

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

**RSA No.2505 of 2016 (O&M)
Date of decision:11.12.2018**

Jasbir Kaur

... Appellant

Vs.

Satish Kumar Sharma

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Jaskaran Singh Attar, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-defendant has not been successful in defending the discretionary relief in a suit for specific performance of the agreement to sell dated 26.03.2009 at the instance of the respondent-plaintiff.

It was alleged that the appellant-defendant had agreed to sell the suit land as detailed in the head note vide agreement aforementioned, for a sum of Rs.5,15,000/- and received a sum of Rs.90,000/- as earnest money in the presence of the witnesses. The target date for execution and registration of the sale deed was 26.06.2009. The defendant did not appear. Plaintiff served a legal notice dated 22.09.2009 to execute the sale deed on 05.10.2009 but the defendant did not come forward.

In response thereto, the defendant contested the suit by denying the execution of the agreement to sell and treated the alleged transaction to be a loan of Rs.90,000/- and signatures on the blank papers had been

converted into agreement to sell. Being dwelling unit, there was no question to sell the same.

In support of the aforementioned averments, plaintiff appeared himself as PW1 and Naresh Kumar as PW2, Rajinder Singh Namberdar as PW3, Gurdev Singh, HRC from the office of D.C. as PW4 and tendered into evidence the documents Ex.P8 to Ex.P10. On the other hand, defendant appeared herself as DW1 and closed the evidence.

Learned counsel appearing on behalf of the appellant submitted that PW2- Naresh Kumar in cross examination admitted that plaintiff was his neighbour and he did not know other witnesses, much less contents of the agreement to sell Ex.P1 which itself was a clincher for treating the transaction to be a loan transaction instead intention to sell the land. As per the provisions of Section 20(2)(b) of Specific Relief Act, 1963 (for short "1963 Act"), the Court can always decline the discretionary relief owing to the hardship suffered by the defendant. The price of the property was not the one which was referred to in the agreement to sell. Even the stamp papers of the agreement were not seen.

I have heard the learned counsel for the appellant-defendant, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Jaskaran Singh Attar, for, the Court below while granting the discretionary relief noticed the fact that agreement to sell was signed by husband (Randhir Singh) of appellant-defendant, whose signatures at point AX was admitted by Jasbir Kaur. She refused to have received the notice sent by registered post, which

as per the provisions of Section 27 of General Clauses Act, carried a presumption of truth. Once the agreement to sell was signed by her husband, did not reflect to be a loan transaction but intention to sell the land. The provisions of Section 20(2)(b) of 1963 Act are to be read with Explanation II.

For the sake of brevity, Section 20(2)(b) of 1963 Act and Explanation II read as under:-

“(20(2)(b) The following are cases in which the Court may properly exercise discretion not to decree specific performance-
(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff;

Explanation II.— The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.”

The hardship has to be on account of some acts of the plaintiff and not from fault of the defendant.

No ground is made out for interference in the impugned judgment and decree.

The appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 11, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No