

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.627 of 2018 (O&M)
Date of Order:02.07.2018

Ramesh Kumar

..Appellant

Versus

Satnam Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gursimran Singh Madaan, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral)

C.M.No.1564 & 1566-C of 2018

Prayer in these applications is for condonation of delay of 78 days in filing and 250 days in re-filing the appeal.

For reasons mentioned in the applications, which are supported by an affidavit, the delay of 78 days in filing and 250 days in re-filing the appeal are condoned.

Applications are allowed.

C.M.No.1565-C of 2018

Prayer in this application for making good the deficiency in Court fee.

Deficiency in Court fee has already been made good. Delay, if any, in making up the deficiency is condoned.

MAIN

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below while decreeing

the suit for recovery of the amount paid as earnest money under the agreement to sell dated 27.12.2003.

Plaintiff claimed that the defendant entered into an agreement to sell with him for sale of a house and received a sum of Rs.1,50,000/- as earnest money. However, subsequently it came to the knowledge of the plaintiff that the defendant is not the owner of the house, therefore, suit for recovery of earnest money was filed.

Defendant contested the suit and pleaded that the agreement to sell is forged and fabricated document. It was pleaded that the defendant had taken a loan of Rs.50,000/- which has been re-paid in the presence of Kuldeep Kumar and on account of the aforesaid loan, the plaintiff had obtained his signatures on blank papers.

Both the courts after appreciating the evidence available on the file decreed the suit filed by the plaintiff for recovery of the earnest money. Courts have noticed that the agreement to sell is attested by two marginal witnesses and the plaintiff has examined Swaran Singh, the marginal witness, as PW2. The other marginal witness i.e. Mangat Rai was also produced, however, he did not come forward for cross-examination, therefore, his evidence was ignored by the courts below. The Court has further noticed that stamp vendor Manjit Kaur has also been examined as PW6, who has stated that the stamp paper was purchased by the defendant-appellant Ramesh Kumar from her.

Learned counsel for the appellant has submitted that the agreement to sell is doubtful on the following grounds:-

- (i) On the second page, there is some difference in the spacing between the lines;

- (ii) the scribe of the document has not been examined;
- (iii) in the criminal proceedings, the appellant has been acquitted and , therefore, the suit could not be decreed;
- (iv) that the suit for recovery was filed on 29.11.2006, although, as per the agreement to sell, sale deed was to be executed on 15.07.2004.

This Court has considered the submissions and examined photocopy of the agreement to sell produced by the learned counsel for the appellant.

The agreement to sell has been written on two papers of non-judicial stamp paper. Each page is not only thumb marked by the appellant but he has also put his signatures in English. No doubt, last four lines of the agreement to sell have little bit of different spacing between the lines, however, on the last four lines, nothing important has been written. Earnest money paid has been mentioned in the beginning of the second page. Even the date for execution and registration of the sale deed has been mentioned within first four lines of the second page. Still further, on careful examination of the agreement to sell, it does not appear that the blank thumb marked and signed papers of the appellant have been used for drafting this agreement to sell.

Next argument of learned counsel is with regard to non-examination of the scribe.

In this regard, it may be noticed that one marginal witness has been examined and stamp vendor Manjit Kaur from whom the appellant had purchased the stamp paper has been examined. When the stamp paper was purchased, Ramesh Kumar had signed the endorsement before the stamp

vendor. No evidence has been lead by the defendant-appellant to prove that the stamp paper was not purchased by him. Appellant admits his thumb impressions and the signatures on the agreement to sell. In view thereof, onus shifted on the defendant-appellant to prove that the agreement to sell was a forged and fabricated document, which defendant-appellant had failed to prove.

The reliance by learned counsel on the judgment passed by the Court while dealing with the criminal complaint is also misplaced as the standard of proof required before convicting a person in a criminal case is beyond shadow of any doubt, whereas civil cases are decided on the basis of preponderance of evidence. In the criminal case, defendant-appellant has been given benefit of doubt. Still further the judgment passed by a court while deciding a criminal case is not binding on the civil court.

Last submission of learned counsel is with regard to delay in filing the suit.

The suit for recovery can be filed within a period of three years. In the present case, the suit was filed within a period of three years. As per the agreement to sell, target date for execution and registration of the sale deed was 15.07.2004, whereas the suit was filed on 29.11.2006. It is not the contention of learned counsel for the appellant that the suit is barred by limitation. The recovery of the earnest money is not a discretionary relief like of specific performance of the agreement to sell. In such circumstances, the suit filed by the plaintiff in the year 2006 cannot be dismissed on the ground of limitation particularly when even from the date of payment of earnest money, the suit is within limitation. Cause of action for recovery of the earnest money would arise on the date when the plaintiff

came to know that the defendant-appellant is not the owner of the house
agreed to be sold.

In view thereof, there is no scope for interference with the
concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

July 02, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No