

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

**RSA No.663 of 2016 (O&M)
Date of Decision.01.05.2019**

Ashok Kumar

...Appellant

Vs

Narinder Kumar

..Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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

-.-

AMIT RAWAL J. (ORAL)

C.M. No.1806-C of 2016

For the reasons stated in the application, delay of 349
days in re-filing of the appeal is condoned.

Application is allowed.

Main case

The present regular second appeal is directed against the
concurrent finding of fact whereby suit of the appellant-plaintiff
seeking specific performance of agreement to sell dated 31.10.2005
agreed to be sold @ ₹1250/- per sq. yard against the payment of
₹40,000/- as earnest money by fixing the date as 31.5.2006 for
execution of the sale deed, has been dismissed by the trial Court and
affirmed in appeal.

The plaintiff claimed that defendant entered into
agreement to sell and aforementioned date was fixed for execution of
the sale deed after receipt of earnest money but the defendant did not
come forward, resulting into issuance of legal notice dated 8.12.2006
calling upon the defendant to appear but he did not, resulted into

filing of the suit.

Defendant admitted agreement to sell but stated that readiness and willingness of the plaintiff was conspicuously wanting. He had been ready and willing throughout but plaintiff did not come forward nor he had sufficient balance.

Both the parties led in extensive evidence.

Mr. Sharma, learned counsel appearing on behalf of the appellant submitted that the Courts below ought to have confined the decree to return of the earnest money, if not for specific performance, as the suit was filed within the period of limitation. It is the defendant, who had not putting up the matter and did not come forward. Plaintiff waited during all this period and realizing that limitation was approaching near, instituted the suit.

I am afraid aforementioned argument of Mr. Sharma is not sustainable, as terms and conditions of the agreement postulates forfeiture of money on account of non-performance of the agreement to sell. No explanation has come forward in not appearing before the Registrar on 31.05.2006, as only an affidavit attested by the notary has been placed on record. In such circumstances, the affidavit of 18.12.2006 would be meaningless. Explanation of readiness and willingness throughout till filing of the suit on 22.05.2009 is also conspicuously wanting.

In view of such circumstances, arguments of Mr. Sharma have not been able to cut the ice to bring the case within the realm of illegality and perversity to form a different opinion than the one already arrived at by the Courts below, 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

May 01, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No