

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

RSA No.2914 of 2018 (O&M)

Date of decision : 19.03.2019

Teeka Ram

...Appellant

Versus

Ram Gopal

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Balram Singh, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.7451-C of 2018

For the reasons stated in the application, which is duly supported by an affidavit, delay of 174 days in filing the present appeal is condoned.

Application is allowed.

CM No.7452-C of 2018

Deficiency in the court fees has already been made good, subject to all just exceptions. Delay, if any, is condoned.

Application is allowed.

Main Case

Plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below ordering refund of the earnest money alongwith appropriate rate of interest rather than granting specific performance of the agreement to sell.

Basically, the discretion exercised by the Courts while granting

refund is questioned before this Court. The Courts have found two reasons for holding that the relief of specific performance cannot be granted:-

- 1) In the agreement to sell which is with respect to a shop, previously owned by mother of defendant late Smt. Basanti Devi, it was recorded that the possession was handed over to the plaintiff-Teeka Ram, however, when appeared in evidence, he has admitted that he is not in possession, in fact, defendant is in possession.
- 2) PW1 Parkash Chand, the alleged attesting witness of the agreement to sell, who was stepson of late Smt. Basanti Devi, did not come forward for cross-examination, although, examined in chief by the plaintiff as PW1.
- 3) Apart from the aforesaid two grounds, this Court has found that time lag between the alleged agreement to sell dated 17.11.2003 to 30.06.2006 i.e. the date for execution and registration of the sale deed is unusual. A commercial property i.e. a shop was agreed to be sold. In such a situation, normally the agreement to sell does not prescribe for such a long time for execution and registration of the sale deed.

In view of the aforesaid, the discretion exercised by the Courts is in accordance with law and need no interference.

Accordingly, the present Regular Second Appeal is dismissed.

19.03.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No