. In fact, no steps purported to have been taken by the plaintiff in approaching the defendants for execution and registration of the sale deed. In the absence of the same, I am of the view that the appellant had not “always” been ready and willing to perform his part of contract.

This aforementioned view of mine is reiterated by the Hon'ble Supreme Court in **Sita Ram vs. Radhey Shyam 2007(4) RCR (Civil) 533**. If the defendant had not taken any objection, the Court itself can always look into the same and cannot sit as a mute spectator. I am of the view that increase of 2% in the rate of interest in respect of earnest money would not be much as if I issue notice of motion to other party/respondents, there might be more litigation expenses.

Accordingly, I upheld the judgment and decree of the Lower Appellate Court with slight modification qua interest which should be 6%

instead of 4% in respect of earnest money.

Accordingly, the appeal stands disposed of.

(AMIT RAWAL)
JUDGE

September 20, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No