

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

RSA No.6409 of 2017 (O&M)

Date of Decision:25.10.2018

Ashok Kumar

...Appellant(s)

Versus

Sandhya Rani and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Deepak Sharma, Advocate
Mr.Pankaj Bali, Advocate for the appellant.

ANIL KSHETARPAL, J.

CM-16606-C-2017

Learned counsel for the applicant-appellant submits that deficiency of court fee has already been made good. Delay, if any, is condoned.

Application is allowed.

CM-16605-C-2017

For the reasons stated in the application, which is supported by an affidavit, delay of 34 days in refiling the appeal is condoned.

CM stands allowed.

Main case

The plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below, while granting alternative relief of refund of earnest money along with interest and refusing to grant decree for specific performance of the agreement to sell.

The learned trial court has noticed that in this case if decree for specific performance of the agreement to sell is granted, it will cause undue hardship and untold misery to the defendants. Kartar Chand, who executed

the agreement to sell, was seriously ill and had died immediately after few days of the execution of the agreement to sell. The defendants are widow and children of the deceased.

Agreement to sell is with respect to a house measuring 3 marlas. The defendants, while filing the written statement, have already taken a plea that it was in fact a loan transaction. In such circumstances, the courts have exercised their discretion under Section 20 of the Specific Relief Act, 1963. In the considered opinion of this Court, such exercise of discretion is neither shown to be perverse nor result of any substantive error.

In view of the above, there is no ground to interfere with the concurrent findings of fact arrived at by both the courts below. The present regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

25.10.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No