

RSA No.6488 of 2016 (O&M)

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

RSA No.6488 of 2016 (O&M)

Date of decision:10.01.2019

Sarla Rani

... Appellant

Vs.

Sudesh Jain

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vishavjeet Singh, Advocate for
Mr. Keshav Pratap Singh, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.17001-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 31 days in filing the appeal, is condoned.

C.M. stands allowed.

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The present Regular Second Appeal is directed against the concurrent findings of fact and law, whereby, the appellant-defendant has not been able to defend the suit for specific performance of the agreement to sell dated 31.01.2007 in respect of the suit land agreed to be sold for a sum of Rs.9,84,000/- against the payment of Rs.9,74,000/- by way of pay order.

The defendant opposed the suit by denying the agreement to sell and stated to be a loan transaction. The plaintiff examined deed writer as PW4 and himself as PW1. On the other hand, defendant also examined the hand writing expert as DW3 and herself as DW4.

Mr. Vishavjeet Singh, learned counsel appearing on behalf of the appellant-defendant submitted that readiness and willing on behalf of the plaintiff was conspicuously wanting as the suit was filed in the month of January 2009 approximately two years after expiry of the target date. The report of handwriting expert reveals that blank signed papers were used and converted into agreement to sell, therefore, there is no intention to part with the land.

I am afraid the aforementioned arguments are not sustainable as there is a categoric pleading in the plaint with regard to readiness and willingness which was emphatically denied. No evidence has been led as to under what circumstances the plaintiff was not ready to perform her part of the contract, particularly when the agreement to sell was denied. The aforementioned argument is totally opposite to the stand taken in the written statement. The agreement to sell is a registered document and carried a presumption of truth. All these factors weighed in the mind of the Courts below, therefore, arguments of Mr. Vishavjeet Singh, do not able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below.

Resultantly, the regular second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

January 10, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No