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

RSA No.1719 of 2015 (O&M)
Date of Decision:11.03.2019

Dilbag Singh

...Appellant(s)

Versus

Mohinder Singh

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.N.S.Wahniwal, Advocate for the appellant.
Mr.K.B.Raheja, Advocate for the respondent.

ANIL KSHETARPAL, J.

The defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below, decreeing the suit for possession by way of specific performance of the agreement to sell dated 11.09.2006 with respect to one shop (only ground floor) measuring 8 ½ feet x 14 feet situated at Kotkapura, Tehsil and District Faridkot.

The defendant denied execution of the agreement to sell and pleaded that there was no intention to sell. The defendant pleaded that he had borrowed a sum of Rs.90,000/- as loan and agreement to sell was executed as a security document. In evidence, it has come that the defendant-- constructed seven shops out of which one shop in dispute was agreed to be sold.

Both the courts have found that the agreement to sell as well as payment of earnest money has been proved. The courts have further found that defence of the defendant that it was only a loan transaction has not been proved.

MUKESH KUMAR
2019.03.26 16:10
I attest to the accuracy and
integrity of this document
High Court, Chandigarh

Learned counsel appearing for the appellant has submitted that there is no reason forthcoming as to why the target date for execution and registration of the sale deed which was originally fixed as 11.10.2006 was extended, once the construction of the shop was complete even as per agreement to sell. He has further submitted that price of the shop in question is not less than Rs.5,00,000/- and, therefore, total sale consideration of Rs.1,80,000/- is a clear indicator of the fact that the agreement to sell was only a security document.

On the other hand, learned counsel for the respondent has pointed out that there is no evidence that market price of the shop was Rs.5,00,000/-. He has further submitted that front shutter of the shop was not fixed and, therefore, time was extended on first occasion for 14 days and thereafter for a month. Hence, he has submitted that two extensions for a total period of 1½ months cannot be treated as a circumstance to deny the specific performance.

This Court has heard the learned counsel for the parties and with their able assistance gone through the judgments passed by the courts below and the record.

As regards argument of learned counsel with regard to target date having been extended on two occasions, learned counsel has read over the endorsements got recorded by the parties on the paper of the agreement to sell, extending the target date. In both the endorsements, parties have jointly extended the time for performance of agreement to sell by mutual consent. Hence, two extensions cannot be solely attributed to the plaintiff.

Learned counsel for the appellant has laid stress on the fact that in the agreement to sell itself, it has been recited that construction of the

MUKESH KUMAR
2019.03.26 16:10
I attest to the accuracy and
integrity of this document
High Court, Chandigarh

shop is complete. Hence, he has submitted that the plea put forth by the plaintiff for extension of the time is against the record. In the present case, two extensions were reduced into writing with the consent of parties. The aforesaid endorsements do not prove that extensions were on account of any laxity on the part of the plaintiff. As noticed above, two extensions are only for a period of 1 ½ months.

As regards argument of learned counsel that it was a loan transaction, it may be noticed that agreement to sell is dated 11.09.2006, whereas the target date was fixed for execution and registration of sale-deed one month thereafter i.e. 11.10.2006. The defendant has taken a stand that on payment of Rs.90,000/- which was taken as a loan with contract to repay the amount alongwith interest @3% per annum interest, Rs.1,20,000/- was got written. Rs.30,000/- interest, which is alleged to have been added in advance, in no manner calculates up to Rs.1,20,000/- even if interest is calculated @3% per annum as pleaded by the defendant the amount of interest for one month would come to Rs.2700/-.

Next argument of learned counsel for the appellant that price of the property agreed to be sold was Rs.5,00,000/- and not Rs.1,80,000/- is to be noticed and rejected particularly when learned counsel for the appellant has failed to point out any cogent evidence to prove that price on the date the shop was agreed to be sold was Rs.5,00,000/-. The agreement to sell is a contract between the parties and it depends upon bargaining power and circumstances of the parties entering into a contract. Unless the price of the property agreed to be sold is shockingly disproportionate, the court would not decline specific performance of the agreement to sell. In the present case, no cogent evidence has been led by the defendant to prove that price

MUKESH KUMAR
2019.03.26 16:10
I attest to the accuracy and
integrity of this document
High Court, Chandigarh

as alleged is Rs.5,00,000/- on the date the agreement to sell was executed.

In view of the above, there is no ground to interfere. Hence, regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

11.03.2019 **(ANIL KSHETARPAL)**
mks **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

MUKESH KUMAR
2019.03.26 16:10
I attest to the accuracy and
integrity of this document
High Court, Chandigarh