

108.

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

**CM-4959-C-2018 IN/AND
RSA-4100-2013 (O&M)**
Date of decision:17.04.2018.

JOGINDER

... Appellant

Versus

MUKESH KUMAR

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Rajesh Bansal, Advocate,
for the appellant.

Mr.Bhupinder Singh, Advocate,
for the respondent.

HARI PAL VERMA, J.(Oral)

CM-4959-C-2018

Prayer in this application filed under Section 151 CPC is for preponing the date of hearing of the main case which is otherwise fixed for 03.07.2018.

For the reasons stated in the application, same is allowed and the hearing of the main case is preponed and the case is taken on board today itself.

CM-11086-C-2013

Prayer in this application filed under Section 5 of Limitation Act is for condonation of delay of 4 days in filing the present appeal.

For the reasons stated in the application, same is allowed and the delay of 4 days in filing the appeal is condoned.

CM-11085-C-2013

Prayer in this application filed under Section 151 CPC is for condonation of delay of 35 days in re-filing the present appeal.

For the reasons stated in the application, same is allowed and the delay of 35 days in re-filing the appeal is condoned.

RSA-4100-2013 (O&M)

Appellant-defendant has filed the present Regular Second Appeal against the judgment and decree dated 16.01.2013 passed by learned Additional District Judge, Panipat whereby the appeal filed by the respondent-plaintiff against the judgment and decree dated 10.10.2011 passed by learned Civil Judge (Senior Division), Panipat, was accepted.

Briefly stated, the plaintiff had filed a suit for possession by way of specific performance of an agreement to sell dated 29.12.2005. However the suit was dismissed by the trial Court vide judgment and decree dated 10.10.2011. Thereafter, the plaintiff filed an appeal against the judgment and decree dated 10.10.2011 and the Lower Appellate Court vide judgment and decree dated 16.01.2013 allowed the appeal and decreed the suit. The decree for possession by way of specific performance of an agreement to sell dated 29.12.2005 with regard to suit property was passed in favour of plaintiff and the plaintiff was directed to pay/deposit the remaining sale consideration amount within a period of one month from the date of judgment passed in appeal. It was made clear that in case the plaintiff failed to pay/deposit the remaining sale consideration amount within a period of one month, the appeal would deem to have been dismissed.

Aggrieved against the aforesaid judgment and decree dated 16.01.2013, the defendant has filed the present appeal.

Vide order dated 08.02.2018 on the statement of counsel for the appellant that the parties are in the process of entering into an amicable settlement, and in case, the matter is referred to Mediation & Conciliation Centre of this Court, it is possible that the matter may be settled. This Court had directed the parties to appear before the Mediation Centre of this Court on 27.02.2018. Accordingly, the parties appeared before the Mediation Centre and it has been brought to the notice of this Court and that the parties have compromised the matter on the terms & conditions as settled between them vide settlement deed dated 27.02.2018. The relevant terms & conditions as incorporated in paragraph No.6 are reproduced as under:-

“6. That the parties i.e. first party and the second party have settled their dispute amicably on the following terms:-

i) That both the parties have settled their dispute for an amount of Rs.2,00,000/- (Rupees Two Lacs Only) and the appellant Joginder Singh-first party have given a cheque of Rs.2,00,000/- (Rupees Two Lacs Only) dated 27.02.2018 bearing No.283777 in the Mediation Centre to the respondent Mukesh Kumar. A photocopy of the above cheque duly signed by the recipient is attached with the file. The cheque is signed by Mrs. Kamlesh who is wife of Joginder Singh-appellant/first party.

ii) That by returning this amount of Rs.2,00,000/- (Rupees Two Lacs Only) to the respondent the dispute which gave rise to the present RSA between the parties is finally settled between them.

iii) That both the parties request the Hon'ble High Court that an amount of Rs.3,00,000/- (Rupees Three Lacs Only) which is deposited by Mukesh Kumar (respondent in the present appeal) in the Courts of Panipat may be returned to Mukesh Kumar-second party as soon as possible as the dispute is finally resolved between the parties

in the Mediation Centre.

iv) That both the parties request the Hon'ble High Court that in view of this settlement the agreement to sell which was executed between the parties may be deemed to be cancelled and the appellant will remain owner in possession of the disputed house.”

Learned counsel for the parties are *ad idem* that the aforesaid settlement dated 27.02.2018 has already been acted upon and as a result thereof, the agreement dated 29.12.2005 is deemed to have been cancelled and the appellant-defendant, namely, Joginder Singh shall remain owner in possession of the house in dispute.

Accordingly, present appeal is disposed of in terms of settlement/agreement so arrived at between the parties before the Mediation Centre on 27.02.2018.

In view of above, the application i.e. CM-5098-C-2018 filed under Section 151 CPC seeking disposal of present appeal in view of settlement so arrived at between the parties, is allowed.

It is made clear that the amount deposited by the respondent-plaintiff with the Executing Court shall be refunded back to him.

Since the matter has been settled between the parties before the Mediation Centre of this Court, the court fee so affixed by the appellant, while filing the present Regular Second Appeal, is ordered to be refunded to the appellant. Accordingly, the application i.e. CM-5099-C-2018 stands disposed of.

(HARI PAL VERMA)
JUDGE

17.04.2018
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No