

RSA No.3352 of 2018 (O&M)

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

RSA No.3352 of 2018 (O&M)

Pardeep Kumar

....Appellant

Versus

Surinder Singh

....Respondent

Date of Order: 01.06.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. J.S. Thind, Advocate for the appellant.

AMIT RAWAL, J (ORAL)

CM No.8891-C of 2018

For the reasons stated in the application, which is supported by an affidavit, the same is allowed. Delay of 59 days in re-filing the appeal is condoned.

RSA No.3352 of 2018

The appellant-defendant has challenged concurrent findings of both the courts below whereby the suit filed by the plaintiff-respondent for specific performance of agreement to sell dated 15.1.2010 executed in respect of the suit property mentioned in the head note of the plaint has been decreed vide judgment and decree dated 03.2.2014 passed by learned Addl Civil Judge (Sr. Division), Amritsar and the appeal preferred was dismissed by the lower Appellate Court.

The respondent-plaintiff instituted the suit for specific performance of agreement to sell dated 15.1.2010 in respect of the suit property for total sale consideration of Rs.27,00,000/- out of which a sum of Rs.10,00,000/- was received by the appellant-defendant as earnest money. The stipulated date for registration and execution of sale deed was

15.7.2010 but the defendant did not come which gave cause of action to file the present suit.

Upon notice, defendant-appellant denied the execution of agreement to sell by projecting that he had agreed to let out the premises on monthly rent. The plaintiff obtained signatures and thumb impressions of the defendant and signature of his son on a blank stamp paper with a purpose of execution of rent note but the plaintiff prepared a false agreement to sell by misusing those stamp papers.

From the pleadings of the parties, the trial Court framed the following issues:

- “1. Whether the plaintiff is entitled to possession by way of specific performance of agreement to sell dated 15.1.10?OPP*
- 2. Whether the plaintiff has not come to the court with clean hands?OPD*
- 3. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD*
- 4. Relief.”*

Respondent-plaintiff in support of their case examined PW1-Arvinder Singh and PW3-Sarabjit Singh besides appearing himself as PW2.

On the other hand, defendant himself put in appearance as DW1.

On the preponderance of evidence, the trial Court decreed the suit of the plaintiff and the findings affirmed in appeal by the lower Appellate court.

Learned counsel for the appellant submitted that the findings recorded by both the courts below in decreeing the suit are patently illegal and the same are liable to be set aside. The learned courts below have

proceeded on wholly misconceived notion while granting the discretionary relief, for, the respondent-plaintiff had failed to prove the execution of the agreement to sell much less passing of sale consideration, therefore, he prayed for setting aside the impugned judgment and decrees.

After hearing learned counsel for the appellant and perusing the paper book, I find no merit in the present appeal, for, the defendant has not been able to rebut the onus with regard to execution of the agreement to sell much less sale consideration, which has been proved through the testimony of PW1-Arvinder Singh, Attesting witness and Sarabjit Singh, Advocate, who had prepared the agreement to sell. No explanation has come forward as to under what circumstances, the signatures were existing on the agreement to sell. If at all the agreement was not executed, the defendant could have taken appropriate steps to prove this fact but having failed to do so, in my view, the findings arrived at by both the courts below cannot be said to be suffering from any illegality. No sufficient explanation has been assigned for seeking condonation of 526 days' delay in filing the appeal.

The judgments of both the courts below cannot be said to be suffering from perversity warranting any interference by this court. No other relevant document has been placed on record enabling this Court to form a different opinion than the one adopted by both the courts below.

Dismissed on the ground of limitation as well as merits.

June 01, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No