

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

RSA No.3907 of 2016 (O&M)

Date of Decision.08.08.2016

Mohd. Gafoor and another

.....Appellants

Vs.

Liaqat Ali

.....Respondent

Present: Mr. Sherry K. Singla, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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

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AMIT RAWAL J. (ORAL)

C.M. No.10115-C of 2016

For the reasons stated in the application, delay of 35 days in filing the appeal is condoned.

Application is allowed.

RSA No.3907 of 2016 (O&M)

The appeal is accompanied by an application for pursuing and prosecuting the case as an indigent person as the appellant-defendant is not able to pay court fee in respect of the suit decreed by the trial Court and similar application was moved before the lower Appellate Court which was also allowed.

For the reasons stated in the application, I am of the view that the reasons shown are genuine and correct and therefore, the application is allowed.

the appellants-defendants submits that the fact they entered into an agreement to sell dated 24.07.2009 with respondent-plaintiff in respect of house measuring 112 sq. yards, agreed to be sold, for a total consideration of ₹1,25,000/- against the payment of earnest money as ₹75,000/-, was only a concocted story, as the father of the appellants-defendants was working under the plaintiff and the defendants purchased this house few months back i.e. on 20.01.2009 and price of the same including the stamp duty was almost ₹2 lacs and therefore, there is no occasion of selling the same at a lesser price. In fact, it was a loan transaction of ₹40,000/-, that has been converted into an agreement to sell in respect of the property in dispute. This fact has also been pleaded by the appellants-defendants but the Courts below have yet exercised their discretion without noticing the aforementioned facts, which would cause great hardship to the appellants-defendants.

He further submits that the agreement to sell is not enforceable as there is no penalty clause or liquidated damages qua the failure of performance on the part of the defendant and therefore, it cannot be treated as an agreement to sell.

As the stamp on the previous plaint was presented on 06.08.2010, after the stipulated date, the same would attract the provisions of Order 2 Rule 2 CPC, thus, urges this Court for setting aside the judgments and decrees passed by the Courts below by formulating the substantial questions of law drawn in the memorandum of appeal.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Singla, learned counsel appearing on behalf of the

appellants, as the respondent-plaintiff has examined the deed writer and the attesting witnesses. Both of them have deposed in the same lines with regard to execution of the agreement to sell that the appellants-defendants have appended their signatures. The best possible evidence for the appellants-defendants was to disbelieve the original signatures, appended on the agreement to sell by taking the services of expert or government agency for comparison of the signatures. Having failed to do so, the plea of taking up the loan was also neither here nor there as repayment of the same has not been proved, on the other hand, the readiness and willingness has been proved as the plaintiff admittedly filed the suit in August, 2010 as the target date for execution and registration of the sale was 23.07.2010.

As regards the plea that the suit being barred under Order 2 Rule 2 CPC, the lower Appellate Court had an occasion to examine the record and it found that the previous plaint was presented before the Duty Judge on 17.07.2010 but on that day, the Duty Judge was on leave. The date of drafting of the plaint is 16.07.2010 and therefore, the suit cannot be said to be barred by the provisions of Order 2 Rule 2 CPC, as the stipulated date for execution and registration of sale deed was 23.07.2010 and the suit was presented before the Duty Judge on 17.07.2010 i.e. before it.

For the foregoing reasons, I am of the view that both the Courts below have rightly exercised the discretion under Section 20 of the Specific Relief Act. It is not a case where any hardship is caused to the defendant. Mere mentioning of the amount of penalty on account of failure of performance of contract would also not render the agreement unexecuted. I do not find any illegality and perversity in the judgments and decrees passed by the Courts below, as the same are based on correct appreciation of

documentary as well as oral evidence, much less, no substantial question of law arises for consideration in the second appeal.

The second appeal is dismissed accordingly.

August 08, 2016
Pankaj*

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No