

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

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**RSA No. 2949 of 2009 (O&M)
Date of Decision : 20.3.2018**

Smt. Om Rani

....Appellant

vs.

Shri Raj Kumar

....Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Raj Kumar Gupta , Advocate
for the appellant(s).

Mr. Shailendra Jain, Senior Advocate with
Mr. Satyendra Chauhan, Advocate
for the respondent.

AJAY TEWARI, J. (Oral)

CM No. 8762-63-C-2009

These are two application for condonation of delay of 285 days
and 1 day in refiling and filing the appeal respectively.

For the reasons recorded in the application, the same is allowed
and delay of 285 days and 1 day in refiling and filing the appeal is
condoned.

Main Case

This appeal has been filed against the concurrent judgments of
the Courts below decreeing a suit for specific performance filed by the
respondent. The case of the respondent was that by a receipt cum
agreement dated 15.2.1997, the appellant had acknowledged that
respondent had paid her Rs. 15,000/- as earnest money for the sale of booth

No.338, Sector-59, Faridabad. The Receipt cum agreement dated 15.2.97 further mentioned that respondent was liable to make the entire remaining payment within 35 days i.e. on 21.3.97 22.3.97 to 24.3.97 being holidays, the respondent appeared before the Sub-Registrar on 25.3.97. Since the appellant did not appear to conclude her part of contract, the respondent filed the suit. The case of the appellant was of total denial. She denied receiving any money and also denied executing the receipt. Both the Courts below having found in favour of the respondent and decreeing the suit, the appellant is before this Court.

The first argument of the learned counsel for the appellant is that on the date in question the appellant was merely an allottee and therefore owner continued to be HUDA and thus any agreement to sell was void. In this connection counsel for the appellant has relied upon “**Rajesh Kumar vs. Kusum Lata and another 2010(2) PLR 775**”. That case was completely distinguishable because there it was the seller who filed the suit of specific performance. The Courts found that the property could have been sold only with permission of the competent authority and that seller had never applied for such a permission. In the present case situation is same. The appellant herself did not apply for permission to transfer the property hence the judgment cited by the appellant goes directly against her. Learned counsel for the appellant then argued that the execution of the agreement to sell has not at all been proved. The Courts below noticed that when the appellant appeared in the testimony, she even denied her signatures on the Vakalatnama, on the written statement and on the affidavit in evidence and consequently held that she was not at all a credible witness.

On the other hand, one witness of the agreement to sell was also examined.

The third argument of the learned counsel for the appellant is that under the Haryana Stamp Amendment Act, 1899 an agreement to sell must be stamped with minimum stamp of Rs. 2.25 paise and this document is insufficiently stamped and therefore inadmissible under Section 35 of the Stamp Act, 1899. Learned Senior counsel appearing on behalf of the respondent has argued that this document is basically a receipt in which it has been mentioned that a sum of Rs. 15000/- has been received as earnest money for the sale of booth, the total price of which is Rs. 1.5 lacs. It is not an agreement to sell and thus the bar of Section 35 is not attracted. I find merit in this argument. The appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

16.3.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No