

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

RSA No.4305 of 2018 (O&M)

Date of decision : 21.08.2018

Shiam Singh

...Appellant

Versus

Balwinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

ANIL KSHETARPAL, J.

CM No.11456-C of 2018

For the reasons stated in the application, which is duly supported by an affidavit, delay of 66 days in refiling the present appeal is condoned.

Application is allowed.

Main case

Defendant No.1-appellant is in the Regular Second Appeal against the judgments passed by both the Courts below while dismissing the suit filed by the plaintiff for specific performance of the agreement to sell dated 16.06.2011 but decreeing a suit for refund of the earnest money without any interest.

The plaintiff claimed that defendant No.1-appellant had entered into an agreement to sell with respect to land measuring 100 square yards and built up a house on 16.06.2011 for a sum of ₹4,00,000/-, which was paid, but defendant No.1 is not honouring the agreement to sell. The plaintiff further pleaded that he had served a notice on the defendant on 09.06.2012. It may be noted that in the agreement to sell, no date for specific performance of the

agreement to sell was fixed.

Defendant No.1 contested the suit and pleaded that the agreement to sell was executed as a collateral security as defendant No.1 had borrowed a sum of ₹1,00,000/- from the father of the plaintiff. There was also an agreement between the parties subsequently that the agreement to sell would be cancelled, if defendant No.1 repays a sum of ₹3,30,000/- which has not been repaid.

Learned trial Court as well as First Appellate Court gave various reasons to decline the relief of specific performance which are not under challenge before this Court. It was found by the Courts that the plaintiff and defendant No.1 are closely related and PW3-Balwinder Singh has admitted that there was a compromise that the agreement to sell would be cancelled on repayment of ₹3,30,000/-.

This Court has heard the learned counsel for the appellant at length.

Learned counsel for the appellant has submitted that since the plaintiff has failed to prove his readiness and willingness to perform his part of the contract, therefore, the amount, as ordered could not be refunded. He further submitted that defendant No.1 had only admitted a loan of ₹1,00,000/- whereas a decree for refund of ₹4,00,000/- has been passed.

This Court has considered the submissions. However, do not find any substance therein.

The defendant had taken a stand that the agreement to sell was executed only as a collateral security for loan and the Courts below were not inclined to grant the relief of specific performance of the agreement to sell,

hence question of readiness and willingness on the part of the plaintiff becomes insignificant. In any case, once under the agreement to sell, the entire payment has been received and the plaintiff was not required to pay any further sum and he had also issued notice on 09.06.2012 calling upon the defendant-appellant to come and execute the sale deed, there can be hardly any ground to doubt the readiness and willingness of the plaintiff. However, as noticed, the plaintiff is not in appeal. This appeal has been filed by defendant No.1.

As regards second argument of the learned counsel, it may be noticed that the defendant himself pleaded in the written statement that there was a settlement between the parties and defendant No.1 had agreed to pay a sum of ₹3,30,000/- and a writing was also executed on that account. In these circumstances, the argument of the learned counsel that only ₹1,00,000/- has been received as a loan, cannot be accepted.

Learned trial Court has decreed the suit for refund of ₹4,00,000/- without any future interest or costs. The judgment and decree passed by the trial Court has been affirmed by the First Appellate Court.

In these circumstances, this Court does not find any good ground to interfere.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

21.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No