IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 664 of 2017 (O&M)
Date of Decision: 26.09.2017

Vijay Kumar Goel

.... Appellant

Versus

Raj Bansal and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Akshay Bhan, Sr. Advocate, assisted by
Mr. Saurabh Arora, Advocate for the appellant.

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JASWANT SINGH, J. (ORAL)

Defendant No. 4/appellant (Vijay Kumar Goel) has filed the present second appeal directed against the judgment and decree dated 07.05.2016 passed by the lower Appellate Court/Additional District Judge, Chandigarh, whereby the judgment and decree dated 03.09.2014 passed by the trial Court, granting alternative relief of refund of earnest money was modified and a decree for specific performance of agreement to sell qua 20% of the share of SCO No. 47-48 Sector-17-C, Chandigarh, was decreed in *toto* in favor the respondents-plaintiffs.

Alongwith the aforesaid appeal, applications bearing **CM No. 1441-C of 2017** seeking permission to file the appeal; and **CM No. 1439-C of 2017** seeking condonation of 179 days' delay in filing the appeal have been filed.

In short, the admitted facts are that an agreement to sell was executed on 14.03.2005 between the owner-Mandher Singh and his wife Mahinder Kaur (defendant Nos. 1 & 2, respectively) and the plaintiffs-Raj Bansal and Smt. Anju Bansal, as also Surjit Chaudhary (defendant No. 3)

Vijay Kumar Goel (defendant No. 4/appellant), Jaswinder Singh (defendant No. 5) and Ramesh Kumar Mittal (defendant No. 6), regarding the sale of SCO No. 47-48, Sector 17-C, Chandigarh. The agreement specified that 20% of the share was to be purchased by Raj Bansal and Smt. Anju Bansal (plaintiffs) and 80% by Surjit Chaudhary, **Vijay Kumar Goel**, Jaswinder Singh and Ramesh Kumar Mittal (defendant Nos. 3 to 6, respectively) for a total sale of consideration of Rs. 3,20,00,000/- and earnest money of Rs. 40 lacs was paid out of which Rs. 10 lacs was paid by the two plaintiffs and Rs. 30 lacs by defendant Nos. 3 to 6 **(including the appellant herein)**. The target date for execution of the sale deed was 30.04.2005, however, subject to obtaining a No Objection Certificate by the owner-vendors from the Estate Office qua the property, which was under consideration. Due to non-obtaining the No Objection Certificate, the sale deed could not be executed on the target date and finally, the plaintiffs (respondent Nos. 1 & 2 herein) issued a notice on 08.05.2007 qua purchase of 20% of their share, leading to filing of civil suit on 27.10.2007 for specific performance of the agreement. The four aforesaid co-purchasers **including the appellant** were impleaded as defendant Nos. 3 to 6. Upon notice, the vendors contested the suit, while defendant Nos. 3 & 4 filed their separate written statements, however, the defendants 3 to 6 were given up during the trial. The agreement to sell was duly proved, however, the trial Court found that the plaintiffs were not ready and willing, therefore, proceeded to grant the alternative relief of refund of proportionate earnest money i.e. Rs. 10 lacs out of Rs. 40 lacs paid to the vendors.

Appellant-Vijay Kumar Goel (defendant No. 4) did not file any appeal against the judgment and decree dated 03.09.2014 nor any of the other defendants including the vendors. The plaintiffs (respondent Nos. 1 & 2 herein) filed an appeal, which was allowed and a judgment and decree dated 07.05.2006 was passed by learned Additional District Judge, Chandigarh, whereby the trial Court decree was modified and a suit for specific performance was decreed in *toto*.

After hearing learned counsel for the appellant on the application bearing **CM No. 1441-C of 2017**, seeking permission to maintain the present appeal, this Court finds that the appellant has no locus to file the present appeal. It is a conceded fact that the appellant-Vijay Kumar Goel alongwith Surjit Chaudhary, Jaswinder Singh and Ramesh Kumar Mittal (co-defendants) have filed a separate suit for specific performance of agreement to sell dated 14.03.2005, claiming the sale of 80% of their share, which has been decreed in their favour vide judgment and decree dated 16.05.2014 passed by the trial Court. Therefore, the appellant can have absolutely no grievance against the passing of decree qua the 20% share of the plaintiffs and, thus, has no locus to seek permission to file the present appeal.

In view of above, the application bearing **CM No. 1441-C of 2017** seeking permission to file appeal, as well as the main appeal are dismissed. However, for the reasons mentioned in the application bearing **CM No. 1439-C of 2017**, the delay of 179 days' in filing the appeal is condoned.

September 26, 2017 **(JASWANT SINGH)**
'dk kamra' **JUDGE**

Whether Speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*