

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

**RSA No.2113 of 2016 (O&M)
Date of Decision.08.04.2019**

Sukhdev Singh

...Appellant

Vs

Tan Sen

..Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aditya Jain, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.5597-C of 2016

For the reasons stated in the application, delay of 178 days in re-filing of the appeal is condoned.

Application is allowed.

RSA No.2113 of 2016

The appellant-defendant has not been successful in defending the suit for specific performance of agreement to sell dated 01.04.2008 in respect of suit land agreed to be sold for total consideration of ₹11,50,000/- against the payment of ₹1,20,000/- as earnest money by fixing the date as 02.07.2008. It was averred that the defendant did not come forward, resulting into filing of the suit on 21.08.2008.

The defendant opposed the suit and denied to have entered into agreement to sell, much less, receipt of the earnest money and it was stated to be a fraudulent transaction. Defendant in fact had taken a loan of ₹1 lakh from plaintiff in the presence of

Karambir, Om Parkash, Narender Kumar and Dinesh Kumar. Narender and Dinesh were mediators of the loan which was returned along with interest on 01.11.2008. There was no outstanding amount towards plaintiff.

Plaintiff in support of pleadings examined six witnesses including attesting witnesses and brought on record various documents whereas defendant examined three witnesses and brought on record two release deeds in favour of son and wife, one was during the pendency of suit and another one before filing of the suit but during the subsistence of the agreement to sell.

Mr. Aditya Jain, learned counsel appearing on behalf of the appellant submitted that plaintiff miserably failed to prove readiness and willingness and intention of the parties to enter into agreement to sell. The evidence of the plaintiff was not admissible in law, as plaintiff was not in a position to tell revenue estate involved in the agreement. Without knowing the said fact, a person cannot be entitled for discretionary relief. It was also admitted in cross-examination by the Draftsman that ink was of different colour. All these factors if seen cumulatively, suit was liable to be dismissed.

I am afraid aforementioned argument is not sustainable in the eyes of law, for, the defendant has not been able to discharge onus of his signatures and as well as the repayment of loan. On the other hand, attesting witnesses proved the intention of the parties and receipt of earnest money. Readiness and willingness cannot be said to be wanting in view of the facts disclosed above, as the suit was filed within a month after expiry of target date.

In view of such circumstances, the concurrent finding of fact and law cannot be said to be suffering from illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 08, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No