

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

**RSA No.6944 of 2016 (O&M)
Date of decision:10.01.2019**

Amrik Singh

... Appellant

Vs.

Karam Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Naresh Kaushal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.18010-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 112 days in re-filing the appeal, is condoned.

C.M. stands allowed.

C.M.No.18011-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 3 days in filing the appeal, is condoned.

C.M. stands allowed.

RSA No.6944 of 2016 (O&M)

The present Regular Second Appeal at the instance of the appellant-plaintiff is directed against the judgment and decree of the Lower Appellate Court dismissing the suit for recovery of Rs.5.00 lakhs alongwith interest.

The appellant-plaintiff sought the recovery of aforementioned amount on the premise that parties to the lis had entered into an agreement to sell dated 30.03.2007 for purchase of the land with 35 feet frontage at the rate of Rs.940/- per square yard. The stipulated date for execution and registration of the sale deed was fixed as 10.10.2007. The plaintiff sent a legal notice dated 18.09.2007 calling upon the defendant to measure the land at the spot alongwith demarcation in order to honour the commitment of providing 35 feet frontage, thus, the plaintiff confined the relief of refund of Rs.5.00 lakhs.

The defendant opposed the suit and admitted the agreement to sell but denied the condition of providing 35 feet frontage. Even the legal notice was stated to be replied and stated that in case, the plaintiff was not willing to come forward, earnest money would be forfeited. The trial Court decreed the suit but the Lower Appellate Court reversed the findings as noticed above.

Mr. Naresh Kaushal, learned counsel appearing on behalf of the appellant-plaintiff submitted that relief of specific performance stood frustrated in view of the non-compliance as defendant did not get the land demarcated. The agreement was signed by the witnesses. Two agreements have been brought on record; one by the plaintiff i.e., Ex.P1 and another by defendant i.e. Ex.DA. Ex.DA did not bear the signatures of the purchaser. Non-signing of the condition of 35 feet frontage pales into insignificance. The reasoning assigned by the Lower Appellate Court suffers from illegality and perversity and thus, urged this Court for setting aside the

impugned judgment and decree.

I am afraid the aforementioned arguments are not sustainable as the legal notice aforementioned was duly replied (Ex.D2) wherein the respondent-defendant admitted the agreement to sell but denied the undertaking of providing 35 feet frontage and called upon the plaintiff to come present before the office of Sub-Registrar for execution and registration of the sale deed failing which the amount aforementioned would be forfeited. The aforementioned condition had not been assailed by claiming declaration and the suit was filed in September 2009. In such circumstances, the plaintiff could not have confined the relief qua recovery of aforementioned amount as the same already stood forfeited.

The findings of fact and law rendered by the Lower Appellate Court, in my view, do not suffer from illegality and perversity, much less no substantial question of law arises for adjudication of the present appeal.

The regular second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

January 10, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No