

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 4509 of 2014 (O&M)

Date of decision : May 16, 2018

Sher Singh

..... Appellants

Versus

Shamsher Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R. S. Mamli , Advocate
for the appellant.

Mr. V. K. Gupta, Advocate
for the respondent.

AMIT RAWAL, J (oral).
CM No. 10444-C of 2014

This is an application under Section 5 of the Limitation Act read with Section 151 CPC seeking condonation of delay in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 125 days in filing the appeal is condoned.

RSA No. 4509 of 2014 (O&M)

The appellant-defendant is in Regular Second Appeal against the concurrent finding of fact whereby the suit for specific performance of agreement to sell dated 22.3.2002 in respect of suit land agreed to be sold by the appellant-defendant for a sum of ₹ 2 lacs against the receipt of earnest money of ₹50,000/- has been decreed.

The stipulated date for execution and registration of the

sale deed was 15.3.2004. The aforementioned amount of ₹50,000/- was paid vide cheque No. 901023 dated 22.3.2002 and parties had agreed to enter into an agreement to sell and thereafter respondent-plaintiff paid another sum of ₹70,000/- on 10.4.2002. In all, a sum of ₹1,20,000/- was paid to appellant-defendant.

As per averments made in the plaint, the appellant-defendant did not appear before the Sub Registrar on the stipulated date, giving cause of action to the plaintiff to file the civil suit on 26.4.2004 i.e. a month after the expiry of the stipulated date. The aforementioned agreement to sell was attested by one Mangat Singh. Both the parties appended their signatures. The aforementioned suit was contested by the defendant by taking the plea that he had not agreed to sell the land in question and that he had taken a loan of ₹50,000/- for purchase of a vehicle and thus, the aforementioned loan had been re-paid and in lieu thereof the plaintiff had returned the original documents. Since, the parties were at variance, the trial Court framed as many as 8 issues including the issue of Relief.

The appellant-defendant examined Sher Singh son of Lehna Singh as DW-1.

The respondent-plaintiff had examined three witnesses Mangat Ram, PW-1 and Sher Singh son of Khajan Singh, PW-2 and Shamsher Singh, PW-3, thereafter the evidence was closed.

The trial court did not accept the plea of the appellant-defendant viz-a-viz the receipt of amount allegedly reflected in the affidavit Ex.D-2 dated 17.12.2003, for, the defendant failed to prove that the affidavit bore signatures of Shamsher Singh, the appeal filed by the appellant-

defendant was dismissed.

Learned counsel appearing on behalf of the appellant submitted that as per averments made in para No.4 of the plaint, plaintiff-respondent admitted that he had gone to the house of the defendant-appellant to take the original agreement to sell. However, the defendant obtained certain blank papers and thereafter threatened to use at an appropriate time.

The aforementioned averments were specifically denied, rather, it was stated that the entire amount had been re-paid to the plaintiff along with interest. Mangat Ram in his cross-examination admitted that ₹50,000/- was received by the appellant-defendant for the purpose of purchasing a vehicle. It was a case of fraud being played upon the appellant, for he never entered into an agreement to sell.

Per contra, learned counsel appearing on behalf of the respondent submitted that the affidavit relied upon by the appellant-defendant had been ignored by the courts below, for, it could not tally with the signatures of the plaintiff on the agreement to sell, no attempt was made to compare the same with the original signatures of the plaintiff nor the hand writing expert has been appointed. Even the stamp vendor from whom the stamp papers were alleged to have purchased for execution of the agreement to sell was examined. Finding of fact and law arrived at by the courts below do not suffer from any illegality and perversity, thus urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no merit in the appeal for the following reasons:-

i) The appellant has miserably failed to prove the receipt of payment of loan consideration taken by way of cheque of ₹50,000/- and another amount of ₹70,000/- by cash bearing endorsement dated 10.4.2002.

ii) Defendant failed to prove any copy of the registration certificate of the vehicle alleged to have been purchased in lieu of the loan amount taken from the respondent-plaintiff.

iii) The appellant-defendant failed to appear before the office of Sub Registrar to show his readiness and willingness to perform his part of the agreement whereas readiness and willingness was shown on the part of the respondent-plaintiff, for, the suit was filed within one month from the date of expiry of the stipulated period.

iv) The entire amount of consideration has been deposited and a sale deed has already been executed but the possession is yet to be taken in view of the interim order.

v) The attesting witness Mangat Ram did not utter a word in favour of the appellant-defendant that the agreement was with regard to the loan amount for purchase of the vehicle.

All these factors have been examined by both the Courts below. The arguments of learned counsel for the appellant have not been able to bring the case within the realm of illegality and perversity enabling this Court to form the different opinion than the one arrived at by the Courts below which are based upon the appreciation of oral and documentary evidence.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

The stay granted by this Court vide order dated 13.10.2017 is vacated.

(AMIT RAWAL)
JUDGE

May 16, 2018
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No