

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

104

**CM-5293-94-C-2016 in/and
RSA-1997-2016
Date of Decision : 11.07.2018**

Shingara Singh

..... Appellant

Versus

Hamir Kaur and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. Roopak Bansal, Advocate
for the applicant-appellant.

AJAY TEWARI, J. (Oral)

CM-5293-94-C-2016

For the reasons recorded, the applications are allowed.
Deficiency in the court fee is made good. Delay of 183 days in refiling
the appeal is condoned.

RSA-1997-2016

This appeal has been filed against the concurrent judgments
of the courts below thereby a suit for specific performance filed by the
plaintiff-appellant was decreed in the alternative.

The case of the plaintiff-appellant was that one Sham Singh
had executed a General Power of Attorney in favour of one Ajaib Singh
in the year 1966 and on the basis of that power of attorney Ajaib Singh
had executed agreement to sell of the land belonging to Sham Singh in
the year 2003 in favour of the plaintiff-appellant for a total consideration
of Rs.26 lakhs, out of which the plaintiff-appellant had paid a sum of

Rs.20 lakhs. It was further the case of the plaintiff-appellant that he was ready and willing to perform the contract. The respondents were proceeded against ex-parte. Both the courts below had accepted the case of the plaintiff-appellant as regards the agreement to sell and the payment but as mentioned above decreed the suit for recovery in the alternative and that is how the appellant is before this Court.

Counsel for the appellant has argued that once the agreement to sell as well as the readiness and willingness of the appellant was accepted by the courts below there was no justifiable reason to deny the relief of specific performance. In this regard, the lower appellate court had found that only a photocopy of power of attorney was placed on record by the appellant and then that was not embossed by the Commissioner. The courts further found that it was not the case of the appellant that the attorney Ajaib Singh was not alive and consequently held that it was incumbent upon the appellant to have proved that the power of attorney was validly embossed and in the absence thereof held that even in an ex-parte suit the discretionary relief of specific performance could be denied.

In my considered opinion, there is no fault in the judgments. It must be remembered that an instrument executed abroad is corroborated in three stages. The first stage is when the signature of the executant is attested by the Notary Public. The notarization is then attested by the Embassy in that country and the attestation of the Embassy is corroborated by way of embossing by the Commissioner in India. All these three stages are essential and in the present case admittedly the third stage is not proved.

Consequently, the appeal is dismissed. No costs.

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

July 11, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No