

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

**RSA No.1270 of 2015 (O&M)
Date of Order:14.09.2017**

Raghbir Singh

..Appellant

Versus

Bhupinder Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. H.R.Bhardwaj, Advocate,
for the appellant.

ANIL KSHETARPAL, J (Oral)

C.M.No.3606-C-2015

Prayer in this application is for condonation of delay of 48 days
in filing the appeal.

For reasons mentioned in the application, which is supported by
an affidavit, the delay of 48 days in filing the appeal is condoned.

Application is allowed.

C.M.No.3607-C of 2015

Allowed as prayed

Main case

Defendant is in regular second appeal against the concurrent
findings of fact arrived at by the Courts below.

The dispute in the present case is that the land measuring 1
kanal is situated within the revenue estate of village Korwa Khurd, Tehsil
Naraingarh, District Ambala.

Plaintiff had set up an agreement to sell dated 08.07.1994. Out
of the total sale consideration of Rs.24000/-, Rs.12,000/- was paid as

earnest money. It was agreed that the sale deed would be executed and registered on 25.12.1994. The target date for execution and registration of the sale deed was extended on two occasions and ultimately vide writing Ex.P4, entire payment was made and possession was delivered.

Plaintiff filed the suit on 25.04.2006. It may be significant to note here that as per writing dated 30.04.1995, no further date for execution and registration of sale deed was fixed.

Both the Courts have concurrently found that the agreement to sell dated 08.07.1994, extended on 23.12.1994 and 30.04.1995 are proved on the file.

Counsel for the appellant has very vehemently argued that the suit filed by the plaintiff was barred by time as the limitation for filing such suit is three years only under Article 54 of the Schedule-II of the Limitation Act, 1963 (hereinafter referred to as 'the Act'). Article 54 of the Act is extracted as under:-

“54. For Specific performance of a contract.	Three Years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.”
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Article 54 of the Act is dealing with two eventualities; (i) when the date is fixed for performance then the limitation would start from the date of performance fixed by an agreement; (ii) if no date is fixed for performance then from the date when the plaintiff has notice of the fact that performance has been refused.

In the present case, plaintiff had specifically asserted that he came to know about the refusal when the defendant started negotiating for

sale of the aforesaid plot. Cause of action to file the suit was pleaded on the aforesaid basis. In view of Article 54 of the schedule attached to the Limitation Act, 1963, I do not find any force in the submission made by counsel.

Even otherwise, as per the constitution judgment of the Hon'ble Supreme Court reported as **Chand Rani v. Kamal Rani, 1993(1) SCC 519**, in case of immovable property particularly when there is no date fixed for performance and entire payment has been made, time cannot be the essence of the contract.

In view of what has been discussed hereinabove, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is ordered to be dismissed.

September 14, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No