

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

RSA No.5879 of 2015 (O&M)

Date of Decision.06.12.2016

Smt. Sunita

.....Appellant

Vs

Dinesh Mehta

.....Respondent

Present: Mr. Sandeep Kumar Yadav, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The appellant-defendant is aggrieved of the concurrent finding of fact whereby the suit seeking specific performance of agreement to sell dated 16.10.2007 in respect of the suit land, agreed to be sold for a sum of ₹6 lacs against the payment of earnest money of ₹1,30,000/-, has been decreed by both the Courts below.

Mr. Sandeep Kumar Yadav, learned counsel appearing for the appellant submits that no doubt PW-1, Kailash Chand and scribe Daya Ram, DW3 stated regarding execution of the agreement to sell but the scribe did not mention about the writing of ₹1 lac in a separate handwriting. DW2 and DW5 also stated that it was a money transaction, thus, the courts below ought not to have granted the discretionary relief under Section 20 of the Specific Relief Act, though there was denial of agreement to sell in the written statement, in essence, the plaintiff has been failed to discharge the onus of actual execution of the agreement to sell and therefore, the suit was liable to be dismissed.

I have heard learned counsel for the appellant and appraised the

paper book. The fact remains that the agreement to sell envisaged payment

of earnest money of ₹1,30,000/- which itself is a receipt. Signatures of the appellant-defendant had not been belied/disproved by direct, cogent, much less, corroborative evidence. The target date for execution of the sale deed was 16.10.2008 whereas the suit has been filed on 10.11.2008. The plaintiff was always ready and willing to perform his part of the contract, in essence, ingredients of Section 16(1)(c) of the Specific Relief Act, 1963 have been complied with.

The concurrent finding of fact is based upon preponderance of evidence and arguments of Mr. Yadav have not been able to point out any illegality and perversity, therefore, I do not intend to differ with the same. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 06, 2016
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No