

RSA-6102-2016 (O&M)

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

RSA-6102-2016 (O&M)
Date of decision : 29.01.2019

Kesar Singh

... Appellant

Versus

Mohinder Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vijay Sharma, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

CM-16068-C-2016

For the reasons stated in the application, the delay of 5 days in
refiling the appeal is condoned.

CM stands disposed of.

CM-16070-C-2016

For the reasons stated in the application, the delay of 1 day in
filing the appeal is condoned.

CM stands disposed of.

RSA-6102-2016

The present regular second appeal, at the instance of the
appellant-defendant, is directed against the concurrent findings of fact,
whereby the suit of the respondent-plaintiff for specific performance of the
agreement to sell dated 13.06.2009, has been decreed by the trial Court and
affirmed in appeal.

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The plaintiff sought the specific performance of agreement dated 13.06.2009, in respect of the suit land agreed to be sold @ ₹16.5 Lacs per acre, against the payment of ₹10 Lacs as earnest money. The stipulated date was 10.07.2009. Despite the appearance of plaintiff, the defendant did not appear and the suit was filed on 17.07.2009.

The defendant opposed the suit and denied the agreement to sell or receipt of earnest money as well as scribe and the witnesses.

Learned counsel for the appellant-defendant submitted that the respondent-plaintiff was not ready and willing to perform the part of the agreement to sell because, he was not having cash or brought any bank statement. Sukh Lal, another attesting witness, did not come forward for cross-examination, therefore, there is abdication in granting the discretionary relief. The defendant in examination-in-chief stated that he did not know the person, who drafted the affidavit.

I have heard learned counsel for the appellant-defendant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Sharma, for, it is a settled law that where the defendant has denied the execution of the agreement, cannot be permitted to take the plea of readiness and willingness, but this cannot prevent the Court from examination. The suit was filed after seven days of the expiry of the target date and there was gap of only one month from the date of agreement and stipulated date. It does not lie in the mouth of the defendant to allege the non-examination of the Expert as onus was upon the defendant. In the absence of discharge, the onus could not have been fastened upon the plaintiff, The other witness stated that a sum of ₹10 Lacs was paid to the defendant in his presence. The deed writer had also acknowledged the

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aforementioned fact. Viz-a-viz the aforementioned evidence, the defendant miserably failed to lead any evidence to belie the statement of the aforementioned witnesses.

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.

29.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**