

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

RSA No.3521 of 2015 (O&M)

Date of Decision:19.12.2019

Subeg Singh

...Appellant

Vs

Rakesh Kumar

...Respondent

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Binderjit Singh, Advocate
for the appellant.

None for the respondent.

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JAISHREE THAKUR J. (ORAL)

1. This regular second appeal has been preferred seeking to challenge the impugned judgment and decree dated 23.04.2015 passed by the Additional District Judge, Bathinda affirming the judgment and decree dated 01.02.2012 passed by the Court of Additional Civil Judge (Sr. Division), Talwandi Sabo by which suit for specific performance of agreement to sell qua house as detailed in the plaint has been allowed.

2. Brief facts of the case are that the respondent-plaintiff herein filed suit for specific performance of agreement to sell dated 02.06.2010 with an alternate prayer that in case the primary relief of specific performance of agreement to sell is denied, then the respondent-plaintiff be allowed to recover ₹23.50 lakhs as earnest money paid along with costs. In order to prove his case, the respondent-plaintiff adduced evidence to prove the agreement to sell dated 02.06.2010 Ex.P1, endorsement of receipt of ₹1 lakh, copy of the register of the stamp vendor and examined attesting witnesses and the stamp vendor etc. whereas the appellant-defendant

himself stepped into the witness box and deposed through his affidavit reiterating the version of the written statement. He too examined two witnesses and thereafter, the matter was argued.

3. The trial court on appreciation of the evidence came to hold that the respondent-plaintiff had been able to prove the agreement, which finding was subsequently affirmed by the lower Appellate Court.

4. Learned counsel appearing on behalf of the appellant herein contends that in the appeal, he had filed application to lead additional evidence i.e. for getting the handwriting expert examined regarding extension of time to execute the sale deed, to which notice was issued and reply was filed, however, no decision was taken on the said application. It is also contended that the application had been filed in the appeal seeking to recall PW2 Makhan Singh for further cross-examination to which again reply was filed. It is further contended that despite replies having been filed and matter having been argued as would be evident from the zimini orders, which have been annexed with the RSA, the same were not decided and therefore, the judgment as rendered by the lower Appellate Court suffers from infirmity.

5. Learned counsel appearing on behalf of the appellant argues that the main controversy revolves around the alleged writing dated 04.10.2010, which is the version as set up by the respondent alleging that the appellant had received a sum of ₹11,50,000/- on 04.10.2010 from the appellant and further that the appellant had delivered possession whereas in fact, no such amount had been received nor was possession delivered and therefore, it is imperative that the signatures of the appellant are to be compared with his standard signatures.

6. I have heard learned counsel appearing on behalf of the appellant and have also perused pleadings of the case. The main contention of the appellant is that without deciding the application for additional evidence and application filed for recalling the witness, the Appellate Court has in a mechanical manner decided the appeal without any finding on any of the applications filed.

7. Without going into the merits of the appeal on all issues, the first question that needs to be addressed is whether there is any illegality in the order dated 23.04.2015 of the Appellate Court in not rendering a finding on the aforementioned applications?

8. It is not in dispute that the appellant-plaintiff had filed two applications before the Appellate Court in which notices were issued and replies had been filed. However, despite the fact that arguments had been addressed on the said applications as would be evident from the zimni orders placed on record, there is no decision taken thereon. It is the contention raised by the counsel for the appellant that the said applications are important for the fair decision of the case, as he had not received the said amount as alleged by the respondent as per the endorsement dated 04.10.2010 on the reverse side of the stamp paper.

9. The Appellate Court has the power to allow additional evidence under order 41 Rule 27 CPC which reads as “(b) *the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined*”. Meaning thereby the Court may allow additional evidence not only if it requires such evidence "to enable it to pronounce

judgment", but also for "any other substantial cause". The view expressed by the Hon'ble Supreme Court in **K. Venkataramiah v. A. Veetharama Reddy and others, 1963 AIR (SC) 1526** has been consistently followed by the Courts.

10. In the present case, an application under Order 41 Rule 27 C.P.C. was filed during the pendency of the appeal before the Appellate Court seeking permission to lead additional evidence in support of his claim and further another application was filed for recalling of witness. In the opinion of the Court, decision on the aforementioned applications was must in order to render a fair decision.

11. Consequently, the appeal is allowed and the judgment and decree dated 23.04.2015 as passed by the First Appellate Court is set aside.

12. In view of aforesaid, this court deems it appropriate to remand this case back to the Court of Additional District Judge, Bathinda, who in turn would pass appropriate orders with regard to two options available to the Appellate Court in the context of remand on the basis of additional evidence i.e. either to record evidence itself or to summon report from the trial Court on the issue. This would also be in consonance with the judgment as rendered by Hon'ble the Supreme Court in **H.P. Vedavyasachar v. Shivashankara, (2009) 8 S.C.C. 231** wherein it has been held that once an application has been filed for leading additional evidence, the Appellate Court has two options before it - one to lead evidence itself and the other to direct the trial court to do so. Needless to say, the documents as sought to be relied upon would have to be proved in accordance with law. The First Appeal to be decided thereafter.

13. Accordingly, the matter is remanded back. Both the parties are

directed to appear before the Court of Additional District Judge, Bathinda on 27.01.2020, who will decide the matter expeditiously, preferably within a period of six months from the date of receipt of certified copy of this order.

(JAISHREE THAKUR)
JUDGE

December 19, 2019

Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No