

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

**Civil Revision No.2200 of 2014 (O&M)
Date of Decision:12.12.2017**

Sohan Lal and another

.....Petitioners

Vs

Sunil Kumar and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. H.N. Sahu, Advocate
for the petitioners.

Mr. Ashish Gupta, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the judgment and decree dated 21.11.2013 passed by the Addl. District Judge, Karnal and judgment and decree dated 17.12.2012 passed by the Addl. Civil Judge (Sr. Divn.) Karnal vide which suit of the plaintiffs/petitioners for specific performance was dismissed.

[2]. Brief facts are that the plaintiffs filed a suit for specific performance of contract with consequential relief of permanent injunction on the basis of agreement to sell dated 24.03.2007.

The suit was dismissed by the trial Court vide judgment and

decree dated 17.12.2012. However, plaintiffs were held entitled to recover the earnest money of Rs.10,000/- along with interest @ 6% per annum from the defendants w.e.f. 24.03.2007 till final realization of the amount. The appeal was preferred before the lower Appellate Court and the same was dismissed vide judgment and decree dated 21.11.2013.

[3]. I have heard the submissions made by learned counsel for the parties.

[4]. Since the trial Court decree was in respect of Rs.10,000/- along with interest, therefore, the present revision petition has been preferred in this Court. In view of relief claimed by the plaintiffs/petitioners in respect of grant of decree for specific performance, Regular Second Appeal could have been filed.

[5]. Section 102 of the Civil Procedure Code (for short 'the Code') deals with the suit for recovery of money not exceeding Rs.25,000/- and also claiming other reliefs. If the First Appellate Court has dismissed the suit, the Second Appeal is maintainable. Since the plaintiffs/petitioners have not felt contended with the alternate relief of recovery of earnest amount of Rs.10,000/- along with interest, therefore, the suit is not for recovery of money not exceeding Rs.25,000/-, but other

reliefs i.e. specific performance has been claimed. No second appeal would lie from any decree when the subject matter of the original suit is for recovery of money not exceeding Rs.25,000/-.

[6]. In the instant case, the plaintiffs are not themselves satisfied with alternate relief granted by the trial Court and have sought decretal of the suit in *toto*. Therefore, in my considered opinion, Section 102 of the Code would not apply. The proposition has been set at rest by the Hon'ble Apex Court in **Nagarpalika Thakurdwara vs. Khalil Ahmed and others, 2016(4) R.C.R. (Civil) 615** wherein scope of Section 102 of the Code has been discussed and it was held that the subject matter of the original suit should be only recovery of money and that too not exceeding Rs.25,000/-. If the subject matter of the suit is other than recovery of money or something more than recovery of money, provision in terms of Section 102 of the Code cannot be invoked.

[7]. Apparently, the suit was for specific performance. The trial Court instead of granting decree for specific performance granted alternate relief of recovery of earnest money of Rs.10,000/- along with interest @ 6% per annum. The plaintiffs never consented with the decree of the trial Court, rather filed first appeal and thereafter this revision petition came to be filed.

[8]. In view of above, in my considered opinion *qua* the relief claimed by the petitioners in the present revision petition only Regular Second Appeal is maintainable. Consequently, this revision petition is dismissed as not maintainable. However liberty is granted to the petitioners to file Regular Second Appeal along with application under Section 5 of the Limitation Act. In the event of filing such appeal along with the application, the same shall be decided in accordance with law.

December 12, 2017

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No