

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

RSA No.4215 of 2014 (O&M)

Date of Decision:05.02.2019

Rajwant Kaur and others

...Appellant(s)

Versus

Ajit Singh

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Gursimran Singh Jossan, Advocate for the appellants.

ANIL KSHETARPAL, J.

CM-9771-C-2014

Learned counsel for the applicants-appellants submits that deficiency in court fee has already been made good.

Application stands disposed of.

CM-9770-C-2014

For the reasons stated in the application, which is supported by an affidavit, delay of 33 days in refiling the appeal is condoned.

CM stands disposed of.

Main appeal

Discretion exercised by both the courts below, while ordering refund of the earnest money along with interest in place of specific performance of the agreement to sell has been assailed by filing the appeal.

In the considered opinion of this Court, the discretion exercised is proper and does not require any interference for the following reasons:-

(i) The plaintiff is a commission agent or an Aarhtiya who normally lend the money to the farmers.

(ii) Agreement to sell is dated 25.5.2001. The target date for

execution and registration of sale deed was fixed after a period of two years, i.e. 23.5.2003. The suit was filed on 20.5.2006. There is no explanation why the suit was filed at the fag end of the limitation.

(iii) In the agreement to sell, it is recorded that the land is free from all encumbrance. However, it has come in the evidence that the land was mortgaged with the Punjab State Cooperative Housing Building Societies vide Rapat No.438 dated 24.3.2000 and this entry was part of the revenue record.

For the reasons recorded by both the courts below as also recorded by this Court, there is no ground to interfere. Consequently, Regular Second Appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

05.02.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No