

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

119

RSA-2382-2017 (O&M)

Date of Decision:-13.08.2018

J.S. Arora

... Appellant

Versus

Jawahar Lal Kukreja and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Gaurav Sharma, Advocate for
Mr. Rakesh Kumar Sharma, Advocate
for the appellant.

ANIL KSHETARPAL, J.(Oral)

CM-5802-CII-2017

Application is allowed and the delay in filing the appeal is condoned.

Main Case

The plaintiff-appellant is in the Regular Second Appeal against the concurrent finding of fact arrived at by the Courts below while dismissing the suit for specific performance of the agreement to sell with a consequential relief of permanent injunction and recovery of the earnest money. Agreement to sell executed on 17th February, 2006 and receipt of earnest money is not in dispute. As per agreement to sell, sale deed was to be executed and registered on 17.05.2006. On the request of plaintiff, date was extended to 25.08.2006 when additional payment of Rs.1,00,000/- was made. On extended date i.e. 25.08.2006, the plaintiff did not had sufficient funds. He filed the suit for specific performance on 12.05.2008. Both the Courts below after examining the evidence, have found that defendant No.1 was

not having any authority to sell shop No.31, which was owned by defendant No.2. Still further, Courts below found that the plaintiff failed to prove that he was ready and willing to perform his part of the contract. Courts below further found that since defendant No.1 was not having any authority to sale shop No.31 and price of each of the shop has not separately determined, therefore, relief of specific performance cannot be granted. Both the Courts below have ordered refund of the earnest money along with appropriate rate of interest.

This Court has heard learned counsel for the appellant at length and with his able assistance has also gone through the judgment passed by the Courts below. Although, learned counsel made a sincere effort, however, could not point out any perversity or any error in appreciation of evidence. Learned counsel also could not draw the attention of this Court to any misreading or non-reading of evidence. In view thereof, there is no ground in the present appeal and the same is hereby dismissed.

13.08.2018

geeta

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No