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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-6050-2016 (O&M)
Date of decision : 28.11.2016

Khazan Singh

... Appellant

Versus

Desh Raj

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.B. Goel, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby the suit of the respondent-plaintiff seeking specific performance of the agreement to sell dated 28.05.2009 with consequential relief of permanent injunction and alternative relief of recovery has been decreed by both the Courts below.

The appeal is also accompanied by an application seeking condonation of 196 days' delay in filing the appeal.

As per the averments in the application, Mr. C.B. Goel, learned counsel appearing on behalf of the applicant/appellant, submits that the counsel did not inform about the dismissal of the appeal and had been taking the adjournments in the execution proceedings on its own realizing the aforementioned fact that the appeal has been dismissed, in this regard the delay of 196 days' has occurred in filing the appeal. The delay is neither intentional nor willful and urges this Court for condoning the same as no

prejudice would be caused, in case the appeal is heard on merits.

As regards the merits, he submits that from the naked eye, the agreement to sell was entered into on a blank stamp paper, much less, receipt. All these factors have escaped the notice of both the Courts below, thus, there is a gross illegality and perversity. The respondent-plaintiff is none-else, but working as Conductor, he did not have the ready cash for seeking specific performance and this fact ascertained/surfaced during the course of cross-examination also, shown during the hearing of the present appeal, and therefore, the discretionary relief under Section 20 of the Specific Relief Act ought not to have been granted, thus, urges this Court for setting aside the concurrent findings under challenge.

I have heard the learned counsel for the appellant-defendant and appraised the paper book and of the view that the reasons mentioned in the application are totally lacking explanation of sufficient cause. In my view, putting a blame on a lawyer is not a ground for seeking condonation of delay. The delay is not of a small period, but almost less than one year, thus, the appellant-defendant had been lackadaisical in seeking the vindication of grievance.

As regard as merits, I am of the view that there is no force and substance in the submissions of Mr. C.B. Goel, for, the appellant-defendant has failed to belie his signatures on the agreement to sell, much less, was confronted with a legal notice on 29.03.2010 preceding to filing of the suit on 10.09.2010. Had it been so, the defendant would have been running from pillar to post in seeking the vindication of grievance qua the alleged tempering of the blank stamp paper. Keeping silent is a pointer that he had

actually entered into agreement to sell and all the defences have, thus, been taken for the first time in order to take defence for sake of it. Even the alleged agreement to sell dated 12.02.2009 being set up in the evidence has been held to be beyond pleadings and rightly so, the Courts below concurrently found that the respondent-plaintiff is entitled to discretionary relief.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the same are based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. Accordingly, the regular second appeal is dismissed on the ground of delay and as well as on merits.

28.11.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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