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

RSA-1585-2016 (O&M)
Date of decision : 06.03.2019

Dalip Malik

... Appellant

Versus

Sanjeev Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Gaurav Grover, Advocate
for the appellant.

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AMIT RAWAL, J. (ORAL)

CM-4392-C-2016

For the reasons stated in the application, which is supported by an affidavit, the applicant/appellant is permitted to file the appeal as indigent person.

CM stands disposed of.

CM-4390-C-2016

For the reasons stated in the application, which is supported by an affidavit, delay of 38 days in refiling the appeal is condoned.

CM stands disposed of.

CM-4391-C-2016

For the reasons stated in the application, which is supported by an affidavit, delay of 105 days in filing the appeal is condoned.

CM stands disposed of.

MAIN CASE

The present regular second appeal is directed against the concurrent findings, whereby the appellant-defendant No.1 has not been successful in defending the suit for specific performance of agreement to sell dated 09.09.2002.

It was alleged that appellant-defendant No.1 had entered into agreement to sell *ibid,* in respect of the shop along with basement, which was mortgaged with Punjab National Bank/defendant No.2. The total sale consideration of the said shop was fixed as ₹27,50,000/- and earnest money of ₹3,00,000/- was paid by way of cheque. The stipulated date for execution and registration of the sale deed was 09.10.2002. As per the terms and conditions of the agreement to sell, No Objection Certificate was required to be obtained by defendant No.1/appellant from the Bank/defendant No.2 and even the vacant possession of the shop was delivered to the plaintiff. He was always ready and willing to perform his part of the agreement to sell. The plaintiff had let out the shop to defendant No.3 on rent and sought the specific performance, on the premise that defendant No.1 was confined to jail from 2002 to 2004 and the suit was filed in the year 2004.

Defendant No.1/appellant opposed the suit and stated that there was a breach of the terms and conditions and agreement to sell as the plaintiff was in arrears of occupation charges from 09.09.2002 to February 2004 for a sum of ₹1,70,000/- and preferred a counter-claim. He approached the plaintiff to pay the amount to the Bank which would have adjusted from the balance sale consideration, but the plaintiff did not come forward and even put to notice dated 27.03.2003, constraining the defendant No.1 to terminate the agreement vide notice dated 30.04.2003.

The defendant No.2/Bank also filed the written statement and stated that recovery suit of ₹17,09,348.08 along with interest @ 16.50% with quarterly rest, was pending against the appellant-defendant No.1 before Debts Recovery Tribunal.

The plaintiff in support of the aforementioned pleadings examined five witnesses and brought on record Ex.P1 to Ex.P6, whereas the defendant examined four witnesses and brought on record Ex.D1 to Ex.D18.

Mr. Gaurav Grover, learned counsel appearing on behalf of appellant-defendant No.1 submitted that the readiness and willingness on behalf of the plaintiff was conspicuously absent as he did not have the sufficient money. There was no occasion for the plaintiff to appear before the Sub-Registrar, fully knowing well that defendant No.1 was confined to jail. There was also no occasion for the plaintiff to deposit the amount to the Bank and get the original sale deed registered. In fact, vide two notices (Ex.D2 and Ex.D5), agreement to sell was terminated, which remained unchallenged, therefore, the suit, in view of the *ratio decidendi* culled out by Hon'ble the Supreme Court in ***I. S. Sikandar (Dead) by Lrs V/s K. Subramani and others 2014 (1) RCR (Civil) 236,*** was not maintainable. No explanation has come forth as to how and under what manner, the plaintiff/respondent deposited the amount with the Treasury and got the mortgage deed, thus, there is abdication.

I have heard learned counsel for the appellant-defendant No.1, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Grover, for, the readiness and willingness cannot be said to be wanting, owing to the admission of confinement in the Jail from

2002 to 2004. The agreement contained the clause of payment of loan amount. There is no bar for a party to enter into an agreement to sell in respect of the property, even if, it is mortgaged subject to the clearance of the mortgage loan either by the vendor or the vendee. The liquidated cash is not a ground to deny, particularly the Bank had received the consideration and redemption was ordered. There would have been a force in the arguments of the counsel, had the notices (Ex.D2 and Ex.D5) been proved on record, in accordance with law that they were actually served upon the plaintiff or not. No postal receipts thereof had been brought on record, thus, *ratio decidendi* culled out in ***I.S. Sikandar's case*** (supra) would not apply.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Grover, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the second appeal is dismissed.

06.03.2019 **(AMIT RAWAL)**
Yogesh Sharma **JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**