

107.

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

RSA-5876-2016 (O&M)

Date of decision:02.03.2017

Gurbachan Singh @ Bachan Singh

.... Appellant

versus

Mehar Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Rahul Sharma, Advocate,
for the appellant.

HARI PAL VERMA, J.

CM-15406-C-2016

Prayer in the application filed under Section 149 CPC is to
make good the deficiency in the court fee.

For the reasons stated in the application, same is allowed
and the applicant-appellant is permitted to make good the deficiency in
the court fee.

CM-15405-C-2016

Prayer in the application filed under Section 151 CPC is for
condonation of delay of 6 days in refiling the appeal.

For the reasons stated in the application, same is allowed
and the delay of 6 days in refiling the appeal is condoned.

CM-15407-C-2016

Prayer in the application filed under Section 5 of the

Limitation Act is for condonation of delay of 446 days in filing the appeal.

It has been pleaded in the application that the appellant is an illiterate and poor person and is not well conversant with the law of limitation. His wife was very ill, got operated and there was no other person in the family to look after her and due to which, lot of money has been spent by the appellant on her treatment. Therefore, he was not in a position to arrange the money so as to file the appeal. In this manner, delay of 446 days in filing the present appeal has occurred, which is not intentional.

I have heard learned counsel for the applicant-appellant.

Illiteracy and poverty are not the ground to condone the delay. However, in the present case, the appellant has pleaded that his wife was very ill and he got her operated, due to which a lot of money was spent on her treatment. This ground looks quite satisfactory to condone the delay, but since no such material has been placed on record to substantiate the averments in support of condonation of inordinate delay of 446 days in filing the appeal, this court does not find it as a sufficient ground to condone the delay.

Accordingly, the application stands dismissed.

RSA-5876-2016

To be fair with the appellant, I have heard learned counsel for the appellant on merits also and perused the award passed by the learned Tribunal.

The appellant-defendant has filed the present regular second appeal against the judgment and decree dated 27.03.2015 passed by learned Additional District Judge, Ludhiana, whereby his appeal against the judgment and decree dated 23.01.2015 passed by learned Civil Judge (Junior Division), Ludhiana, was dismissed.

Vide judgment and decree dated 23.01.2015, the trial Court decreed the suit of the plaintiff-Mehar Singh (respondent herein) entitling him for possession by way of specific performance of agreement to sell dated 10.12.2009 executed by the defendant (appellant herein) in favour of respondent-plaintiff of the suit land.

Briefly stated, the plaintiff had filed a suit for possession by way of specific performance of an agreement to sell dated 10.12.2009 executed by the defendant in respect of suit land, as detailed in the plaint, with a direction to execute and get registered the sale deed on receipt of balance sale consideration. He had also sought for a decree for permanent injunction restraining the defendant from alienating and transferring the possession of suit land. The agreement to sell dated 10.12.2009 was executed between the parties whereby the defendant agreed to sell the suit land @ ₹9 lakhs per acre to the plaintiff. The defendant received a sum of ₹2,30,000/- as earnest money from the plaintiff in the presence of marginal witnesses and agreed to execute the sale deed on or before 31.05.2010. However, on 31.05.2010, the plaintiff remained present in the office of Sub Registrar, Ludhiana along with balance sale consideration, for the purchase of stamp papers

and other incidental expenses required for the registration of sale deed. But the defendant did not turn up to execute the sale deed. The plaintiff was always ready and willing to perform his part of the agreement to sell and had sufficient funds to make payment of the balance sale consideration. The plaintiff served a notice dated 10.05.2010, followed by another notice dated 26.08.2010 calling upon the defendant to contact the plaintiff regarding execution of sale deed. But the defendant despite having received the notices did not come forward to perform his part of the agreement to sell, rather threatened to alienate the suit property and to transfer its possession to some other persons.

The defendant filed written statement, taking preliminary objections that the suit filed by the plaintiff is false and frivolous. The plaintiff has not come to the court with clean hands and has suppressed the material facts. The execution of the agreement to sell dated 10.12.2009 was denied by him. On merits, it was submitted that the defendant never entered into any agreement to sell of his land @ ₹9 lakhs per acre with the plaintiff. He further submitted that he had obtained a loan of ₹20,000/- from the plaintiff and had repaid the whole amount to the plaintiff, but he refused to give back the signed blank stamp papers to the defendant which the plaintiff took from the defendant at the time of advancing the loan and converted the said stamp papers into an agreement to sell.

From pleadings of the parties, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled for possession by way of specific performance? OPP
2. Whether the plaintiff is entitled for the decree for permanent injunction restraining defendant from alienating the suit property? OPP
- 2.A Whether the suit filed by the plaintiff is false and frivolous? OPD
- 2.B Whether the plaintiff has suppressed the material facts from this Court and has not come to this Court with clean hands? OPD
- 2.C Whether the present suit is not maintainable? OPD.
3. Relief.”

The plaintiff himself stepped into the witness box and also got examined PW1-Darshan Singh, who is one of the attesting witnesses to the agreement to sell (Ex.P5). He also examined the other attesting witness PW2-Narinder Singh and the scribe of the document as PW4-Amandeep Kumar. All these witnesses supported the case of the plaintiff. All the witnesses were cross-examined by the defendant. Since PW1- Darshan Singh was examined-in-chief, but did not turn up for the purpose of cross-examination, his examination-in-chief being incomplete, was not read into evidence. But PW2-Narinder Singh and PW4-Amandeep Kumar, had proved on record the agreement to sell. The story propounded by the defendant that he had obtained a loan of ₹20,000/- from the plaintiff was not accepted as the defendant had

failed to adduce any such date, month or year of the alleged loan transaction even by approximation. The defendant though had stated that after coming to know regarding agreement to sell, he also filed a complaint before the Commissioner of Police, but no such complaint or application was made part of the record and also the defendant had shown ignorance about the outcome of the said complaint as to what ultimately happened to that complaint. Accordingly, vide judgment and decree dated 23.01.2015, the trial Court decreed the suit of the plaintiff and the defendant was restrained from alienating and transferring the suit land.

Aggrieved against the aforesaid judgment and decree dated 23.01.2015, the appellant-defendant-Gurbachan Singh @ Bachan Singh filed an appeal before the Lower Appellate Court, but the same was dismissed vide judgment and decree dated 27.03.2015.

It is in the aforesaid circumstances, defendant-Gurbachan Singh @ Bachan Singh (appellant herein) has filed the present appeal.

Learned counsel for the appellant-defendant has argued that both the judgments and decrees passed by the courts below are wrong, perverse, illegal and contrary to evidence on record. While passing the impugned judgments and decree, the courts below have ignored the statement of DW2-Darshan Singh and DW3-Makhan Singh where they have specifically stated that the appellant-defendant met with an accident in the year 2008 and during that time, he (defendant) had obtained a loan of ₹20,000/- from the respondent-plaintiff. At the time

of obtaining loan, the respondent-plaintiff had got some blank stamp papers signed from the appellant-defendant as a security, but when the appellant-defendant returned back the whole amount to the respondent-plaintiff, he (respondent-plaintiff) refused to return back the blank signed stamp papers. Rather, the plaintiff with a mala fide intention and to grab the property of the appellant-defendant, converted the said stamp papers into an agreement to sell. The appellant-defendant had only availed loan of ₹20,000/- and that too, was returned back. Therefore, an agreement without consideration is a sham transaction and is not a valid agreement. He has formulated the following substantial questions of law:-

- “i) Whether the agreement to sell on the basis of which the suit of plaintiff has been decreed is illegal and invalid document?
- ii) Whether the judgments and decrees of both the courts below are sustainable in the eyes of law?
- iii) Whether the judgments have been passed without appreciating evidence proved on record?”

I have heard learned counsel for the appellant.

In support of execution of agreement to sell dated 10.12.2009 (Ex.P5), the plaintiff examined Darshan Singh as PW1, who had supported the facts enumerated in the plaint. Similarly, plaintiff had examined PW2-Narinder Singh, who stepped into the witness box and supported plaintiff's version. The plaintiff examined himself as PW-3. PW4-Amandeep Kumar deposed that he is doing the

stamp paper of Ex.P5 which was sold to Bachan Singh son of Maghar Singh on 09.12.2009. The plaintiff succeeded in proving the case that the defendant had executed the agreement to sell dated 10.12.2009 in his favour. Even PW2-Narinder Singh, the attesting witness and PW4-Amandeep Kumar-scriber of the document, had supported the plaintiff's version. The story propounded by the defendant that he had obtained loan of ₹20,000/- from the plaintiff was disbelieved for the reason that the defendant had not given the date, month or year of the alleged loan transaction even by approximation. The defendant also failed to give details of complaint made before the Commissioner of Police and its outcome. The statement of DW3-Makhan Singh that the defendant met with an accident and he (defendant) had taken a loan from the plaintiff was also not accepted as even the accident was not proved by the defendant. Therefore, the whole plea as projected by the defendant was disbelieved.

Since the plaintiff had proved the execution of the agreement to sell dated 10.12.2009 (Ex.P5) as well as passing of consideration of ₹2,30,000/- and the fact that on 31.05.2010 i.e. on the date fixed for execution of sale deed, he remained present in the office of Sub-Registrar, Ludhiana along with balance sale consideration, the amount required for the purchase of stamp papers and other incidental expenses required for registration of sale deed, the courts below have rightly concluded that the plaintiff was ready and willing to execute the sale deed and it was the defendant who did not turn up to perform his

part of the agreement.

No substantial question of law arises in the present regular second appeal.

In view of concurrent finding on facts by the courts below, this Court does not find any cause for interference in the present regular second appeal and the same is, accordingly, dismissed.

(HARI PAL VERMA)
JUDGE

02.03.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No