

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

**(1) RSA No.2472 of 2004 (O&M)
Date of Order: 28.02.2018**

Manjit Singh ..Appellant

Versus

Richhpal @ Rashpal ..Respondents

(2) RSA No.2131 of 2004 (O&M)

Richhpal @ Rashpal ..Appellant

Versus

Manjit Singh ..Respondents

(3) Civil Revision No.6844 of 2016(O&M)

Richhpal @ Rashpal through his LR ..Petitioner

Versus

Manjit Singh and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Akshit Chaudhary, Advocate,
for the appellant (in RSA No.2131 of 2004)
for the respondent (in RSA No.2472 of 2004)**

**Mr. Harminder Singh, Advocate,
for the petitioner (in CR No.6844 of 2016)**

**Mr. K.S.Dhaliwal, Advocate,
for respondent no.1(in CR No.6844 of 2016)**

ANIL KSHETARPAL, J(Oral)

By this judgment, Regular Second Appeal Nos.2131 & 2472 of

2004 and Civil Revision No.6844 of 2016 shall stand disposed of as both

the regular second appeals are arising out of the same suit filed by the plaintiff-appellant for specific performance of the agreement to sell and for permanent injunction.

Both the courts below after examining the evidence available on the file have found that the plaintiff is not entitled to the relief of specific performance of the agreement to sell dated 07.06.1993. Learned trial court decreed the suit ordering refund of earnest money along with interest @ 6% per annum, whereas the learned first appellate court found that the discretion exercised by the learned trial court was correct in the facts and circumstances of the case, however, enhanced the refund from Rs.2,00,000/- to Rs.3,00,000/- along with interest @ 12% per annum.

In this case, both the courts have noticed that the agreement to sell was executed on 07.06.1993. As per the agreement to sell, sale deed was to be executed on 29.04.1994 i.e. after a period of more than 10 months. It is asserted that there was an oral extension of the target date to 29.05.1995. Even after 29.05.1995, plaintiff did not take any steps to get the sale deed executed and registered. Plaintiff served a notice on the defendant for the first time on 11.04.1997 and thereafter, filed a suit on 30.04.1997. Thus, the suit was filed after a period of approximately 4 years from the date of agreement to sell and approximately 3 years from the target date for the execution and registration agreed upon between the parties as per written agreement to sell.

It is further the case of the defendant that the plaintiff was his attorney in the proceedings pending before the authorities under the Ceiling Act.

Learned counsel for the defendant-appellant in RSA No.2131

of 2004 has submitted that there is no evidence available on the file proving any special damage to the plaintiff. He submitted that in absence thereof, the learned first appellate court could not have enhanced the amount of refund to Rs.3,00,000/-. He submitted that learned trial court had rightly directed the defendant to return the earnest money along with interest @ 6% per annum.

On the other hand, learned counsel for the plaintiff submitted that as per the agreement to sell, defendant had agreed to pay double of the earnest money. In view of the aforesaid agreement, learned first appellate court should have rather ordered refund of Rs.4,00,000/-.

It is well settled that before ordering refund of amount, more than the earnest money, plaintiff is required to prove by leading cogent evidence of damages suffered by him. In the present case, no evidence to that effect was led. Such being the position, learned first appellate court erred in ordering refund of Rs.3,00,000/- instead of refund of earnest money of Rs.2,00,000/-.

Taking into consideration the arguments of respective learned counsels, it is ordered that the defendant-appellant in RSA No.2131 of 2004, Richhpal @ Rashpal shall be liable to refund of the earnest money of Rs.2,00,000/- along with interest @ 9% per annum from the date of agreement to sell till realization.

This court does not find any ground to interfere with the discretion exercised by both the courts below refusing specific performance of the agreement to sell. Section 20 of the Specific Relief Act grants discretion to the court to allow specific performance of the agreement to sell or order refund.

In the present case, this court finds that the discretion exercised by the Court is based upon reasons guided by sound judicial principles, which does not require any interference.

The civil revision has been filed by legal representative of Richhpal @ Rashpal against the order by which some land was attached in execution.

In view of the order passed by this Court, petitioners would be free to request the Executing Court to delete the attachment after paying the amount as ordered by this Court.

In view of the discussion made hereinabove, the Regular Second Appeal No.2131 of 2004 filed by Richhpal @ Rashpal is partly allowed, the Regular Second Appeal No.2472 of 2004 filed by Manjit Singh is dismissed and the civil revision is disposed of.

February 28, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No