

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

**RSA-4555-2016 (O&M)
Date of decision : 16.09.2016**

Bachan Singh and others

... Appellants

Versus

Harbhajan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Arora, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

CM-11824-C-2016

For the reasons mentioned in the application, which is duly supported by an affidavit, the delay of 212 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA-4555-2016

The appellants-defendants are aggrieved of the judgment and decree of the lower Appellate Court, whereby the respondent(s)-plaintiff(s) has been held to be entitled to refund of earnest money of ₹ 5,70,000/- along with interest @ 9 % from the date of the execution of the agreement to sell dated 23.05.2003 till the date of decree and further interest @ 6% p.a.

Mr. Sandeep Arora, learned counsel appearing on behalf of the appellants-defendants submits that the respondent(s)-plaintiff(s) has instituted a suit after two years and seven months of the target date of

execution and registration of the agreement to sell was 27.12.2004. The aforementioned agreement to sell was emphatically denied being outcome of the fraud and misrepresentation as there is a squeeze of space on the same. The trial Court dismissed the suit, but the lower Appellate Court has though erroneously held that the agreement to sell, aforementioned, was executed, but declined to grant the discretionary relief for want of readiness and willingness. The respondent(s)-plaintiff(s) had already taken the loan from the Bank by mortgaging the property, therefore, he did not have sufficient money to buy the property, much less, pay the earnest money. All these aspects have been considered by the trial Court, thus, there is a illegality and perversity and the judgment and decree of the lower Appellate Court is liable to be set aside and prays for formulation of the substantial questions of law as drawn in the memorandum of appeal.

I have heard the learned counsel for the appellants-defendants and appraised the paper book and of the view that finding all these facts, the lower Appellate Court did not grant the discretionary relief, but the fact remains that the payment of earnest money has been proved through the testimony of attesting witnesses, namely, Malkit Singh and Avtar Singh, who have withstood the wrath of cross-examination. In my view, the trial Court has erroneously given the finding that the agreement to sell has to be scribed by the regular deed writer and it is not a requirement of law. On the contrary, the appellants-defendants have not been able to discard or dispel the thumb-impressions on the agreement to sell. Neither any assistance of Expert nor the necessary sanction, in this regard, has been taken, rightly so, the lower Appellate Court has held the respondent(s)-plaintiff(s) to recover the aforementioned amount as he had not taken any sanction from the

Government.

For the foregoing reasons, I do not intend to differ with the findings rendered by the lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the appeal is dismissed.

16.09.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No