

**RSA Nos.3414 & 6184 of 2016 (O&M)**

**104**

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

**Date of decision : 29.11.2018**

**1. RSA-3414-2016 (O&M)**

Anand Kumar

... Appellant

Versus

Bala Devi

... Respondent

**2. RSA-6184-2016 (O&M)**

Bala Devi

... Appellant

Versus

Anand Kumar

... Respondent

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Abhinav Sood, Advocate for  
Mr. Vikram Singh, Advocate  
for the appellant in RSA-3414-2016.

Mr. Tejinder Pal Singh, Advocate  
for the appellant in RSA-6184-2016.

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**AMIT RAWAL, J.**

**CM-8985-C-2016 IN RSA-3414-2016**

For the reasons stated in the application, the delay of 17 days in  
filing the appeal is condoned.

CM stands disposed of.

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**MAIN CASES**

This order of mine shall dispose of two regular second appeals bearing **RSA No.3414 of 2016** titled as **“Anand Kumar V/s Bala Devi”** filed by the plaintiff against the declining of discretionary relief qua agreement to sell dated 18.06.2011 and **RSA No.6184 of 2016** titled as **“Bala Devi V/s Anand Kumar”** on behalf of the vendor-defendant challenging the alternative relief of refund of ₹3 Lacs.

The appeal bearing RSA No.6184 of 2016 is also accompanied by an application seeking permission to file the appeal as an indigent person on the premise that the lower Appellate Court vide order dated 27.07.2015 declared the appellant/defendant-Bala Devi as indigent person. For the reasons stated in the application, permission is granted to the defendant-Bala Devi to file the appeal as in indigent person. Accordingly, the application bearing CM No.16263-C of 2016 is allowed.

The plaintiff asserted that the defendant had entered into an agreement to sell dated 18.06.2011 in respect of a plot measuring 150 sq. yds. for a total sale consideration of ₹11 Lacs against the receipt of the earnest money of ₹3 Lacs. The stipulated date for registration and execution of the sale deed was 03.02.2012 and the suit was filed on 21.02.2012.

The defendant opposed the suit by denying the agreement to sell, but stated to be a loan transaction, which has allegedly been converted otherwise. It is, in this background of the matter, signatures were appended on the document meant for securing loan. The property was mortgaged with the bank, in such circumstances, the vendor could not have sold the property. The plaintiff also claimed to have paid a sum of ₹7,50,000/- on 14.01.2012, allegedly witnessed by Rishi Pal. The plaintiff did not examine

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any witness, but examined notary public and stamp vendor. The trial Court confined the suit to the alternative decree. It is, on this background of the matter, two appeals were filed, which have been dismissed.

Learned counsel appearing on behalf of the appellant in RSA-3414-2016 submitted that once there is a categoric admission with regard to the execution of the agreement to sell, the Courts below should not have declined the discretionary relief under Section 20 of the Specific Relief Act. In view of the admission of the agreement to sell, the examination of the attesting witnesses pales into insignificance. Rishi Pal, witness to the endorsement, in this regard, was also examined. Stamp vendor deposed that the relevant papers for execution of agreement to sell were purchased by the vendor. The Courts below have heavily relied upon the report of the Expert and ignored the report of the Expert examined on behalf of the plaintiff.

Learned counsel appearing on behalf of the appellant in RSA-6184-2016 submitted that a sum of ₹3 Lacs taken as loan had already been returned, thus, the suit was liable to be dismissed in toto.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the respective counsels, as in view of his cross-examination, the payment of ₹7,50,000/- witnessed by Rishi Pal, has not been proved, where he feigned ignorance regarding passing of the consideration. The trial Court, in my view, by examining the pleadings/stand in the written statement, confined the decree to ₹3 (Three) Lacs holding to be a loan transaction as the plaintiff miserably failed to prove that the parties had intended to sell the land. The discretionary relief could have been granted, had the witnesses been examined. Stamp vendor

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did not depose that the papers were purchased for execution of the agreement to sell. The defendant in cross-examination admitted to have taken a loan of ₹3 (Three) Lacs. It is, in this conspectus of the matter, decree was confined to the alternative relief.

As an upshot of my observations, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the regular second appeals are dismissed.

The appeal bearing RSA No.6184 of 2016 is accompanied by an application seeking condonation of delay of 179 days. The reasons for condonation of delay are bereft of the expression 'reasonable cause'. Accordingly, the application bearing CM No.16264-C of 2016 is also dismissed.

**29.11.2018**  
Yogesh Sharma

**( AMIT RAWAL )**  
**JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**