

RSA No.76 of 2016 (O&M)

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

RSA No.76 of 2016 (O&M)

Date of Decision: January 14, 2016

Satish Kumar

...Appellant

Versus

Mohinder Singh

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Rajbir Sehrawat, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (Oral):

CM No.227-C of 2016

Prayer in this application is for condoning the delay of 170 days in re-filing the appeal.

The reason assigned for the delay in re-filing the appeal is that initially, the appeal was filed well within the limitation period on 06.06.2015 but the paper-book was returned by the Registry after raising certain objections, which inadvertently got mixed with the briefs of admitted cases and the matter came to knowledge of the counsel only when the briefs of admitted cases were reshuffled on 30.12.2015 and then, the appeal was re-filed which resulted in the delay of 170 days. The application is supported by the affidavit of the counsel.

In view of the reason assigned in the application, the

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same is allowed. Delay of 170 days in re-filing the appeal stands condoned.

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Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Panipat, dated 24.09.2013, whereby, the suit for possession by way of specific performance of the agreement to sell dated 31.01.2008, asserted to have been executed by the appellant-defendant, in favour of the respondent-plaintiff with regard to the agricultural land measuring 3 Kanals and 19 Marlas, as detailed in the head note of the plaint, situated at village Lohari, Sub Tehsil Matlauda, District Panipat, on payment of ₹5,92,500/-, less ₹3,50,000/- paid as earnest money at the time of execution of the agreement to sell, has been decreed, appeal against which preferred by the appellant-defendant has been dismissed by the Additional District Judge, Panipat, on 01.04.2015.

It is the contention of the learned counsel for the appellant that the agreement to sell dated 31.01.2008 is not disputed but the said agreement to sell was not executed with an intend to sell the property in question but was in the form of an investment in a gas agency which was to be obtained by the respondent-plaintiff where this land would be an investment on the part of the appellant-defendant. He contends that the gas agency was, in fact, applied for but it appears that the said agency was not allocated and thereafter, the respondent-plaintiff has, with a *mala fide* intention, used the said

agreement to sell which was never intended to be so to get the decree from the Courts below. Assertion has been made that no amount of consideration as earnest money i.e. ₹3,50,000/- has changed the hands between the parties in pursuance to the agreement and therefore, the said agreement is merely a paper transaction and cannot be relied upon for the purpose of decreeing the suit. He asserts that the agreement to sell is Ex.P-1 and the said document contains a receipt for an amount of ₹3,50,000/-, which has been shown as Ex.P-2 but the witness of the said Ex.P-2 has not been examined and therefore, the consideration amount having been received by the appellant-defendant, has not been proved. In the absence of any consideration, the present suit on the basis of such a document is not maintainable. Counsel further contends that the affidavits dated 30.07.2008 and 26.05.2009 cannot be relied upon for the purpose of decreeing the suit when no person from the office of the Sub-Registrar, Matlauda, has appeared to prove the due execution of the said affidavits. Prayer has, thus, been made for setting aside the impugned judgments and decree of the Courts below and dismissing the suit of the respondent-plaintiff.

I have considered the submissions made by the learned counsel for the appellant and with his able assistance, have gone through the impugned judgments but finding myself not in agreement with his submissions.

The agreement to sell dated 31.01.2008 is not disputed.

What has been asserted is that it was not intended for sale of the property in question, rather, it was a part of investment on the part of the appellant-defendant in the gas agency. Unfortunately, no evidence has been brought on record except for the bald statement of the appellant-defendant who appeared as DW-1. Two witnesses were indeed produced before the trial Court, namely, Prithvi Raj as DW-2 and Rameshwar Yadav as DW-3 but at the time of their cross-examination, they did not appear and therefore, their evidence cannot be taken into consideration and the Courts below have rightly ignored the same. In the absence of any evidence to the effect that a gas agency was to be applied for or it was ever applied for, the plea as taken by the appellant-defendant cannot be accepted.

As regards the contention of the learned counsel for the appellant that the receipt Ex.P-2 which deals with the appellant-defendant having received an amount of ₹3,50,000/- as earnest money, having not been proved because of non-production of the attesting witnesses and therefore, leads to a conclusion that no consideration amount has changed hands, suffice it to say that the admission is the best evidence, in the present case, the appellant-defendant has admitted his signatures on the receipt Ex.P-2. In the light of the admission on the part of the appellant-defendant, no evidence is required to be led by the respondent-plaintiff to prove the payment of earnest money and the receipt thereof by the appellant-defendant.

A plea has also been raised that the readiness and willingness on the part of the respondent-plaintiff to perform his part of the agreement is not proved, suffice it to say that as per the agreement to sell, the date for registration of the sale deed was fixed as 30.07.2008. On the said date, the respondent-plaintiff marked his presence before the Executive Magistrate, Matlauda, and thereafter, served a legal notice dated 09.05.2009 upon the appellant-defendant with a request to appear before the Sub-Registrar, Matlauda, on 26.05.2009 for execution of the sale deed. On the said date again, respondent-plaintiff marked his presence before the Executive Magistrate, Matlauda, but the appellant-defendant did not appear. This proves the readiness and willingness of the respondent-plaintiff as affidavits of these two respective dates i.e. 3.07.2008 and 26.05.2009, have been duly proved on record as Ex.P-7 and P-8. It may be added here that in the cross-examination which was conducted of the respondent-plaintiff, there was no question put to him with regard to the genuineness of these affidavits. The assertion, thus, of the counsel for the appellant, cannot be accepted.

A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the pleadings and the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

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No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

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In view of the order passed in the main appeal, the present application for stay of the operation of the impugned judgments and decree passed by the Courts below during the pendency of the appeal, has become infructuous.

Disposed of as such.

January 14, 2016
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE