

Regular Second Appeal No.4223 of 2016 (O&M) { 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.4223 of 2016 (O&M)
Date of Decision: August 22, 2016

Kulwant Singh

...Appellant

Versus

Chander Bhan

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.P.K.S.Phoolka, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM No.10894-C of 2016

For the reasons mentioned in the application, which is supported by an affidavit, delay of 48 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.4223 of 2016

Appellant-defendant is aggrieved of the decretal of the suit seeking specific performance of the agreement to sell dated 20.6.2006, whereby parties had allegedly agreed for sale of the house measuring 100

sq.yards for a total sale consideration of ₹1,10,000/-.

Mr.P.K.S.Phoolka, learned counsel for the appellant-defendant submits that the agreement to sell was never admitted. In fact, it was agreed between the parties that since a sum of ₹90,000/- was taken as loan, blank stamp papers were signed as security agreement, but the same had been converted into agreement to sell. The Court below ought not to have exercised discretion under Section 20 of the Specific Performance Act. The respondent-plaintiff was not ready and willing to perform his part of the agreement. The amount was returned back, but all these aspects have not been noticed by the Courts below and, thus, urges this Court for setting-aside of the judgments and decrees by framing the substantial questions of law as culled out in the memorandum of appeal.

I have heard the learned counsel for the appellant-defendant and appraised the paper book.

Conceded position on record is that the aforementioned ₹90,000/- was received by the defendant through various cheques, i.e., 431644, 431645 and 431646 for ₹24,000/- each and cheque No.431647 for ₹18,000/- drawn on UCO Bank, Bathinda on 20.5.2006, 22.6.2006, 23.6.2006 and 26.6.2006. No corroborative or direct evidence has been led to show the circumstances that both the parties had an intention of entering into the security agreement. The contents of the agreement

Regular Second Appeal No.4223 of 2016 (O&M) { 3 }

reveal the covenant of seeking performance through the Court and as well as other contingencies. The contents of the agreement do not reveal any intention with regard to security agreement. The agreement to sell has been proved through the testimony of Scribe Dalvir Singh and one attesting witness. The other witness was real brother of the defendant, who had not appeared in the witness box. The aforementioned witnesses have been extensively cross-examined, but not able to surface any truth.

For the foregoing reasons, I do not find any illegality and perversity in the impugned judgments and decrees. No substantial question of law arises for determination. No case for interference is made out.

Appeal stands dismissed.

August 22, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No