

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

**Regular Second Appeal No.6243 of 2016(O&M)
Date of Order: 24.07.2017**

Ram Chand

..Appellant

Versus

Kiran Bala and anotehr

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.S.Jammu, Advocate,
for the appellant.

ANIL KSHETARPAL, J.

C.M.No.16372-C of 2016

Prayer in this application is for condonation of delay of 415 days
in filing the appeal.

The application is supported by an affidavit. However, since I
have heard counsel for the appellant on merits and found no ground to
interfere, therefore, this application is disposed of as such.

R.S.A. No.6243 of 2016

Defendant-appellant has filed the regular second appeal, against
concurrent finding of fact, arrived at by the Courts below.

Plaintiffs had filed a suit for possession by way of specific
performance of agreement to sell dated 27.05.2005 with respect to land
measuring 6 kanals 7 marlas being half share of land measuring 13 kanals
14 marlas. Plaintiffs had paid Rs.1,80,000/- as earnest money in the
presence of deed writer and attesting witnesses, to defendant Ram Chand,
the appellant. Target date for execution of the sale deed was 26.05.2006.

Both the plaintiffs are females. Plaintiffs through their respective husbands, attended the office of Joint Sub Registrar, Guruhar Sahari along with balance sale consideration but defendant did not turn up.

Defendant appeared and claimed that the agreement to sell as set up is false and fabricated document. Execution of the agreement to sell was denied. It was asserted that defendant/appellant was running a commission agency along with the husbands of plaintiffs and the aforesaid agreement has been manipulated by the plaintiffs.

Plaintiff no.2-Parveen Bala herself stepped into the witness box as PW1, Satish Kumar, an attesting witness was examined as PW2, Deed writer Harmesh Singh was examined as PW3. The scribe also proved the relevant entry in the register as Ex.P4. Whereas defendant-appellant appeared as DW1 and reiterated contents of his written statement.

Learned trial court found that defendant has not disputed his signatures on the agreement to sell, Ex.P2. Learned trial Court after appreciating the evidence available on the file ordered alternative relief of recovery of Rs.1,80,000/- along with interest @ 9% per annum.

Defendant-appellant preferred first appeal, whereas plaintiffs filed cross-objections. Learned first appellate court after re-appreciating the evidence available on record, dismissed the appeal as well as cross objections and, therefore, upheld the order passed by the trial court directing refund of earnest money along with interest @ 9% per annum.

I have heard learned counsel for the appellant at length.

Learned counsel for the appellant has submitted that once the agreement to sell was held to be not entitled to specific performance, the suit of the plaintiffs was liable to be dismissed. Learned counsel further

submitted that even payment of Rs.1,80,000/- is not proved and therefore, refund could not be ordered.

As regard first point, it is suffice to say that grant of specific performance of agreement to sell is discretion of the Court as provided under Section 20 of the Specific Relief Act. In the present case, looking into the facts and circumstances of the case, learned trial Court exercised the jurisdiction in a judicious manner. The execution of the agreement to sell has been proved. Appellant had admitted his signatures on agreement to sell. Attesting witness had been examined. In these circumstances, learned trial Court chose to decline the relief of specific performance of the agreement to sell but granted alternative relief i.e. refund of the earnest money along with the interest.

Learned counsel has further argued that payment of Rs.1,80,000/- has not been proved, therefore, refund could not be ordered.

I have considered the submission made by counsel for the appellant. Plaintiff no.2 had herself appeared in the witness box. The evidence of the plaintiff was supported by attesting witness Satish Kumar and evidence of deed writer. All of them had stated that defendant was given Rs.1,80,000/-. Both the courts on appreciation of evidence has found that Rs.1,80,000/- was paid as earnest money. Defendant-appellant has admitted his signatures. Therefore, there is no force in the argument of learned counsel for the appellant, receipt of Rs.1,80,000/- was not proved.

Learned counsel for the appellant has not been able to point out any substantial questions of law as required under Section 100 CPC or any ground falling within the scope of Section 41 of the Punjab Courts Act, 1918, enabling this Court to interfere with the concurrent finding of fact.

Finding no merit in the appeal, the same is ordered to be dismissed.

July 24, 2017
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No

.