

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

RSA No.5675 of 2017 (O&M)

Date of decision : 02.12.2017

Avtar Singh

...Appellant

Versus

Surjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwal Goyal, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.14982-C of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 128 days in filing the appeal is condoned.

Application is allowed.

Main Case

The defendant-appellant is in Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while deciding the suit for possession by way of specific performance of the agreement to sell dated 18.07.2008.

Both the Courts below have ordered the refund of the earnest money and refused to grant the relief of specific performance of the agreement to sell.

The appellant contends that even the refund could not be ordered on the premises that the agreement to sell has been held to be executed for collateral purposes.

It is not in dispute that the execution of the agreement to sell is admitted by the defendant-appellant. It is the case of the defendant-appellant that this agreement to sell was executed as a collateral security for sending the daughter of the defendant-appellant to Italy. It is further the case of the defendant that she was sent to France via Moscow, therefore, submits that the amount is not payable.

The defendant has not produced any evidence to support this assertion. Except the pleadings and oral evidence, no document has been produced. The defendant-appellant has neither produced the passport of the daughter nor any other document which proves that the plaintiff was in any way involved in that transaction.

Both the Courts below have concurrently found that the agreement to sell has been proved. In fact, it is an admitted document.

Taking into consideration these facts, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

02.12.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No