

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

**RSA No.155 of 2017 (O&M)  
Date of Decision.28.11.2018**

Rajinder Singh (since deceased) through LRs .....Appellant

Vs

Ranjit Singh ...Respondent

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

Present: Dr. Anmol Rattan Sidhu, Senior Advocate with  
Mr. M.S. Saini, Advocate  
for the appellant.

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**AMIT RAWAL J. (ORAL)**

**C.M. No.17671-C of 2018**

The prayer in the application is for preponing the date of  
hearing of the appeal.

The application is allowed and with the consent of  
parties, the main case is taken up today itself.

**C.M. No.320-C of 2017**

For the reasons stated in the application, delay of 115  
days in re-filing of the appeal is condoned.

Application is allowed.

**RSA No.155 of 2017**

The appellant-defendant has not been successful in  
defending the suit for specific performance of agreement to sell dated  
05.06.2009 allegedly executed by him in favour of the plaintiff in  
respect of the land measuring 59 kanals 16 marlas. The plaintiff  
claimed specific performance of the agreement to sell in respect of  
land measuring 59 kanals 16 marlas, alleged to have been agreed to  
be sold for total amount of ₹93,43,750/- against the payment of

₹32,00,000/- as earnest money. It was agreed that balance sale consideration of ₹61,43,750/- was to be paid at the time of execution and registration of the sale deed on 15.09.2009 but the defendant failed to honour the payment or perform part of the agreement, compelling the plaintiff to institute the suit on 14.10.2009.

The defendant denied the execution of the agreement to sell, much less, receipt of ₹32,00,000/- and stated to be an act of forgery and fabrication. Even the alleged request of the plaintiff to appear before the Registrar on 15.09.2009 was emphatically denied.

In support of the averments, the plaintiff appeared himself as PW2, Karamjit Singh Shergil, attesting witness of the agreement as PW3, Rajiv Kumar, Registration Clerk as PW4, Labh Singh, Advocate Notary Public as PW5 and Dr. Inderjit Singh, Handwriting and Fingerprints Experts.

On preponderance of the evidence, the trial Court decreed the suit and the appeal laid before the lower Appellate was also dismissed.

Mr. Anmol Rattan Sidhu, Senior Advocate assisted by Mr. M.S. Saini, Advocate for the appellant submitted that great hardship has been caused to the defendant as there is no other land. Even the executants of the agreement i.e. vendor had died on 30.04.2017 and in view of the provisions of sub-section (2) of Section 20 of the Specific Relief Act, 1963, Courts could not have granted discretionary relief as the defendant did not foresee such situation. They are willing to return the money and suitable compensation, thus, urges this Court for setting the findings under challenge.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Sidhu. It would be apt to reproduce of Section 20 (2) of the Specific Relief Act:-

***“20. Discretion as to decreeing specific performance. \_***

xxxx

xxxx

xxxx

*(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;*

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

The provisions of sub-clause (b) of clause 2 of Section 20 cannot be read in isolation but have to be read with explanation II and the same reads as under:-

*“Explanation 2. The question whether the performance of 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.”*

From the simple and plain reading of Explanation II, hardship has to be attributed on account of the act of the plaintiff and not defendant's hardship. The appellant-defendant has failed to belie the signatures/thumb impression of Rajinder Singh on the agreement to sell, despite having denied the existence or execution on the agreement. On the contrary, the plaintiff has proved execution of the agreement, much less, passing of the sale consideration through examination of attesting witness referred to above. Despite extensive cross-examination, nothing contrary surfaced to deny discretionary relief, as the suit was filed immediately after expiry of the stipulated date.

In view of the aforementioned circumstances, concurrent finding of fact rendered by the Courts below cannot be faulted with as the same are based upon correct appreciation of fact, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)  
JUDGE

**November 28, 2018**

Pankaj\*

Whether Reasoned/Speaking      Yes

Whether Reportable                  No