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

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RSA No.966 of 2010 (O & M)
Date of Decision:23.04.2018

Surinder Singh ...Appellant

Versus

M/s SLR Finlease Ltd. and another ...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. A.P. Bhandari, Advocate
for the appellants.

Mr. Arun Jain, Senior Advocate with
Mr. Lokesh Sinhal, Advocate
for the respondents.

**ANIL KSHETARPAL, J.(Oral)**

Defendant No.1-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below decreeing the suit for specific performance of agreement to sell dated 20.08.1998. It is a case where defendant No.1-appellant admits his signatures on each page of the agreement to sell, spread over 7 sheets of paper. First page and second page also has an endorsement for extension of the date, wherein also the defendant-appellant admits his signatures. First endorsement is dated 19.02.1999, whereas second endorsement is dated 18.05.1999. Through the endorsements defendant-appellant further received Rs.1,00,000/- each and extended the date for execution of the agreement.

It is further not in dispute that earnest money of Rs.2,50,000/- at the time of the execution of the agreement to sell was received through two cheques of Rs.1,00,000/- and Rs.1,50,000/- respectively and encashment of the aforesaid cheques have been proved by Hari Shankar, who is an official of the bank who appeared in witness-box as PW-2. It is further proved on file that the defendant-appellant had also executed a general power of attorney on the same day i.e. 20.08.1998. The aforesaid general power of attorney is registered with the Sub Registrar and very first para of the general power of attorney makes a reference to the agreement to sell. On the basis of the aforesaid overwhelming evidence, Courts below have decreed the suit.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the photocopy of the record.

Learned counsel for the appellant has submitted that since scribe and two attesting witnesses of the agreement to sell have not been produced, therefore, the agreement to sell is not proved. He has further submitted that since the plaintiff is a limited Company, therefore, before entering into an agreement, the company was required to pass a resolution and since no resolution has been produced, therefore, agreement is void. Next argument of learned counsel is that even power of attorney, which is a registered document has not been proved as both the attesting witnesses have not been examined. Next argument of learned counsel is that once the defendant-appellant had denied execution of the agreement, the onus shifted on the plaintiff who was required to prove that agreement to sell was entered into.

On the other hand, learned counsel for the respondent has read the statement of DW-1, defendant-appellant. Defendant-appellant has admitted his signatures on Ex.P-10 and Ex.P-11 i.e. agreement to sell and power of attorney as also the endorsements on 19.02.1999 and 16.05.1999.

Learned counsel for the respondent has further submitted that once the payment of earnest money is through Bank and the defendant-appellant admits his signatures, the agreement to sell stood proved.

This Court has considered the argument of learned counsel for the parties and with their able assistance re-evaluated the evidence available on the file. This Court is not in agreement with the submissions of learned counsel for the appellant particularly in view of the peculiar facts of the case.

It is not in dispute that earnest money of Rs.2,50,000/- was paid through bank cheques and Bank transaction has been proved by examining Hari Shankar PW-2. Defendant-appellant admits his signatures on the agreement to sell, power of attorney (registered) and endorsements. The signatures of the defendant-appellant are in English and it does not appear from the signatures of the defendant-appellant who is literate that he did not know what he is signing. Defendant-appellant has also signed on the revenue stamp affixed on both the pages and with his own hand he has written that he has received Rs.1,00,000/- on each occasion. An agreement to sell is only a contract for sale of the property. Agreement to sell is not required to be attested by the two marginal witnesses.

In the considered opinion of this Court, only few documents are required to be attested by the attesting witnesses like gift, mortgage and Will etc. Learned counsel for the appellant could not point out any statutory provision requiring that agreement to sell is required to be attested by two witnesses.



Second argument of learned counsel is that the plaintiff-

Company is a limited Company and, therefore, before entering into an agreement resolution was required. The Company is a legal entity. The scope of work of the Company is regulated by memorandum and article of association. In absence of any power under the memorandum of association and article of association, the Company has to act in accordance with the Companies Act.

In the present case, defendant-appellant before raising this contention was required to prove on file that the memorandum and Article of Association of Company did not authorize purchase and sale of the property.

Still further, the present suit was filed by the Company. Company had pleaded agreement to sell. Company also produced on file resolution passed by the Board of Directors permitting Director of the Company to file a suit for specific performance of the agreement. In view thereof, there is no substance in the second submission of learned counsel for the appellant.

Next submission of learned counsel for the appellant is that power of attorney has not been proved on file. The argument is same as learned counsel submits that attesting witnesses have not been examining.

Learned counsel for the appellant was requested to point out any statutory requirement that power of attorney is required to be attested by two attesting witnesses. He failed to point out. It is further significant to note that defendant No.1-appellant when appeared in the witness-box admitted his signatures on the power of attorney. Power of attorney is a registered document bearing photograph of the defendant-appellant. Official from the Sub Registrar office has been produced as PW-1, who has proved the power of attorney. Hence, this Court does not find any force in the submission.

Last submission of learned counsel for the appellant is that once the defendant-appellant had denied the agreement to sell, onus shifted on the plaintiff to prove that there was an agreement to sell.

The agreement to sell is in writing as noticed above, it is spread over 7 sheets of paper. Agreement to sell has been scribed on a non judicial stamp paper. Defendant-appellant admits his signatures on each page apart from two endorsements signed on 15.02.1999 and 16.05.1999. Payment under the agreement to sell has been proved through Bank official. In the considered opinion of this Court, plaintiff fulfilled the requirement of law in proving the agreement.

In view of the aforesaid discussion, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Regular second appeal is dismissed.

23.04.2018 **(ANIL KSHETARPAL)**
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Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No