IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.410 of 2016 (O&M)
Date of decision:14.11.2018

Surinderbir Singh ... Appellant

Vs.

Jagwinder Singh and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sham Lal Bhalla, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.1215-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 68 days in re-filing the appeal is condoned.

C.M. stands allowed.

RSA No.410 of 2016 (O&M)

Learned counsel for the appellant submitted that costs imposed by this Court on 15.10.2018, has not been deposited, despite availing one opportunity.

On merit, the appellant-defendant has not been able to defend the suit for specific performance of the agreement to sell dated 03.10.2005 decreed by the trial Court and upheld by the Lower Appellate Court.

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The plaintif sought the specific performance of the agreement to sell aforementioned, in respect of land measuring 2 kanals 12 marlas at the rate of ₹3,50,000/- per acre for a total sale consideration of ₹1,13,750/- against the receipt of ₹35,000/-. The stipulated date for execution and registration of the sale deed was fixed as 03.04.2006 but the defendant did not come forward to perform the part of contract, therefore, the suit aforementioned was filed.

The defendant opposed the suit by denying the execution of the agreement to sell being forged and fabricated document. The signatures on the agreement to sell were emphatically denied. On the basis of evidence, the trial Court decreed the suit and the appeal laid before the Lower Appellate Court also met with the same fate.

Mr. Sham Lal Bhalla, learned counsel appearing on behalf of the appellant-defendant submitted that suit was filed by two plaintiffs, namely, Jagwinder Singh and Narinder Singh but one of the them did not sign the plaint nor appear in the witness box as witness and other one did not come forward for cross-examination. The testimony of attesting witnesses thus pales into insignificance. In such circumstances, the Court ought not to have granted the discretionary relief. The appellant-defendant was not in India at the time of execution of the agreement to sell nor on the target date.

I am afraid the aforementioned argument is not sustainable in the eyes of law, for, the defendant has failed to discharge the onus by not

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placing on record the passport. On the other hand, agreement to sell was preceded by a legal notice Ex.P4, postal receipt, Ex.P5 and acknowledgment Ex.P7. Mohinder Singh, Lambardar and Mukhtiar Singh, witnesses of the agreement to sell had also been examined. In such circumstances, non-appearance of the plaintiff for cross-examination would be immaterial, for, agreement to sell had been proved through independent witness. Even the readiness and willingness by marking the presence before the office of Sub-Registrar has also been proved. All these factors lead to irresistible conclusion that judgments and decrees of the Courts below do not suffer from any illegality and perversity.

The appeal is also accompanied by an application seeking condonation of delay of 30 days. No explanation, much less reasonable explanation has come forth in explaining the delay.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge which are based upon the appreciation of oral and documentary evidence.

Resultantly, the appeal is dismissed on limitation as well as on merits.

(AMIT RAWAL)
JUDGE

November 14, 2018
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Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No

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