

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

RSA No.4295 of 2016 (O&M)

Date of decision : 25.07.2017

Harvinder Singh

...Appellant

Versus

Inder Pal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. A.P. Kaushal, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.11143-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 137 days in filing the present appeal is condoned.

Application stands allowed.

Main Case

This Regular Second Appeal has been filed by the plaintiff against the concurrent judgments passed by the Courts below.

The plaintiff had filed a suit on 14.06.2008 for specific performance of the agreement to sell dated 12.07.2003. The learned trial Court as well as learned First Appellate Court exercised the discretion as provided under Section 20 of the Specific Relief Act, 1963 and ordered for refund of earnest money along with interest. The appellant has filed the

present appeal challenging the judgment and decree passed by the Courts below on the ground that the appellant was entitled to specific performance of the agreement to sell.

I have heard learned counsel for the appellant at length.

Learned counsel for the appellant has contended that once the agreement to sell was proved and the plaintiff had filed a suit within limitation prescribed, there was no occasion for the Court to rely upon the relevant provision of Specific Relief Act.

Learned counsel for the appellant has further submitted that mere rise in price of the property cannot be a ground to refuse the specific performance of agreement.

I have considered the arguments raised by the learned counsel for the appellant and in my opinion, the learned Courts below have rightly exercised their discretion because of following reasons:-

1. Admittedly, the plaintiff has not stepped into the witness-box. Only attorney appeared. The plaintiff did not even appeared in the witness-box to face cross-examination.
2. No attesting witness of the agreement to sell was examined.
3. Out of total sale consideration of ₹7,00,000/- only ₹50,000/- was paid.
4. In the agreement to sell, it was provided that the sale deed would be executed two years from the date of execution of the agreement.

The plaintiff filed a suit on 14.06.2008. Counsel for the appellant has read me the plaint which does not explain why the plaintiff waited for a period of 35 months before instituting the suit for specific

performance.

Counsel for the appellant has further admitted during the course of arguments that the appellant-plaintiff was in fact representing the defendants as attorney in their litigation with third party.

Looking into the aforesaid circumstances, I do not find any reasons to interfere with the discretion exercised by the Courts below.

Accordingly, present Regular Second Appeal is dismissed.

25.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No