

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CM No.3754-C of 2018 in/and
RSA No.1452 of 2018 (O&M)
Date of Decision : 23.03.2018

Milwant Singh

..... Appellant

Versus

Surinder Kaur and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Nitin Kant Setia, Advocate
for the applicant-appellant.

AJAY TEWARI, J. (Oral)

CM No.3754-C-2018

For the reasons recorded, the application is allowed. Delay of
94 days in filing the appeal is condoned.

RSA-1452-2018 (O&M)

This appeal has been filed against the concurrent judgments of
the courts below whereby the plaint filed by the appellants was rejected
under Order 7 Rule 11 CPC.

The essential background of the case is that the appellant had
entered into an agreement to sell dated 23.06.2008 with the respondents
No.1 and 2. The deal having fallen through the said respondents filed a suit
for specific performance. Para No.7 of the plaint and the written statement
filed by the appellant and his wife-respondent No.3 (copies of which are

handed over by the counsel for the appellants) are reproduced herein below:-

“Plaint

7. *That on 6.10.2008, plaintiff Harjit Singh after intimating the defendants remained present in the office of Sub Registrar, Ludhiana from 9 A.M. to 5 P.M. to perform his part of the agreement to sell as well as on behalf of Smt. Surinder Kaur but the defendants did not turn up during the office hours to perform his part of the agreement to sell. The plaintiff Harjit Singh got his presence marked on that day.*

Written Statement

7. *Para No.7 is wrong and denied. It is wrong that on 6.10.2008 plaintiff Harjit Singh after intimating the defendants remained present in the office of the Sub Registrar, Ludhiana from 9.00 a.m. to 5.00 p.m. to perform their part of the agreement to sell as well as on behalf of Surinder Kaur. It is incorrect that the defendants did not turn up during the office hours to perform their part of the agreement sell. It is incorrect that the plaintiff Harjit Singh got his presence marked on that day. The plaintiff no.1 or plaintiff no.2 were never present or got their presence marked nor they ever tendered the balance sale consideration nor they ever purchased stamp papers for the same. The intention of the plaintiff is just to delay the matter and the cause great hardship to the defendants. Rest of the para is wrong and denied.”*

A perusal of these paragraphs reveal that in the plaint the respondents No.1 and 2 had averred that on the due date the respondent No.2 was present in the office of Sub Registrar from 9 AM to 5 PM on his own behalf and on behalf of the respondent No.1 Surinder Kaur. A perusal

respondent No.3 had denied that respondent No.2 was present before the Sub Registrar on his own behalf or on behalf of respondent No.1 on the due date. That suit was put to trial and was decreed. The first appeal, the regular second and the review application having been dismissed, the appellant and respondent No.3 approached the Supreme Court and the following order was passed in the SLP:-

“At the threshold, learned senior counsel on instruction seeks leave to withdraw these petitions and states that information has been received by the petitioners pursuant to enquiry made under the RTI Act which disclosed that the respondent No.2 has filed a false affidavit asserting that he was present in the office of the Sub Registrar on 06.10.2008. Learned Senior Counsel further states that she has to agitate this question in the appropriate Forum. Special Leave Petition is dismissed as withdrawn.

Pursuant to that the appellant and respondent No.3 filed an application under Section 340 Cr.P.C. before the trial court which is stated to be still pending. After having filed that application under Section 340 Cr.P.C. the appellant and respondent No.3 filed this independent suit in which it was claimed that actually it had now come to their notice that the respondent No.1 was abroad on the due date and the respondent No.2 was not actually present before the Sub-Registrar as claimed by him. The respondents No.1 and 2 filed an application under Order 7 Rule 11 CPC praying that the plaint be rejected. The trial court accepted the application and rejected the plaint. The appeal having been dismissed the appellants are before this Court.

Counsel for the appellant has argued that the courts below have

erred in rejecting the plaint. As per him, the issue of limitation has been

wrongly taken.

In my opinion, the more fundamental issue is that the appellant is now seeking to reopen the decree to prove the assertion which he had originally made in the written statement. Once the appellant had stated in the written statement that the respondent No.2 was not present before the Sub-Registrar on the due date he had to prove it in that suit and can not now file a subsequent suit to prove that fact. As regards the averment that on the due date the respondent No.1 was not in India, the same is hardly germane in view of the averment in para No.7 of the previous plaint that respondent No.2 had appeared on her behalf also. This matter was heard on a previous date also and on that date also I had intimated to the counsel about the probable fate but he had sought more time. Even today despite my pointing out to him that unnecessary and irrelevant arguments would result in heavy costs, counsel has still persisted.

In the circumstances, I am constrained to dismiss this appeal with costs of Rs.50,000/-. Ordered accordingly.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

March 23, 2018
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Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No