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

**RSA-4295-2017 (O&M)
Date of decision : 05.12.2018**

Rattan Singh

... Appellant

Versus

Avtar Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Malkeet Singh, Advocate
for the appellant.

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AMIT RAWAL, J.

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby the suit for specific performances of agreement to sell dated 19.05.2005 agreed to be sold for a total sale consideration of ₹5 Lacs against the receipt of payment of ₹3 Lacs as earnest money, has been decreed by the trial Court and affirmed by the lower Appellate Court.

It was alleged that the first stipulated date for execution and registration of the sale deed was fixed as 21.11.2005 and thereafter vide endorsements (Ex.P1 to Ex.P5) i.e. after extension, the last date fixed for execution and registration of the sale deed was 11.02.2008, whereas the present suit was filed on 20.08.2008.

The defendant denied the execution of the agreement to sell stated to be outcome of fraud and misrepresentation as the transaction was for obtaining loan and the agreement was for security purposes.

Learned counsel for the appellant submitted that through the testimony of the attesting witnesses, it has been brought on record that the appellant had been dealing with the plaintiff by selling the plot. It is a common practice amongst the commission agents to obtain blank paper and convert into an agreement to sell, thus, in such circumstances, discretionary relief ought not to have been granted. It is also unbelievable that after payment of ₹3 Lacs, the plaintiff would seek numerous extensions as itself was a clincher to establish the loan transaction.

I am afraid the aforementioned argument is not sustainable as the testimony of the deed writer PW3 and PW1, despite extensive cross-examination, has proved that the parties had intended to enter into agreement to sell, but was not a loan transaction. Account books should have been best possible documentary evidence to establish that money taken was adjusted for the purpose of using personal gains and payment of interest, if any. In the absence of the same, the defendant failed to rebut the positive evidence of the plaintiff. In such circumstances, the Courts below had no occasion, but to grant the discretionary relief.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Malkeet Singh to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the second appeal is dismissed on merits as well as on account of delay of 221 days.

05.12.2018 **(AMIT RAWAL)**
Yogesh Sharma **JUDGE**

Whether speaking/reasoned	**Yes/ No** ✓Yes
Whether Reportable	**Yes/ No** ✓No