

RSA-2107-2016 (O&M)

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

**RSA-2107-2016 (O&M)
Date of decision : 22.02.2019**

Satbir

... Appellant

Versus

Mahipal

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Bhupinder Kaur, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

CM-5585-C-2016

For the reasons stated in the application, the delay of 16 days in
filing the appeal is condoned.

CM stands disposed of.

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The appellant-defendant has not been successful in defending
the suit for specific performance of agreement to sell dated 07.06.2010
(Ex.P1), alleged entered into by the defendant in respect of the suit property,
for a total sale consideration of ₹9 Lacs, against the receipt of payment of
₹4,48,000/- as earnest money, by stipulating the date as 06.12.2010, for
execution and registration of the sale deed. The plaintiff stated to have
appeared before the sub-Registrar on the said date and marked his presence
through an affidavit, but the defendant did not turn up and accordingly, filed
the suit on 14.12.2010.

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The defendant opposed the suit on the premise that there was no intention to sell the land as it was a loan transaction and writing was a security.

The plaintiff, in order to prove intention and execution of the agreement to sell, much less, payment of earnest money, examined PW1 Suresh Kumar, attesting witness, PW2-Rajesh Sharma, Advocate, scribe of the agreement, PW4 V.B. Kashyap, handwriting and finger print expert and examined himself as PW3. On the other hand, the defendant examined himself and closed the evidence.

Ms. Bhupinder Kaur, learned counsel appearing on behalf of the appellant-defendant submitted that the appellant-defendant had undertaken to repay the amount to the plaintiff as it was a pure and simple transaction, therefore, question of denial of the thumb-impressions/signatures did not arise. The plaintiff miserably failed to prove the intention to sell the land, in such circumstances, discretionary relief under Section 20 of the Specific Relief Act ought not to have been granted.

I am afraid the aforementioned argument is not sustainable in the eyes of law as from the conduct of the plaintiff, he had been able to prove the due diligence, much less, readiness and willingness, as per the provisions of Section 16(c) of the Specific Relief Act, whereas the defendant did not lead any evidence contrary to the consistent statements of the witnesses. In such circumstances, the Courts below had no other option, but to grant the discretionary relief. If at all, it was a loan transaction, the defendant would have come out with some bank statement to establish that he had been paying the interest on the aforementioned amount.

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In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

22.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**