

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

**RSA No.4382 of 2015 (O&M)
Date of Order: 13.12.2017**

Bhushan Lal

..Appellant

Versus

Balvir Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajit Singh Sodhi, Advocate
for the appellant.

ANIL KSHETARPAL, J.

C.M.No.10554-C-2015

Prayer in this application is for condonation of delay of 22 days
in filing the appeal.

For reasons mentioned in the application, which is supported by
an affidavit, the delay of 22 days in filing the appeal is condoned.

Application is allowed.

RSA No.4382 of 2015

Defendant-appellant is in regular second appeal against the
judgment passed by the learned Additional District Judge, dated 03.04.2015
while deciding the first appeal.

Plaintiff filed a suit for specific performance of the agreement
to sell dated 13.08.2004.

Defendant, on the other hand, denied execution of the
agreement to sell and receipt of earnest money.

Learned trial court after appreciating the evidence available on

the file dismissed the suit after recording a finding that payment of Rs.50,000/-, the earnest money has not been proved.

Plaintiff filed first appeal. Learned first appellate court after re-appreciating the evidence available on the file, held that agreement to sell is proved. However, the Court recorded that it appears to be a money transaction, and therefore, relief of specific performance was refused, whereas alternative relief of refund of the amount along with interest was granted.

I have heard counsel for the appellant at length and with his able assistance gone through the judgments passed by the courts below.

Counsel for the appellant had vehemently argued that the payment of the earnest money has not been proved by the plaintiff. Learned counsel for the appellant has drawn attention of the Court to the statement given by Rajiv Kumar, scribe of the agreement to sell, where in cross-examination he admitted that the payment was not exchanged in his presence.

Counsel for the appellant on the basis of the aforesaid statement tried to impress upon the court that there is no evidence on the file to prove the payment of the earnest money.

I have considered the submissions of learned counsel for the appellant, however, I am unable to agree with the same. The agreement to sell is in writing, executed on a non judicial stamp paper of Rs.300/-. The stamp paper for agreement was purchased by the defendant. An agreement to sell runs into two pages. Both the pages have been signed by the defendant. Defendant has signed the first page on the left hand margin as well as at a place the narration of the agreement ends. Whereas on the

second page, defendant has signed where the narration of the agreement to sell comes to an end. It is specifically recorded in the agreement to sell that the appellant had received a sum of Rs.50,000/- as earnest money.

Still further the plaintiff has stepped into a witness box and has stated that payment of Rs.50,000/- was made.

In view of the fact that there is a document in writing between the parties, which is signed, recording a fact that Rs.50,000/- has been paid, which is supported by the oral evidence, the Court in such circumstances cannot accept the argument of learned counsel for the appellant.

Learned counsel for the appellant has further submitted that the agreement to sell has not been proved on the file, as the attesting witness Gurpreet Singh has not come forwarded to face cross-examination. The agreement to sell is not required to be attested by witnesses. Agreement to sell is a contract between the parties, reduced into writing and signed by the defendant-appellant. In such circumstances, the agreement to sell was not required to be proved by examining the attesting witness.

Taking into consideration the aforesaid facts, this Court does not find any good ground to interfere with the findings of fact arrived at by the learned first appellate Court.

The regular second appeal is dismissed.

December 13, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No