

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

**RSA No.4808 of 2014 (O&M)
Decided on: 16.05.2016**

Gurdeep Singh

....Appellant

Versus

Satpal Singh

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Kamal Narula, Advocate
for the appellant.

Mr. Yogesh Aneja, Advocate
for the respondent.

- 1. Whether Reporters of local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

REKHA MITTAL, J.

CM No.11303-C of 2014

Prayer in this application is for condoning delay of 137 days in refiling the appeal.

Counsel for the non-applicant/respondent has got no objection.

In view of averments made in the application supported by an affidavit of Gurdeep Singh, the application is allowed and delay of 137 days in re-filing the appeal stands condoned.

RSA No.4808 of 2014 (O&M)

The present appeal has been directed against the consistent

findings recorded by the Courts below whereby suit filed by the respondent for possession by way of specific performance of agreement to sell dated 16.02.2008 was decreed by the learned trial Court and the findings recorded by the trial Court have been affirmed in appeal.

The sole submission made by counsel for the appellant is that the findings recorded by the Courts below in regard to readiness and willingness of the respondent/plaintiff to perform his part of the agreement are erroneous and the result of misreading of evidence and ignoring certain material facts and evidence. To substantiate his contention, it is submitted that the affidavit produced on record by the respondent/plaintiff with regard to his presence in the office of Sub-Registrar on the stipulated date i.e. 20.05.2008 is not attested by any authority but the same has been attested by the Notary Public, Sh. Hari Dev Bhusri, Advocate. It is further argued that on 20.05.2008, the appellant/defendant remained present in the office of Sub-Registrar concerned and got his presence marked. In addition, it is submitted that the appellant got issued a notice to the respondent/plaintiff Ex.D-3 informing him that the earnest money paid by him stands forfeited but there was no response to the said notice at the instance of the respondent/plaintiff.

Counsel for the respondent, on the contrary, has supported the judgments passed by the Courts below with the submission that concurrent findings of fact recorded by the Courts below cannot be interfered in the second appeal unless there is a substantial question of law raised for adjudication. It is further argued that the Courts below on

a thorough and detailed examination of the materials on record has rightly upheld plea of the respondent/plaintiff with regard to his entitlement to seek specific performance of agreement to sell, admittedly, executed by the appellant whereby he agreed to sell his plot measuring 09 marlas for a sale consideration of Rs.4,00,000/- out of which an amount of Rs.1,00,000/- was paid as earnest money at the time of agreement. It is further argued that on the target date i.e. 20.05.2008, the respondent/plaintiff was very much present in the office of Sub-Registrar, Fazilka and got his presence marked by way of getting an affidavit attested from Notary Public, Fazilka. He never received any notice issued by the appellant, therefore, there was no occasion for him to file any response. The suit was filed by him without any loss of time and conduct of the respondent throughout negates plea of the appellant that he was not ready and willing to perform his part of the agreement.

I have heard counsel for the parties, perused the records and find that the appeal sans merit and deserves to be dismissed.

Counsel for the appellant has not disputed that Gurdeep Singh – appellant entered into an agreement to sell dated 16.02.2008 *qua* the suit land whereby he received an amount of Rs.1,00,000/- towards earnest money out of sale consideration of Rs.4,00,000/-. As per the agreement, the date for execution and registration of the sale deed was fixed to be 20.05.2008. The respondent/plaintiff has raised a categorical plea that on the stipulated date, he remained present in the office of Sub-Registrar, Fazilka and executed an affidavit in token of

his presence which was attested by Sh. Hari Devi Bhusri, Advocate. Counsel for the appellant is not in a position to point out any fact elicited during his cross-examination to doubt correctness of his deposition in this regard duly supported by an affidavit Ex.P-2. Not only this, Sh. Hari Devi Bhusri, Advocate, Notary Public, appeared in the witness-box and proved the affidavit dated 20.05.2008 Ex.P-2 and the relevant extract of an entry in his register Ex.PW-3/P. On the contrary, the appellant failed to prove that the respondent refused to accept the notice sent by him. Under Section 27 of the General Clauses Act, there is a presumption that a duly addressed registered letter is served upon the addressee and the said presumption is to be rebutted by the addressee. On the other hand, if there is a report of refusal, refusal being a question of fact is to be proved by the party relying thereupon in accordance with law. In the case at hand, the appellant has not adduced any evidence to prove the endorsement of refusal on the alleged notice sent by him. Under these circumstances, the appellant cannot derive any advantage to his contention from the factum of sending any notice with regard to forfeiting of earnest money.

Concededly, the target date for execution and registration of the sale deed was 20.05.2008. As per the settled position in law, ordinarily time is not considered to be an essence of contract for sale of immovable property unless otherwise intended by the parties. The suit for possession by way of specific performance was filed by the respondent/plaintiff on 07.06.2008 just within a period of 20 days from the date fixed for execution and registration of the sale deed. The very

fact that the respondent instituted the suit within the shortest possible time is sufficient to corroborate his version with regard to his being ready and willing to perform his part of the agreement and to negate plea of the appellant/defendant that he was not so ready and willing.

As has been rightly argued by counsel for the respondent, consistent findings recorded by the Courts below cannot be interfered with in exercise of jurisdiction by way of second appeal unless the findings suffer from perversity. Keeping in view the findings based on evidence recorded by the Courts below coupled with the discussion made hereinbefore, I find myself unable to accept plea of the appellant that the present appeal gives rise to a question of law much less a substantial one.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

16.05.2016

yakub

(REKHA MITTAL)
JUDGE