

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

**RSA No.2722 of 2016 (O&M)
Date of Decision.17.11.2018**

Surjit SinghAppellant
Vs

Kashmir Singh ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Randeep Singh, Advocate
for the appellant.

-:-

AMIT RAWAL J. (ORAL)

C.M. No.7293-C of 2016

For the reasons stated in the application, delay of 226 days in filing the appeal is condoned.

Application is allowed.

RSA No.2722 of 2016

The appellant-defendant has not been successful in defending the appeal preferred by the respondent-plaintiff, who was not successful in seeking discretionary relief under Section 20 of the Specific Relief Act, in essence, the lower Appellate Court has decreed the suit.

The plaintiff instituted the suit for specific performance of agreement to sell dated 25.06.2008 in respect of land measuring 8 kanals 1 marla, agreed to be sold for a total sale consideration of ₹6,50,000/- per killa and alleged to have paid a sum of ₹5,60,000/- as earnest money. The stipulated date for execution and registration of the sale deed was fixed as 25.06.2009.

The defendant did not come forward to contest the suit.

The plaintiff examined Joga Singh Lambardar as PW1, Satnam Singh power of attorney holder as PW2 and Mohinder Singh as PW-3.

The trial Court noticing the fact that plaintiff did not step into the witness box, dismissed the suit, however, the lower Appellate Court as noticed above, has reversed the finding of the trial Court.

Learned counsel for the appellant-defendant submitted that in the absence of appearance of the plaintiff, finding of fact and law arrived at by the trial Court was most appropriate. Plaintiff has miserably failed to prove readiness and willingness, even if the defendant did not contest the suit, thus, there is illegality and perversity.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submission of Mr.Randeep Singh. There would have been a substance in the plea aforementioned, had there been a contest. The agreement to sell has been proved through the testimony of PW1 Lambardar but even the payment of earnest money, as indicated through the testimony of witnesses, aforementioned. The appellant could also have taken permission of the lower Appellate Court to file written statement in order to contest the suit but no such effort was made. In view of such position, the discretionary relief granted cannot be said to be faulted with.

As an upshot of my finding, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court, much less, no substantial question of law arises for

determination by this Court. No ground for interference is made out.
Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 17, 2018
Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No