

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

RSA No. 1860 of 2017

Date of Decision: September 11, 2018

Kamlesh Rani

....Appellant.

Versus

Kamlesh Kumari

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJAN GUPTA

Present: Mr. Premjit Kalia, Advocate
for the appellant.

Rajan Gupta, J (Oral)

Present appeal has been filed by the decree holder herself in whose favour court below has passed the decree for specific performance. Appellant, however, submits that she had abandoned her claim for specific performance or possession of the property in question. She merely wanted refund of the amount paid as earnest money. Thus, lower appellate court has erred in ignoring this prayer of the appellant. I do not find any merit in the plea. Plaintiff approached the court for praying for decree of specific performance on the basis of agreement to sell dated 22.8.2012 stated to have been executed by defendant in her favour. She made an alternative prayer for recovery of Rs.1,00,000/- alongwith interest @ 18%. Trial court found merit in plea of the decree holder and held that defendant was liable to get the sale deed executed on receipt of balance of sale consideration for a period of 3 months. Defendant was also restrained from alienating the property in any manner. Dissatisfied, appellant preferred appeal before the lower appellate court stating that the alternative

relief be granted to her as she intended to abandon her claim for specific performance. Plea was rejected by the lower appellate court as it felt that appellant was entitled to main relief prayed for. I find no error with this finding. Besides, plaintiff led cogent evidence before the court below that agreement in question was executed. It is strange that decree holder herself has approached this court by way of appeal after suit having been decreed in her favour. I find no ground to interfere.

Dismissed.

(Rajan Gupta)
Judge

September 11, 2018

BB

Whether speaking/reasoned Yes/No

Whether reportable: Yes/No