

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

RSA No.5925 of 2016 (O&M)

Date of Decision.21.11.2016

Radhe Sham

.....Appellant

Vs

Ram Dass Sharma

.....Respondent

Present: Mr. M.S. Bedi, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.15549-C of 2016

For the reasons stated in the application, delay of 34 days in
filing the appeal is condoned.

Application is allowed.

RSA No.5925 of 2016

The appellant-defendant is aggrieved of the concurrent finding
of fact whereby the suit seeking specific performance of the agreement to
sell dated 02.04.2008 in respect of the suit property measuring 56 sq. yards,
has been decreed.

As per the case set up by the plaintiff, the total sale
consideration of the aforementioned property was ₹4 lacs and a sum of
₹50,000/- was paid as earnest money. The stipulated date for registration
and execution of the agreement to sell was 30.07.2008. However, on
stipulated date, there was an extension. On 10.04.2008 and 30.07.2008, the
appellant-defendant stated to have received a sum of ₹20,000/- and
₹1,15,000/- and again on 18.08.2008, a sum of ₹2,10,000/-, in all

₹3,95,000/- was received. It is in this aspect of the matter, the Courts below

have granted the discretionary relief as the suit aforementioned was filed on 15.01.2010.

Mr. Bedi, learned counsel appearing for the appellant submits that no doubt in the written statement, execution of the agreement was emphatically denied but in the cross-examination, admitted a receipt of ₹50,000/- and ₹20,000/- but not in lieu of the intention to enter into the agreement to sell but for some other purpose. On cursory glance of the agreement to sell, the signatures on the extension qua receiving of ₹1,15,000/- and ₹2,10,000/- are not of the appellant-Radhe Sham. In this backdrop of the matter, even the application under Order 41 Rule 27 CPC for getting his signature examined from a handwriting expert has been filed before this Court for effective and fair adjudication of the *lis* between the parties. Both the Courts below have committed illegality and perversity, thus, judgments and decrees under challenge are liable to be set aside.

I have heard learned counsel for the appellant, appraised the paper book and of the view that it is too late in a day to move such application as there was a complete denial to the agreement to sell. If at all, there was some truth in the aforementioned assertion, the appellant-defendant was confronted with the legal notice dated 3.12.2009, preceding to the filing of the suit. The defence taken in the written statement could have been explained by filing the reply. It is common practice amongst vendors to take up all possible pleas of denial of signatures and then volte-face, when subjected to cross-examination. As notice above, there was a complete denial in the written statement but in the cross-examination, admitted the receipt of ₹50,000/- and ₹20,000/-.

The explanation given for obtaining the money was that it was

taken for marriage of son but no documentary evidence has been led with regard to the marriage of son. The presumption was liable to be drawn in favour of the respondent-plaintiff qua receipt of the remaining amount. The respondent-plaintiff, on the contrary, has proved the ingredients of Section 16(1)(c) of the Specific Relief Act, 1963, rightly so, the Courts below have granted the discretionary relief.

For the reasons aforementioned, I do not intend to differ with the findings rendered by both the Courts below as the same are based upon 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. Consequently, the application for additional evidence is also dismissed.

(AMIT RAWAL)
JUDGE

November 21, 2016

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No