

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CM-7972-C-2018 in/and
CM-8589-C-2017 in/and
RSA-3563-2017 (O&M)
Date of Decision : 21.05.2018

Islamudin

...Appellant

Versus

Ashwani Kumar

...Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Mandeep Singh Dhaliwal, Advocate
for the applicant-appellant.

AJAY TEWARI, J. (Oral)

CM-7972-C-2018

For the reasons recorded, the application is allowed. The case
is preponed for today itself.

CM-8589-C-2017

For the reasons recorded, the application is allowed. Delay of
141 days in refiling the appeal is condoned.

RSA-3563-2017 (O&M)

It is stated that the court fee has been appended.

This appeal has been filed against the judgment of the lower
Appellate Court wherein he partly allowed the appeal of the respondent-
plaintiff and though refused to granted specific performance yet ordered

Brief facts of the case are that the respondent had filed a suit for specific performance for an agreement to sell dated 10.05.2008 of a premises belonging to the appellant for a total consideration of Rs.7,50,000/- and had paid an amount of Rs.2 lakh in advance. The case of the appellant was that he had neither entered into an agreement to sell nor had been given any advance amount but actually because there were previous financial dealings between the parties, the respondent had obtained his signatures on a blank paper which were misused into fabricating an agreement to sell. The trial court held that the appellant could not prove the assertion that his signatures had been obtained on blank paper and consequently decided that execution of the agreement to sell was duly proved. The trial court further noticed that once the appellant had denied the execution of the agreement to sell he could not take the plea of readiness and willingness but went ahead and examined the readiness and willingness of the respondent and held that since the respondent had not appeared before the Sub-Registrar on the designated date alongwith the remaining consideration amount, he could not be taken to be ready and willing and dismissed the suit. The lower appellate court in an appeal filed by the respondent also endorsed the finding that the agreement to sell was duly proved but, in the circumstances of the case, declined the discretionary relief of specific performance and awarded refund of the earnest money alongwith 9% interest from the date of the agreement to sell and that is how the appellant is before this Court.

Counsel for the appellant has vehemently argued that once the respondent did not appear before the Registrar with the balance consideration, there was no good cause for the lower appellate court to have

awarded refund of earnest money.

In my considered opinion, this argument has to be taken with a pinch of salt because the trial court rightly noticed that a party who denies execution of the agreement to sell cannot then turn around and challenge the readiness and willingness of the other party. In the conspectus of facts, I cannot bring myself to find any error in the judgment of the lower appellate court.

Appeal is dismissed. No costs.

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

May 21, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No