

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

**RSA No.5504 of 2016 (O&M)
Date of decision:09.11.2016**

Nand Kishore

... Appellant

Vs.

Harender

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ankit Grewal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-defendant is aggrieved of the concurrent findings of facts and law, whereby, the suit for possession by way of specific performance of the agreement to sell dated 20.07.2010 in respect of five shops for a total sale consideration of Rs.5 lacs against the payment of Rs.3 lacs as earnest money, has been decreed by both the Courts below.

Mr. Ankit Grewal, learned counsel appearing on behalf of the appellant-defendant submits that the agreement to sell has not been proved on record as only one attesting witness, namely, Suresh Chand as PW4, has been examined. The other witnesses have not been examined as the plaintiff was afraid of unveiling of the truth. In fact, the respondent-plaintiff is a tenant of two shops and appellant is a landlord but the agreement to sell was of five shops. The appellant never agreed to sell the shops in dispute, in essence, there was no intention to sell the shops, but entered into lease agreement. All these factors have not been taken into consideration by both

the Courts below. Even the target date was 19.07.2011, whereas, legal notice dated 11.05.2011 before the stipulated date was sent, thus, there is gross illegality and perversity in the findings under challenge. The factum of the appellant-defendant being drunken has been admitted in the cross-examination. All these facts should have been weighed in the mind of the Courts below in declining the relief as sought for and thus, urges this Court for setting aside the findings under challenge.

I have heard learned counsel for the appellant-defendant and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Ankit Grewal, for, that there is a cross-examination of only witness, who has deposed in terms of law, is sufficient requirement of law as per the provisions of Section 68 of the Indian Evidence Act. If at all the appellant-defendant's signatures had been misused, then on receipt of the legal notice dated 11.05.2011 before the stipulated date, an action should have been taken, rather the appellant-defendant could have defended the same by resorting to the proceedings in accordance with law. Having failed to do so, no sane person would sit idle, who had actually not signed the document, therefore, presumption is to be drawn against the vendor. The payment of earnest money of ₹3 lacs has already been proved.

The respondent-plaintiff immediately after the expiry of stipulated date had filed a suit on 08.08.2011, thus, readiness and willingness had always been there, much less proved on record.

In view of the aforementioned observations, I do not intend to

differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

November 09, 2016
savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No