

**RA-RS No.79-C of 2017 (O&M) in
RSA No.4893 of 2013**

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

**RA-RS No.79-C of 2017 (O&M) in
RSA No.4893 of 2013
Date of Decision.06.10.2017**

Shamsher Singh

.....Appellant

Vs

Hanuman Singh and others

.....Respondents

Present: Mr. P.K. Chugh, Advocate
for the applicant-respondent(s).

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

Hanuman Singh, applicant-respondent No.1 (defendant No.1 in the suit) sought review of the order dated 25.10.2016 whereby the regular second appeal preferred by the non-applicant/appellant (plaintiff in the suit) *viz-a-viz* refund of amount of ₹1,80,000/- in a suit for specific performance has been allowed. The review petition is also accompanied by an application seeking condonation of delay of 243 days on the premise that respondent No.1 was never served in the regular second appeal proceedings and acquired knowledge of the same when received summon in execution petition for seeking refund of the money was filed.

This Court asked Mr. Chugh, learned counsel appearing on behalf of the review applicant-respondent No.1 to apprise as to how and in what manner the alternative relief granted was adverse to his interest and would fall within the expression 'error apparent on the face of record'.

It is settled position on record that Hanuman Singh, applicant-respondent No.1 had entered into agreement to sell dated 18.07.2001 for a

total consideration of ₹2,30,000/- against earnest money of ₹1,80,000/-, thereafter had also executed a GPA in favour of Krishan Lal, who further sold it vide sale deed dated 07.02.2003 (Ex.P18) for a consideration of ₹1,20,000/-. The aforementioned plot was again sold to defendant no.5 vide sale deed dated 11.03.2004 (Ex.P19).

The argument raised in the present review petition is that vide Ex.P6, the affidavit furnished by the non-applicant/plaintiff before HUDA authorities for obtaining the No Objection Certificate stated that there was nothing due from defendant No.1. This Court while examining the record had given the reasoning for refund of money, which reads as under:-

“I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Sudhir Sharma viz-a-viz discretionary relief, for, it was incumbent upon the appellant-plaintiff to prove the signatures of Hanuman Singh on the agreement to sell, particularly when it was specifically denied, much less, on the application (Ex.P-10) alleged to have been submitted for issuance of NOC. The objection taken, had been upheld by both the Courts below. Ex.P-13 is the statement of the appellant-plaintiff. Ex.P-14 is the statement of the respondent No.1, whereas Ex.P-15 is the application of Hanuman Singh. The said documents are on the paper of Haryana Urban Development Authority attested by Estate Officer, HUDA, Hisar and bears the following serial numbers:-

- 1. Ex.P-13 - Sr. No.000120*
- 2. Ex.P-14 - Sr.No.000121*
- 3. Ex.P-15 - Sr. No.000122.*

The contents of Ex.P-14 and Ex.P-15 would reveal that Hanuman Singh admitted the execution of the agreement to sell, but stated that he had issued a power of attorney in favour of Krishan Lal for execution of the sale deed. The aforementioned objections had been assailed in the grounds of appeal by taking the aid of the provisions of Order 43 Rule 1-A of the Code of Civil Procedure,

thus, the lower Appellate Court ought to have examined the aforementioned fact while rendering the judgment.

It is a matter of record that the aforementioned documents were confronted to Hanuman Singh, but he denied the signatures. It is very easy to a person to deny the signatures.

The appearance before the Sub-Registrar was not volunteer one, but both the parties appeared in pursuance to the notice dated 09.01.2004 (Ex.P-12) bearing Memo No.929-33 which was sent to both the parties i.e. Shamsher Singh and Hanuman Singh. Assuming for an argument sake that the contents of the application (Ex.P-15) and the statement alleged to have been recorded by the concerned Officer of HUDA or somebody else impersonated, but the person, who impersonated, would not know the execution of the power of attorney in favour of Krishan Lal as that was a personal knowledge between Hanuman Singh and Krishan Lal and this fact was not in the knowledge of the appellant-plaintiff at that relevant point of time. The factum of execution of the power of attorney only surfaced at the time of filling of the suit. The documents coming from the record of the HUDA bearing serial numbers as indicated above, cannot be ruled out to be in genuine.

It is a common practice for a person, who appended his signatures to suffer or state by denying the same during court proceedings, though equally the onus shifted upon the appellant-plaintiff to prove the signatures, but this Court cannot remain oblivious of the aforementioned grievance as in the statement (Ex.P-14) and (Ex.P-15) i.e. there is categoric admission of the agreement to sell, had the signatures been proved perhaps the appellant-plaintiff would have been able to seek the discretionary relief. Since the plot in dispute has also exchanged two hands, I am of the view that the appellant-plaintiff is not entitled to discretionary relief. The Courts below ought to have examined, the aforementioned aspect, at least, or granted the alternate relief. The examination and the cross-examination of the attesting witnesses as a whole has to be seen, mere one line here and there in the cross-examination cannot be read into isolation to form a different opinion.”

The aforementioned documents have not been rebutted either

by oral or documentary evidence. In my view, no sufficient ground is made for review of the matter. Had notice been served to the review applicant even then the things would have remained the same, much less, explanation given in the application for condonation of delay does not stand the touchstone of principles laid down for condoning the delay.

Resultantly, the review application is dismissed on the ground of delay as well as on merits.

**(AMIT RAWAL)
JUDGE**

October 06, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No