

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

**RSA No.3025 of 2017 (O&M)
Date of Decision.30.04.2019**

Harmesh Singh

...Appellant

Vs

Sarwan Kumar

..Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Varun Katyal, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.5606-C of 2019

For the reasons stated in the application, order passed by this Court on 13.03.2019 is recalled and the appeal is restored to its original number.

Application is allowed.

RSA No.3025 of 2017 (O&M)

The only argument raised by learned counsel for the appellant-defendant is that the suit for specific performance of agreement to sell dated 14.09.2007 filed in the year April, 2013 was barred by law of limitation.

It is contended that though time was not essence of the agreement but the respondent-plaintiff did not bring the case within the realm of Article 54 of the Limitation Act except a bald statement made in paragraph 6 and 7 of the plaint.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit.

Pleadings made in paragraph 6 and 7 of the plaint as well as corresponding paragraphs in the written statement are reproduced as under:-

“6. That the plaintiff made several request to defendant to execute the sale deed in his favour but the defendant has not acceded to the request of plaintiff, hence this suit.

7. That the cause of action arose to the plaintiff on 14.9.07 when the agreement was executed and lastly a day before yesterday when the defendant refused to execute the sale deed.”

Written statement.

“6. That the contents of para 6 of the plaint are wrong and denied. In reply to this para it is submitted that plaintiff never approached the defendant for the execution of sale deed, rather defendant at that time number of times requested the plaintiff to pay the balance amount and get the sale deed executed.

7. That the contents of para 7 of the plaint are wrong and denied. It is submitted that defendant never refused to execute sale deed in favour of the plaintiff, further it is wrong that cause of action accrued in favour of the plaintiff to file the present suit, plaintiff should be put to strict proof to prove the same.”

Though perpetual requests were made but intention of the defendant reflected that he wanted to execute the sale deed at market

price. In other words, appellant-defendant wanted to have more money. This fact has also been noticed by the lower Appellate Court in para No.18. No attenuating circumstances had been brought on record to establish the date of refusal of execution of sale deed and the suit was not filed within three years therefrom.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered 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

April 30, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No