

RSA No.2816 of 2015 (O&M)

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

RSA No.2816 of 2015 (O&M)

Date of Decision: January 19, 2016

Kuldeep Singh

...Appellant

Versus

Improvement Trust, Pathankot through its Chairman

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Vishal Munjal, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (Oral):

CM No.6950-C of 2015

Prayer in this application is for condonation of delay of 62 days in filing the appeal.

The reason mentioned in the application for delay is that the appellant is a retired teacher and a senior citizen and was not keeping well, because of which, he could not engage a counsel which resulted in the delay of 62 days in filing the appeal. The application is supported by the affidavit of the applicant-appellant.

For the reason mentioned in the application, the same is allowed. Delay of 62 days in filing the appeal stands condoned.

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Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Pathankot, dated 20.07.2012, whereby, the suit for mandatory injunction directing the respondent-defendant-Improve Trust to refund the excess amount received on account of public auction of shop No.13, held on 26.08.2003 shown to be 313.5 square feet, whereas, actually it comes to 243.218 square feet with internal measurement and 285.718 square feet with external measurement by deducting the proportionate area which has not been handed over to the appellant-plaintiff, stands dismissed, appeal against which preferred by the appellant-plaintiff stands dismissed by the District Judge, Pathankot, on 28.08.2014.

2. It is the contention of the learned counsel for the appellant that as per auction notice Ex.P-1, shop No.13 was shown to be 313.5 square feet. On the basis of the said auction notice and believing the area to be 313.5 square feet, the appellant-plaintiff had bid for the shop. There was nothing mentioned with regard to the Verandah and therefore, it also was inclusive of the shop area. Reference has also been made to the allotment letter issued to the appellant-plaintiff by the respondent on accepting his bid, where again, the area is mentioned as 313.5 square feet. He contends that these two documents i.e. the auction notice and the allotment letter

clearly depict that the shop was 313.5 square feet for which the bids were invited but the Courts below have not appreciated the pleadings and the evidence which has been led by the appellant-plaintiff and thus, the impugned judgments deserve to be set aside and the suit of the appellant-plaintiff decreed.

3. I have considered the submissions made by the learned counsel for the appellant and with his able assistance, have gone through the impugned judgments but do not find any illegality which would persuade this Court to interfere in the findings returned by the Courts below.

4. Auction notice Ex.P-1 shows that as per the term No.8, the interested bidders could see the relevant maps of the scheme in which the properties under auction was given, on any working day. These maps were displayed on the notice board on the date of the auction also and therefore, the appellant-plaintiff could easily go and see the said maps, where the correct dimensions of Shop No.13 were also mentioned. Even as per the agreement Ex.P-2, which was with regard to the payment details to be made by the appellant-plaintiff vide para 3 at the time of demarcation of the plot in auction, there could be some difference of the area and the plaintiff would be bound to accept such difference in the area and no objection could be raised about the area at any subsequent stage. Admittedly, this agreement has been signed by both the parties. Ex.P-3 is a letter

addressed to the appellant-plaintiff, where he agreed to purchase the shop as is where is basis and he had no right to refund of auction amount or adjustment of the auction amount, if the shop is found to be of lessor area than the one at the site as mentioned in the auction notice Ex.P-1. Nothing stopped the appellant-plaintiff, in the light of these clauses specifically mentioning about the likelihood of change in area of the site at the spot, from taking due caution to verify the correct facts prior to participating in the auction. He having failed to do so and have entered into the agreement and bound himself by those terms and conditions, cannot now turn around and make an effort to wriggle out of the same. He is estopped by his own act and conduct from putting forth the claim as in the present suit.

5. As regards the contention of the learned counsel for the appellant that the Verandah of the shop was also to be included in the shop to be the ownership of the appellant-plaintiff, suffice it to say that the said plea also cannot be accepted in the light of the specific mention in the auction notification Ex.P-1 that the Verandah in front of the shop would be meant for the customers and passersby and none of the shop-keepers would be entitled to use it.

6. The concurrent findings, thus, recorded by the Courts below are based upon the proper appreciation of the pleadings and the evidence brought on record, specially the documentary evidence. which do not call for any interference by this Court as there is no

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misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

7. No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

January 19, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**