

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

**RSA No.4673 of 2016 (O&M)
Date of Decision : 08.05.2018**

Punit

.....Appellant

Versus

Davinder Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Ranjit Sharma, Advocate for the appellant.
ARUN PALLI, J. (Oral)

Vide judgment and decree dated 24.07.2012, the suit filed by the respondent/plaintiff seeking a decree for specific performance of the agreement to sell dated 18.03.2008 (Ex.P-1), was decreed by the trial Court. As the appeal preferred against the said decree failed and was dismissed on 11.12.2015, the appellant/defendant is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

In brief, the case set out by the plaintiff was that an agreement to sell dated 18.03.2008 (Ex.P-1), was executed between the parties as regards the land measuring 12 marla, situated at village Fatehgarh Churian for a consideration of Rs.4,80,000/-. A sum of Rs.1,50,000/- was given by way of earnest money. But, as the defendant failed to perform his part of contract, thus, the suit.

In the written statement filed by the defendant he denied the

execution of the agreement to sell as also the receipt of earnest money and prayed for dismissal of the suit.

On a consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that the agreement in question was fully proved by the plaintiff. For, he examined Harminder Singh Randhawa, Deed Writer (PW-2), who testified in his deposition that he scribed the agreement executed by Punit Arora (defendant) in favour of the plaintiff qua the suit property. A sum of Rs.1,50,000/- were received by the defendant by way of earnest money, in the presence of the attesting witnesses namely Tarlok Singh and Naresh Kumar. Entries in this regard were duly recorded by him in his register at serial No.150. Plaintiff also examined one of the attesting witness of the agreement Naresh Kumar (PW-3), who also proved the claim of the plaintiff. The plea set up by the plaintiff that agreement in question was never executed by him remained unsubstantiated due to lack of any cogent evidence. Thus, having reached a conclusion that the plaintiff has always been ready and willing to perform his part of the contract, at all material stages of the agreement, suit of the plaintiff was decreed. In so far as the plea that the first Appellate Court erred in declining the prayer seeking amendment in the written statement; suffice it to say that first Appellate Court on a consideration of the application moved by the defendant reached a conclusion that suit was instituted on 8.10.2008, and remained pending about 4 years, but, no such application was moved. Likewise,

even the appeal preferred by the defendant remained pending for three years, but no such effort was made. Thus, in the given situation, the amendment prayed for could not be granted, for, it was merely sought with an intent to fill up the lacuna and delay the proceedings, and would have prejudiced the interest of the plaintiff. What is also required to be noticed, is that first Appellate Court dismissed the appeal filed by the defendant almost 2 ½ years ago, and in the absence of any interim order the sale deed has since been executed in favour of the plaintiff qua the suit property. On being pointedly asked, learned counsel for the appellant could not refer to anything on record which shows that conclusion arrived at by both the Courts were either contrary to the record or suffered from any material illegality. Thus, no question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly, dismissed.

08.05.2018

*Manoj Bhutani***(ARUN PALLI)
JUDGE**Whether speaking/reasoned
Whether reportableYes/No
Yes/No