

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

**RSA No.2968 of 2017 (O&M)
Date of Decision.16.11.2018**

FazruddinAppellant

Vs

Niyaz Mohammad and another ...Respondents

2. RSA No.2971 of 2017

Fazruddin @ FazruAppellant

Vs

Niyaz Mohammad and another ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashish Gupta, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of two regular second appeals bearing No.2968 and 2971 of 2017. RSA No.2968 of 2017 is arising out of Civil Suit No.252/2007/2005 titled as “Niyaz Mohammad Vs. Fazruddin and another” (hereinafter called the first suit) in respect of agreement to sell dated 10.07.2003, agreed to be sold for a total sale consideration of ₹1,40,000/- against payment of earnest money of ₹1,15,000/- and RSA No.2971 of 2017 is arising out of Civil Suit No.253/2007/2005 titled as “Niyaz Mohammad Vs. Fazruddin and another” (hereinafter called the second suit) in respect of agreement to sell dated 10.07.2003, agreed to be sold for a total sale consideration of ₹1,00,000/- against payment of earnest money of ₹85,000/-

Both the appeals have been preferred by the defendants.

The suit aforementioned was filed on the premise that the appellants-

defendants herein had not been ready and willing to perform their part of agreement despite having appeared before the Registrar on the stipulated date.

The defendants had opposed the suit on the premise that there was no intention of the defendants to sell the suit land to the plaintiff as it was simplicitor case of loan transaction and under the garb of mortgage deed, agreement to sell had been executed.

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

Mr. Ashish Gupta, learned counsel appearing on behalf of the appellants-defendants submitted that the plaintiff has not been able to prove readiness and willingness as it was transaction to secure loan at the relevant point of time. Ex.P1 to P6 established that the plaintiff had been indulging in obtaining loan and under the guise of same, plaintiff along with his father converted certain mortgage deed into agreement to sell but it has gone unnoticed, therefore, there is illegality and perversity.

I am afraid aforementioned argument of Mr. Gupta is not sustainable, for, both the agreement to sell not only bore signature of the defendants but also photographs. A person cannot be permitted to take a complete summersault that he intended to execute a mortgage deed but the same was converted into agreement to sell. If at all, it was so, no evidence has been brought on record for return of the alleged amount taken as loan. It is a common practice amongst the vendors to take such plea. The defendants failed to discharge the

onus that it was a loan transaction. In the absence of the same, the Courts below noticing the readiness and willingness on the part of plaintiff, much less, proof of execution of the agreement to sell and as well as payment of earnest money, granted the discretionary relief.

The appeals are accompanied by applications for condonation of delay of 257 days in filing the appeals. The explanation lacks bona fide.

As an upshot of my finding, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the appeals are dismissed both on the ground of delay as well as on merit.

(AMIT RAWAL)
JUDGE

November 16, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No