

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

RSA No.5501 of 2016 (O&M)

Date of Decision.22.10.2016

Mohan Lal @ Mohan Singh

.....Appellant

Vs

Akbar Khan

.....Respondent

Present: Mr. N.C. Kinra, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.14365-C of 2016

For the reasons stated in the application, delay of 39 days in filing the appeal is condoned.

Application is allowed.

RSA No.5501 of 2016

The appellant-defendant is aggrieved of the concurrent finding of fact whereby the suit for specific performance of the agreement to sell dated 29.08.2011 in respect of land agreed to be sold for a sum of ₹9 lacs, against the earnest money of ₹4 lacs, has been decreed by the Courts below.

Mr. N.C. Kinra, learned counsel appearing for the appellant submits that the Courts below have abdicated, much less, misconstrued and misread the oral and documentary evidence rather perversely granted the discretionary relief as per Section 20 of the Specific Relief Act, 1963 whereas there is categoric admission of the respondent-plaintiff that prior to the agreement to sell, he had entered into agreement to sell dated 25.08.2011 with Sanjiv Kumar from whom he had borrowed money in

respect of the land, he was not equipped with the sufficient money, much

less, entire money of the balance sale consideration and therefore, discretionary relief ought not to have been granted at best it could have granted alternative relief, as readiness and willingness in view of the aforementioned statement has not been proved.

He further submits that prior to the filing of the suit on 02.03.2013 for specific performance of agreement to sell, the respondent-plaintiff filed a suit for permanent injunction which was withdrawn on 06.12.2012 without liberty and therefore, provisions of Order 2 Rule 2 CPC would come into operation. All the aforementioned facts have not been taken into consideration by both the Courts below and therefore, there is illegality and perversity, thus, urges this Court for setting aside the judgments and decrees under challenge by formulating substantial questions of law as drawn in the memorandum of appeal.

I have heard learned counsel for the appellant, appraised the paper book and of the view that all the aforementioned contentions are not sustainable, as in the absence of the copy of the plaint and the statement, the provisions of Order 2 Rule 2 CPC cannot be pressed into service.

With regard to other arguments, I am of the view that sufficient amount of earnest money of ₹4 lacs had already been paid. Even the agreement to sell dated 25.08.2011 purported to have been executed between the plaintiff and one Sanjeev Kumar in respect of the land has not seen the light of the day, thus, I am of view that one line in the cross-examination would not render the plaintiff disentitled for discretionary relief. On the contrary, once the execution of the agreement to sell has been admitted, the Court was only required to see the ingredients of Section 16(c) of the Specific Relief Act, 1963, which have been proved. Prior to the filing

of the suit, there was a legal notice dated 09.01.2013. Had the aforementioned pleas been there, nothing prevented the appellant-defendant to rebut or denying the same. The defence taken for the first time here is an afterthought.

For the foregoing reasons, I do not intend to differ with the findings rendered by the Courts below as the same are based upon the correct appreciation of fact and law, much less, no substantial question of law arises for consideration. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 22, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No