

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

RSA No.5138 of 2013 (O&M)

Date of decision : 12.10.2018

Mewa Singh

...Appellant

Versus

Balwinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aman Pal, Advocate for the appellant.

Mr. Davinder Singh Dadwal, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The discretion exercised by the learned First Appellate Court while ordering refund of earnest money alongwith interest and declining the relief of specific performance of the agreement to sell, has been questioned in the present appeal.

Few facts would be required to be noticed.

The agreement to sell between the parties is dated 25.01.2005 for a total sale consideration of ₹3,15,000/- approximately. ₹1,59,000/- is said to have been paid as earnest money on that day i.e. 25.01.2005. As per the agreement to sell, the target date for the execution and registration of the sale deed was agreed to be 25.01.2006. However, on 24.01.2006 i.e. the day prior to the target date, the date for execution and registration of sale deed was extended to 23.04.2006 on receipt of additional amount of ₹13,000/-.

On 23.04.2006, again the date was extended to 21.07.2006. On 20.07.2006, once again the date was extended to 29.08.2006. The defendant while filing the written statement, had admitted his signatures on the blank papers but submitted that it was in fact a loan transaction.

Learned trial Court granted the relief of specific performance of the agreement to sell. However, learned First Appellate Court while re-appreciating the evidence partly accepted the appeal and granted the relief of refund of the entire payment alongwith interest.

Learned counsel for the appellant has submitted while referring to the statement of the defendant to the effect that he visited the office of Sub-Registrar at Bholath on the target date and submitted that if there was no intention to execute the sale deed, the defendant would not have visited the office of Sub-Registrar. He further while referring to the statement of Ravail Singh who has appeared as DW1 has submitted that Ravail Singh admits the execution of the agreement to sell and, therefore, the case set up by the defendant that the signatures were taken on the blank papers stands falsified.

This Court has considered the submissions.

It is well established that as per Section 20 of the Specific Relief Act, 1963, the Court is not bound to grant the specific performance of the agreement to sell in every case. The Court has to examine the facts of the case and thereafter exercise its discretion in accordance with well established principles of law. Such exercise of discretion is capable of correction in appeal. In the present case, the defendant from the very beginning had taken a plea that it was a loan transaction; when defendant

No.3 appeared in evidence, he stated that ₹50,000/- was returned out of the loan transaction. However, the aforesaid statement was ignored by the trial Court on the ground that such plea is beyond pleadings. In the present case, there is absolutely no explanation why the defendant would sign on the extension of the target date for execution and registration of the sale deed on 24.01.2006 only on the receipt of additional amount of ₹13,000/-, although, he was entitled to receive ₹1,59,000/- on the next day. Still further, there is no explanation why the target date for execution and registration of the sale deed was extended three times. The plaintiff claims that he was having sufficient money to execute the sale deed. The defendant was in need of money. Still the target date as per the original agreement to sell was fixed exactly after a period of one year and thereafter it was extended repeatedly as noticed above.

As regards the argument of the learned counsel for the appellant that the defendant admits that he went to the office of Sub-Registrar, his entire statement is to be read in the context he has stated. The defendant has stated in his evidence that he could not arrange the money to repay the entire loan and, therefore, he was requesting the plaintiff to grant him more time so that the loan is repaid. In such circumstances, the evidence of defendant cannot be used against him.

Learned counsel for the appellant has further submitted that no indulgence should have been granted to the defendant particularly when he had not come to the Court with clean hands. It may be noticed that the defendant had originally taken a stand that blank papers were signed by him while taking a loan. However, when DW1 Ravail Singh appeared in

evidence, he admitted that no doubt it was a loan transaction but the agreement to sell was signed.

In the considered opinion of this Court, it is the plaintiff who has to stand on his own legs. The plaintiff claims that he is entitled to specific performance of the agreement to sell and the discretion exercised by the First Appellate Court is erroneous. In such circumstances, minor variation in the pleadings and evidence of the defendant can not result in reversal of the judgment passed by the First Appellate Court. The discretion exercised by the First Appellate Court is neither suffering from any perversity nor error.

In view thereof, there is no ground to interfere.

Regular Second Appeal is dismissed.

12.10.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No