

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

114

RSA-4226-2019 (O&M)
Date of Decision : 12.09.2019

Amarjit Kaur

.... Appellant

Versus

Gurvir Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. N.K.Manchanda, Advocate
for the appellant.

RAMENDRA JAIN, J. (ORAL)

After remaining unsuccessful before the lower Appellate Court, the appellant has filed instant Regular Second Appeal against judgment and decree of the lower Appellate Court dated 12.04.2019, affirming judgment and decree of the trial Court dated 08.08.2017, whereby suit of the respondent-plaintiff for possession by way of specific performance and permanent injunction was decreed.

Briefly, respondent filed a suit for possession by way of specific performance and permanent injunction against the appellant, based on agreement to sell dated 10.03.2015 executed by appellant in his favour, agreeing to sell suit property detailed in the head note of the plaint in a sum of Rs.4.00 lakhs. At the time of execution of the aforesaid agreement, appellant had received Rs.1,50,000/- as earnest money. The balance was to be paid on the agreed date of execution and registration of sale deed on or

before 09.03.2016 which with the written mutual consent of the parties was extended to 30.05.2016. However, on 30.05.2016, the respondent remained present throughout the day in the office of concerned Sub Registrar with balance sale consideration and got marked his presence also, but the appellant did not turn up and thus failed to perform her part of contract.

Upon notice, appellant appeared through counsel, but thereafter, she opted not to contest the suit. Even, she did not file written statement. Thus, finding no option, the learned trial Court struck off her defence and after examination of respondent as PW1 and two other witnesses as PW2 and PW3 in *ex parte* evidence, decreed suit of the respondent vide judgment and decree dated 08.08.2017.

Being aggrieved, appellant approached the First Appellate Court along with an application for condonation of delay. The Appellate Court though condoned the delay in filing the appeal, but dismissed the appeal on merits vide judgment and decree dated 12.04.2019.

Learned Counsel for the appellant *inter alia* contends that the appellant, being illiterate, did not know the intricacies of law. She has been non suited by both the Courts below illegally without appreciating the fact that she was not to penalise for the fault of her counsel, who even did not cross-examine respondent-plaintiff and his witnesses. In support of his arguments, learned counsel relied upon the judgment in ***Rafiz and another v.***

Munshilal and another, 1981 AIR (SC) 1400.

Having given thoughtful consideration to the submissions made by learned counsel for the appellant, this Court finds the instant appeal completely devoid of any merit for the reasons to follow.

It is well settled that “ignorance of law is no excuse”. Therefore, the appellant cannot be permitted to urge so.

Perusal of file shows that before the First Appellate Court, the appellant took all available frivolous pleas like that her counsel did not tell her about passing of judgment and decree dated 08.08.2017 by the trial Court against her and her falling ill, after coming to know about the aforesaid judgment and decree against her in the month of July 2018 etc. etc.

Appellant had preferred her appeal before the lower Appellate Court on 14.03.2019. As per her own stand, she had come to know about the judgment and decree dated 08.08.2017 in the month of July 2018. Her explanation that during intervening period of 8 months between her knowledge of passing of judgment and decree dated 08.08.2017 and date of filing appeal, she had fallen ill, was not liable to be entertained by the Appellate Court in the absence of any medical record. Still, the Appellate Court entertained her appeal and decided the same on merits.

It is needless to mention here that as a matter of routine, since last 4-5 decades, whenever a litigant loses his/her case, he/she puts entire blame on his/her counsel. The appellant

has not annexed affidavit of her counsel, who allegedly acted negligently and did not pursue her case properly. Even, she did not bring any other evidence to support her said plea.

It is also needless to mention here that profession of an advocate is job oriented one. No advocate ever dares to put his profession at stake by conducting case of his client in a negligent manner. Therefore, plea of the appellant that she could not file written statement or lead any evidence on account of misconduct of her counsel is completely false.

Time has come to curb down and reject such type of frivolous pleas inasmuch as frequent entertainment of such frivolous pleas by the courts, since last several decades has unnecessarily increased the pendency of cases manifolds.

Respondent to prove his case appeared as PW1 followed by two attesting witnesses PW2-Amarjit Singh and PW3-Bohar Singh. Both the above witnesses supported case of the respondent, testifying that on 10.03.2015, appellant had executed agreement to sell Ex.P1 in favour of respondent to sell her property in sale consideration of Rs.4 lakhs. The appellant after admitting the contents of agreement had thumb marked the same, after receiving Rs.1,50,000/- as earnest money, in their presence. This witness and PW3-Bohar Singh further testified about extension of time by mutual consent of the parties. That apart, the respondent to prove his ready and willingness to perform part of his contract, proved application Ex.P3, vide which he got marked his presence

before concerned Sub Registrar on the agreed date for execution and registration of sale deed. Service of legal notice Ex.P4 by the respondent to the appellant further proves his readiness and willingness to perform part of his contract. Thus, considering the above *ex parte* evidence, both the Courts have rightly and legally non suited the appellants.

I have gone through judgments of both the Courts below and find no illegality or perversity in the same.

No question of law much less substantial has been raised in this appeal. Therefore, same is held not maintainable.

Facts and circumstances of the authority referred to above by learned counsel for the appellant are not identical to the facts of present case. Therefore, no benefit of the same can be given to the appellant.

Dismissed.

September 12, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No