

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2798 of 2014 (O&M)

Date of Decision: 16.05.2018

Simarjit Kaur and others

..... Appellants

Versus

Rachhpal Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Amit Kohar, Advocate
for the appellants.

Mr. K.R. Dhawan, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Detailed arguments were heard and the judgment was reserved
on 07.05.2018. The Court now proceed to release its detailed judgment.

CM-6667-C-2014

There is an application for condonation of delay of 1500 days.
A supplementary application for condonation of delay has also been filed
giving detailed reasons. Reply to the application has been filed. In the
considered opinion of this Court, delay in filing the appeal deserves to be
condoned for the following reasons:-

1. In the earlier round, this Court had condoned the delay
after recording various reasons and the Hon'ble Supreme Court
while remitting the case back had directed this Court to hear
the appeal afresh.
2. Surjit Singh, the defendant had died after the judgment

was delivered by the learned First Appellate Court.

3. There were two suits against late Sh. Surjit Singh for specific performance of the agreement to sell. Hence, there were two judgments of the learned First Appellate Court. Surjit Singh filed appeal in one case but did not file the appeal in the second case. The appeal in the connected case was pending and the defendant-Surjit Singh with a view to settle the entire dispute had made an offer to pay Rs.20,00,000/- as noticed in the order dated 18.11.2013. Surjit Singh deposited the amount of Rs.20,00,000/- before the learned Executing Court as offered. It is the case of the appellants that they remained under impression that deposit of Rs.20,00,000/- would be accepted by the plaintiff-respondent and the entire dispute would stand resolved.

4. There were series of agreement to sells between the parties. First agreement to sell was executed on 05.07.1997. The second agreement to sell was executed on 20.06.1998 with respect to the same property and this case pertains to third agreement to sell dated 10.06.1999 with respect to different property. In a way, these appeals are connected. This Court has already found vide RSA No.2996 of 2009 that the agreement to sell was executed only as a security to ensure repayment of the loan. Hence, these appeals are inter-linked.

In view of the reasons recorded above, delay of 1500 days is

condoned.

CM-12286-C-2014

The application has been filed under Order 41 Rule 27, CPC for permission to produce in evidence the judgment and decree passed in the connected suit. The aforesaid judgment and decrees have now merged into the judgment passed by this Court in RSA No.2996 of 2009. Hence, the application is dismissed.

Main Case

Defendants-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while decreeing the suit for possession by way of specific performance of the agreement to sell. This appeal has been remanded back by the Hon'ble Supreme Court for decision afresh. The order passed by the Hon'ble Supreme Court is extracted as under:-

“Leave granted.

These appeals are filed against the judgment and order dated 07th September, 2016 passed by the High Court of Punjab and Haryana at Chandigarh whereby order passed by the Addl. Civil Judge (Sr. Division) Kapurthala in Civil Suit No.83 dated 19.04.2011 was dismissed and order passed in Civil Suit No.575 dated 30.07.1999 was allowed.

After hearing learned counsel for the parties at length it is stated at the Bar by both sides that the impugned judgment deserves to be set aside and case be remitted to the High Court for decision afresh. The impugned order is set aside. Let the appeals be heard afresh by the High Court and the judgment be rendered in accordance with law.”

It is the case of the plaintiff that the defendant i.e. late Sh. Surjit Singh had entered into an agreement to sell on 10.06.1999 agreeing to sell 23 kanals and 18 marlas of land @ Rs.3,00,000/-. The total sale consideration works out to Rs.9,00,000/- approximately, out of which,

Rs.2,95,000/- has been paid as earnest money. It is pleaded that the defendant late Sh. Surjit Singh is now not honouring the agreement to sell and not performing his part of the commitment and therefore, the suit has been filed.

The defendant-Surjit Singh denied the execution of the agreement to sell. Both the Courts below after appreciating the evidence have recorded a concurrent finding of fact that the execution of the agreement to sell is proved and the plaintiff is also proved to be ready and willing to perform his part of the contract. In the considered opinion of this Court, the following substantial question of law arise for consideration:-

“Whether the Courts below have correctly exercised discretion under Section 20 of the Specific Relief Act, 1963?”

Section 20 of the Specific Relief Act, 1963 is extracted as under:-

“20. Discretion as to decreeing specific performance.—

(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:—

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the

plaintiff; or

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2.—The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.”

A careful reading of aforesaid provision makes it apparent that grant of decree of specific performance of the agreement to sell is discretionary and the Court is not bound to grant such decree. It is further provided that the discretion of the Court shall not be arbitrary but sound and reasonable guided by judicial principles. The discretion so exercised by the Court is capable of correction by a Court of appeal.

In the considered opinion of this Court, the Courts below have not exercised their discretion properly. In fact, both the Courts have not even adverted to this aspect of the matter. Reasons for only allowing refund along with interest are as under:-

1. Faqir Singh, the attesting witness of the agreement to sell has admitted that the plaintiff is a money lender. He further admits that Surjit Singh had been taking loan from the plaintiff who lends money to various persons. Of course, he has also stated that the plaintiff does not lend money to every one.

2. There has been series of agreement to sells between the parties. First agreement was executed on 05.07.1997. It is the case of the plaintiff that the aforesaid agreement to sell came to an end as Surjit Singh, the predecessor defendant of the appellant had paid the amount of earnest money. Thereafter, there is an agreement to sell dated 20.06.1998 in which one of the term of the agreement to sell is as under:-

“It is agreed that in case first party returns the total amount to second party by 19.06.1999, this agreement shall be cancelled and possession of land will be returned.”

3. Before completion of the transaction pursuant to the agreement dated 20.06.1998, another agreement to sell is alleged to have been executed between the same parties on 10.06.1999, subject matter of present appeal.

4. In all the agreements, the target date for execution and registration of the sale deed is after a period of one year. It is the plea of the defendant in the other suit that the transaction was a loan. Although, it is correct that in the written statement in this suit, this plea has not been taken, however, Faqir Singh, the attesting witness has admitted that there were loan

transactions between the plaintiff and Surjit Singh.

5. The plaintiff while filing the suit does not disclose about earlier agreement to sells executed between the same parties. The plaintiff further does not disclose that there is a previous suit pending between the same parties for possession by way of specific performance. First suit which is subject matter of RSA No.2996 of 2009 was instituted on 30.07.1999 whereas in the present case, the suit was filed on 19.04.2001.

In view of the aforesaid reasons, the question of law framed earlier, is answered in favour of the appellants.

Hence, the judgment and decree passed by the Courts below decreeing the suit for possession by way of specific performance are modified. The plaintiff is held entitled to alternative relief of recovery of the amount of Rs.2,95,000/- along with interest @ 12% per annum from the date of agreement to sell i.e. 10.06.1999 till the date of payment. Learned Executing Court would pay the amount to the plaintiff out of Rs.20,00,000/- deposited in the connected case after ensuring that the decree in civil suit No.575 of 30.07.1999 has been satisfied.

The pending miscellaneous application, if any, shall stands disposed of accordingly.

Regular second appeal is partly allowed.

(ANIL KSHETARPAL)
JUDGE

16.05.2018
Dinesh Bansal

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No