

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1278 of 2016 (O&M)
Date of Order: 17.10.2018

Rekha Rani

..Appellant

Versus

Kamaljit Kaur

..Respondent

RSA No.2577 of 2016 (O&M)

Rekha Rani

..Appellant

Versus

Hardial Sidhu

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Munish Gupta, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral)

C.M.No.3642-C of 2016

C.M.No.6839-C of 2016

Prayer in these applications is for condonation of delay of 09
and 08 days in filing the appeal.

For reasons mentioned in these applications, which are
supported by an affidavit, the delay of 09 and 08 days in filing two separate
appeals is condoned.

Applications are allowed.

MAIN

By this judgment, regular second appeal Nos.1278 and 2577 of
2016 shall stand disposed of as the properties in disputes are adjoining.

Plaintiff in both the cases is one, whereas defendants are husband and wife.

The date of agreement to sell in both the suit is also same i.e. 04.11.1997.

The only issue which needs determination is whether the learned first appellate court has exercised its discretion in accordance with law or not?

In the present case, learned first appellate court has noticed the following facts to deny the relief of specific performance of the agreement to sell while ordering refund of the earnest money along with interest:-

- (1) Defendants in both the cases purchased this property on 03.11.1997, whereas the present agreement to sell is dated 04.11.1997 i.e. the next day;
- (2) Additional amount was paid which constituted approximately 80% of the payment of total sale consideration on 29.10.1998 but still the sale deed was not got registered on 29.10.1998 i.e. a day later (target date as per agreement for execution and registration of the sale deeds);
- (3) Still further the target date for execution and registration of the sale deed was extended to 29.10.1999. In other words, there was approximately 2 years period between agreement to sell and date for execution and registration of the sale deed;
- (4) The suit was filed in both the cases on 28.10.2002 i.e. the last date when the limitation was going to expire;
- (5) Plaintiff admits that he is property broker/dealer;
- (6) There is no reason forthcoming as to why the suit for

specific performance was not filed immediately after the target date i.e. 29.10.1999 and there is no overt act on part of the plaintiff during this period of 3 years after the extended target date for execution and registration of the sale deed was over.

Learned counsel for the appellant submitted that the agreement to sell was denied, although, it was pleaded that the defendants in both the cases had taken loan which has been re-paid. He submitted that once the agreement to sell has been proved, specific performance should have been ordered. He further submitted that the learned first appellate court erred in granting interest at a lower rate from the date of filing of the suit, rather than from the date of payment.

This court has considered the submissions, however, find no substance therein.

In the written statement filed by the defendants in both the cases, defendants have pleaded that the transaction was only a loan transaction. Although, execution of the agreement to sell was denied, which has been found to be incorrect, however, the specific performance of the agreement to sell is discretionary as per Section 20 of the Specific Relief Act. The learned first appellate court as noticed above has given reasons to deny the relief of specific performance. The court after examining the evidence has discretion to grant or refuse specific performance of the agreement to sell. The discretion exercised by the learned first appellate court is not found to be erroneous.

As regards second argument, it may be noted that the readiness and willingness to perform his part of the contract is doubtful because if a

party is serious in getting the relief of specific performance of the agreement to sell through court, in normal circumstances he would not wait for last date of limitation to file the suit. In such circumstances, the learned first appellate court has still granted relief of refund of the earnest money along with interest @ 6% per annum from the date of filing of the suit till realization.

As regards the argument of learned counsel that the rate of interest awarded is lower, is just to be noticed and rejected particularly when the rate of interest has not been proved in the present case.

In view thereof, this court does not find any good ground to interfere with the findings of fact arrived at by the learned first appellate court.

Both the regular second appeals are dismissed.

October 17, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No