

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**C.Ms. No.16256-16258-C of 2017 in/and
RSA No.6238 of 2017
Date of Decision: 12.03.2018**

Dharam Singh ... Appellant

Versus

Santosh Kumar ... Respondent

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. T.S. Salana, Advocate,
for the appellant.

RAMENDRA JAIN, J.(Oral)

C.M. No.16256 -C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, the same is allowed. Delay of 121 days in refiling the appeal is condoned.

C.M. No.16257-C of 2017

Through the instant application, prayer was made for making good the deficiency in Court fee, which has been deposited. Therefore, the application having been rendered infructuous is disposed of as such.

RSA No.6238 of 2017 (O&M)

Defendant has preferred this regular second appeal against the judgment and decree dated 23.03.2017 of the First Appellate Court accepting the relief claimed by the respondent-plaintiff in toto for possession of the house by way of specific performance of contract based on an agreement dated 19.10.2011 while setting aside the judgment and decree dated 01.12.2014 of the trial Court, whereby alternative relief for recovery of

₹2,75,000/- as earnest money paid by the plaintiff to the defendant along with interest @ 12% per annum from the date of agreement till the date of decree and future interest @ 6% per annum from the date of decree till realization, was granted.

Briefly stated, the defendant-appellant executed an agreement to sell dated 19.10.2011 in favour of the respondent-plaintiff, thereby agreeing to sell his house situated in khewat No.376/786 Khasra No.2858/2094/1596/1349/ 490 (1-16-18) to the extent of 60/738 fully detailed in head note of the judgment of the trial Court. The date for registration of execution of sale deed was fixed for 25.04.2012. However, on that day, the respondent-plaintiff along with valid sale consideration went to the office of Sub-Registrar, Mandi Gobindgarh, and remained present there throughout the day, but the appellant-defendant did not turn up to execute and get registered the sale deed, forcing the respondent-plaintiff to file a suit for possession by way of specific performance.

The trial Court after holding trial, decided issues No.1 and 2 in favour of the respondent-plaintiff that he was entitled for a decree for specific performance of impugned agreement to sell in question, but considering the fact that the appellant-defendant along with his children was residing in the house in question moulded the relief and thereby directed the appellant-defendant to refund the amount of ₹2,75,000/- received by him along with interest @ 12% till the date of the decree and thereafter, interest @ 6% per annum from the date of realization vide judgment and decree dated 01.12.2014.

Being aggrieved, the respondent-plaintiff approached the First

Appellate Court.

After hearing both the sides, the Court accepted the claim of the respondent-plaintiff in toto by setting aside the judgment and decree of the trial Court aforesaid vide judgment and decree dated 23.03.2017.

Learned counsel for the appellant contends that the First Appellate Court has failed to adhere the provisions of Section 20 of the Specific Relief Act while accepting the appeal of the respondent-plaintiff in toto. It would be great hardship for the appellant-defendant, in case, the impugned judgment of the First Appellate Court is not set aside and the judgment and decree of the trial Court is not affirmed for recovery of ₹2,75,000/- along with 12% interest. In support of his arguments, learned counsel has placed reliance on Nanjappan Vs. Ramasamy and anr., 2015(3) PLR 218, Parakunnan Veetill Joseph's Son Mathew Vs. Nedumbara Kuruvila's Son and others, AIR 1987 Supreme Court 2328, Smt. Ranganayakamma Vs. N.Govinda Narayan, AIR 1982 Karnataka 264, Shamsher Singh and others Vs. Rajinder Kumar and others, 2014 (5) JT 319.

Having given anxious consideration to the submission made by learned counsel for the appellant, I find that the instant appeal is completely devoid of any merit for the reasons to follow.

No question of law muchless substantial question of law has been raised for consideration in this appeal. Therefore, the same is not maintainable.

After filing of the suit against him, the appellant-defendant took the stand that he never executed any such agreement to sell in question and intended to sell his house, rather had executed a writing as a security for loan

borrowed by him from the respondent-plaintiff.

The trial Court after holding trial negated the plea of the appellant-defendant and while deciding issues No.1 and 3 categorically held that the agreement to sell dated 19.10.2011 was in fact executed by him agreeing to sell his house and not as a security document vide its judgment and decree dated 01.12.2014. The First Appellate Court also affirmed the finding of the trial Court vide judgment and decree aforesaid.

Since the appellant-defendant did not come with honest intention in the Court or in other words with clean hands, therefore, a dishonest person is not entitled to equitable relief. Had the defendant been fair in his conduct and would have come before the Court with plain heart disclosing the true facts, in that eventuality, there was some scope to consider his case sympathetically and to affirm the finding of the trial Court while setting aside the judgment and decree of the First Appellate Court. The dishonest act and conduct of the appellant forced the respondent-plaintiff to fight in the Court for his legal right for around six years for no fault of his. Therefore, the respondent-plaintiff cannot be penalized for wrong and willful dishonesty of the appellant-defendant. In other words, appellant cannot be enriched for his own dishonesty.

Much water has already been flown. Now the time has come to crack down such type of frivolous litigations carried on by the dishonest litigants with sever hands.

The facts and circumstances of the above-mentioned citations relied upon by learned counsel for the petitioner are not identical to the facts of the present, rather are distinguishable. Therefore, no benefit of the same

can be given to the appellant.

In view of the discussion above, this appeal fails and is dismissed.

12.03.2018
monika

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No