

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

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RSA No.5661 of 2017 (O & M)
Date of Decision:15.12.2017

Kamaljit Kaur

...Appellant

Versus

Hans Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjeev Pandit, Advocate
for the appellant.

ANIL KSHETARPAL, J.(Oral)

CM No.14953-C-2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 35 days in re-filing the appeal is condoned.

Main Case

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court.

Plaintiff filed a suit on 14.05.2007 for specific performance of an agreement to sell dated 08.04.2003. As per the agreement, the target date for execution and registration of sale deed was fixed as 08.04.2004.

Defendant appeared and pleaded that he had taken a loan and this agreement to sell was executed for collateral purposes. It was further pleaded that the loan amount had been returned and the agreement to sell was punched/cancelled and an endorsement on the back side of the agreement to sell was written and duly signed by the plaintiff.

Learned trial Court after recording a finding that the agreement to sell has been cancelled, still ordered refund of the earnest amount.

Learned First Appellate Court has accepted the appeal and held

that once the agreement to sell has been cancelled by an endorsement on the back side of the agreement to sell, neither refund can be ordered nor specific performance of the agreement to sell can be ordered.

Learned counsel for the appellant has submitted that the plaintiff has not signed the endorsement for cancellation. I have repeatedly asked learned counsel whether any evidence was produced on file or not to prove that the endorsement dated 23.05.2004 does not bear the thumb impression of the plaintiff. However, counsel for the appellant failed to answer it.

Learned First Appellate Court after appreciating the evidence available on the file has confirmed the finding of the learned trial Court that the agreement to sell has been cancelled vide endorsement dated 23.05.2004. However, the learned trial Court had ordered refund of the amount on the ground that the exact amount refunded has not been mentioned in the endorsement of cancellation.

In the considered opinion of this Court, the specific performance of the agreement to sell can only be ordered of an agreement to sell, which is existing and binding between the parties. Once the agreement to sell has been cancelled, the suit for specific performance was not maintainable.

In view, there is no scope for interference.

Hence, this regular second appeal is dismissed.

15.12.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No