

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

**RSA No.3008 of 2017(O&M)
Date of Decision: 25.09.2019**

Mahi PalPetitioner

Versus

Baldev SinghRespondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. S.K. Verma, Advocate
for the petitioner.

Mr. J.S. Chahal, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

CM No.11425-C of 2019

Notice in this application was issued on 05.09.2019 for 17.09.2019. Notice re:stay was also issued. On 17.09.2019, the turn of the case did not reach and the case was adjourned for today by order.

With the concurrence of the parties, the main case is taken up today itself.

CM No.7508-C of 2017

Prayer in this application is for condonation of delay of

47 days in filing the appeal.

Notice of this application was issued on 04.12.2017.

As per office report, respondent was served on 06.02.2018. No reply has been filed till date.

For the reasons recorded in the application and after hearing learned counsel for the parties, I find that sufficient cause has been shown for condonation of delay of 47 days in filing the appeal. Delay of 47 days in filing the appeal is accordingly condoned.

Application stands allowed.

Main case

[1]. Defendant is in regular second appeal against the concurrent judgments and decrees passed by the Courts below in a suit for specific performance.

[2]. Plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 02.11.2004 executed by the defendant in favour of the plaintiff in respect of suit property as detailed in the headnote of the plaint. The agreement to sell was executed on 02.11.2004 in a sum of Rs.1,30,000/-. The agreement to sell was reduced into writing and was duly signed by the defendant in the presence of marginal witnesses. The target date for execution and registration of the sale deed was fixed as 01.10.2005. Earnest amount to the tune of Rs.85,000/-

was paid to the defendant at the time of execution of agreement to sell dated 02.11.2004. The receipt was duly executed by the defendant in the presence of the witnesses at the foot of agreement to sell. Defendant did not execute the sale deed. The target date was extended vide endorsement dated 30.09.2005 from 01.10.2005 to 05.12.2005. Again time was extended to 27.01.2006. On 11.12.2004, defendant had received an amount of Rs.40,000/- from the plaintiff vide another receipt dated 11.12.2004 in the presence of the witnesses. In this way, total amount of Rs.1,25,000/- was advanced to the defendant and only a sum of Rs.5000/- was to be paid towards balance sale consideration at the time of execution and registration of sale deed. On the target date i.e. 27.01.2006, the plaintiff remained present in the office of Sub Registrar along with balance sale consideration and other expenses, but the defendant did not turn up. Plaintiff got his presence marked by way of affidavit dated 27.01.2006 duly attested by the Executive Magistrate, Mustfabad. Plaintiff also remained present on 30.01.2006 in the office of Sub Registrar, but the defendant did not turn up. Plaintiff again got his presence marked by way of affidavit.

[3]. In the written statement filed by the defendant, he has denied the execution of agreement to sell in favour of the plaintiff. He further pleaded that in fact, he was in need of

money in the first week of November 2004 and as such, he approached the plaintiff for financial assistance of Rs.55,000/-. Defendant had asked the plaintiff that he will return the amount within five months with interest. Plaintiff paid an amount of Rs.53,900/- by deducting Rs.1100/- as interest @ 2% per month on 02.11.2004. Plaintiff told the defendant that he has to sign some blank stamp papers as token of security. Plaintiff in fact obtained the signatures of the defendant on some blank stamp papers. Defendant signed the same in good faith being an illiterate person who can only sign. Plaintiff promised to return the blank stamp papers on repayment of loan with interest. Defendant again took loan of Rs.25,000/- for the purchase of sheeps on 02.12.2004 on the same interest. This time also plaintiff paid an amount of Rs.24,500/- after deducting the amount towards interest. In this way, defendant borrowed total sum of Rs.80,000/- from the plaintiff, but later on, he returned an amount of Rs.20,000/- to the plaintiff on 06.08.2005 and thereafter, an amount of Rs.1,18,340/- including interest was returned by the defendant to the plaintiff on 27.01.2006 in the presence of respectable persons. Plaintiff did not return the signed papers to the defendant. Defendant filed a police complaint, but no action was taken. Defendant also convened a Panchayat, but for no avail. The complaint filed by the defendant

was forwarded to the Economic Cell, Yamuna Nagar for investigation, where the plaintiff gave in writing that nothing was due towards the defendant and he will return the original blank stamp papers to the defendant, but the plaintiff did not return the blank papers and filed the suit in question.

[4], Both the parties went to trial on definite issues.

[5]. Plaintiff has examined attesting witnesses namely Gurmail Singh and Kapoor Singh as PW 1 and PW 2. Charan Singh, Deed Writer has been examined as PW 3. The agreement to sell has been tendered as Ex.P1. The execution of agreement to sell has been proved with reference to testimonies of scribe and attesting witnesses. Witnesses have also proved the receipt Ex.P2 in respect of earnest money of Rs.85,000/-. Receipt Ex.P3 in respect of payment of Rs.40,000/- on 11.12.2004 has also been proved by the witnesses. The scribe has proved on record that the agreement has been entered in his register. The due execution of agreement to sell and the receipts have not been countered by the defendant by way of leading any evidence. The extensions of time vide Exs.P8 and P9 have also been proved on record.

[6]. The brother of the defendant while appearing as DW 3 has admitted in his cross-examination that his brother i.e. defendant has studied upto 2nd standard and also identified the

signatures of his brother on agreement to sell. Defendant has not denied his signatures, rather took up the stand that his signatures were obtained on blank papers. Even for return of signed blank papers, the defendant filed independent Civil Suit No.482 of 2006 titled Mahi Pal Vs. Baldev Singh for mandatory injunction, directing the plaintiff to return the signed blank papers, which were obtained as security for repayment of Rs.80,000/- with interest.

[7]. Trial Court dismissed the suit vide judgment and decree dated 25.08.2011 by holding that the defendant (plaintiff in the said suit) had failed to prove that his signatures were obtained on blank stamp papers. Against the aforesaid judgment and decree, the present defendant preferred an appeal before the Lower Appellate Court, which was got dismissed as withdrawn. No further challenge was made to the judgment and decree dated 25.08.2011 passed by the trial Court in a suit for mandatory injunction filed by the present defendant.

[8]. The story of signed blank stamp papers was disbelieved by the trial Court in the said suit. Agreement to sell dated 02.11.2004 is found to have been signed by defendant Mahipal. The endorsement at page No.2 i.e. Ex.P2 in respect of payment of earnest money is also found to have been signed by Mahipal. The endorsement at the back of first page i.e. Ex.P3 in

respect of payment of Rs.40,000/- is also found to have been signed by Mahipal. The endorsements of extensions at the back of page No.2 are also signed by Mahipal.

[9]. Pleadings are suggestive of the fact that Mahipal used to sign the pleadings and documents. The instant appeal and power of attorney have been thumb marked by Mahipal so as to give this impression that he is an illiterate person. In the pleadings on record, defendant has admitted that he had signed the blank stamp papers which were misused by the plaintiff. In the grounds of appeal before the Lower Appellate Court, the defendant/appellant in ground No.7, has specifically pleaded that he is an illiterate person and alleged signatures on the documents do not belong to him. The signatures were obtained from the brother of the defendant. The aforesaid change in the stand is beyond the comprehension of this Court. Statement of DW 2 Mukandi Lal has been disbelieved by the Courts below on the premise that his statement has not advanced the case of the defendant in any manner, rather his testimony was found to be wanting on the parameters as to when the loan was returned with reference to date, time and year.

[10]. Once the execution of agreement to sell is proved with reference to material on record, the onus shifts heavily on the defendant to prove that the agreement to sell is the result of

fraud and fabrication. No such evidence has been led by the defendant to discharge such onus. Sale deed has already been executed with the process of the Court. 03.10.2019 is the date fixed for delivery of possession under the orders of the executing Court. Learned counsel for the appellant submitted that the house in question is the only dwelling unit and execution of the sale deed would result in hardship.

[11]. It is a settled principle of law that the hardship in terms of Section 20 of the Specific Relief Act has to be pleaded and proved by way of evidence on record. No such pleadings have been made by the defendant in the written statement, nor any evidence has been led, rather the case of the defendant throughout is that his signatures were obtained on blank stamp papers.

[12]. In a case of decree for specific performance, even protection in terms of Section 60 (1) (ccc) CPC is not available to the judgment debtor. Once the execution of agreement to sell is proved, the normal circumstances are to pass a decree for specific performance unless and until, hardship is pleaded and proved by the defendant/judgment debtor. No such hardship has come forth on record. Reference can be made to **Bikram Singh vs Surjit Singh and others, 2004(4) RCR (Civil) 422, Mahender Kumar vs Mangal Singh, 2013(4) RCR (Civil) 342**

and **Sheela Rani vs Punjab and Sind Bank Limited, 1994(1)**

PLR 583,

[13]. Both the Courts below have concurrently recorded that the execution of agreement to sell is proved. The appreciation of evidence done by the Courts below is not found to be the result of misreading of evidence nor the same is suffered with any perversity. No question of law worth consideration is involved in the present appeal. This appeal is found to be totally devoid of merits and is accordingly dismissed.

25.09.2019

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No