

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

RSA No.5351 of 2017 (O&M)

Date of decision:09.01.2019

Rakesh Chander Kapoor

... Appellant

Vs.

Raman Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. Veneet Sharma, Advocate
for the appellant.**

AMIT RAWAL J. (Oral)

The appellant-defendant is aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby, suit claiming specific performance dismissed by the trial Court, has been confined to the refund of Rs.1,00,000/- along with interest @ 6% per annum.

The plaintiff instituted the suit and sought specific performance of the agreement to sell dated 06.06.2008 in respect of the suit property agreed to be sold by the appellant-defendant for a sum of Rs.5,20,000/- against the receipt of Rs.1,00,000/- as earnest money. The stipulated date for execution and registration of the sale deed was fixed as 21.09.2008. The suit was filed on 04.06.2009. It was alleged that plaintiff was ready and willing to perform his part of the contract.

The defendant opposed the suit and denied the intention of the party to sell the property referred to therein and stated to be a loan

transaction as he was in dire need of money and agreed to pay the interest @ 6%. The defendant had given two blank cheques and got the signatures on blank papers and converted the same into agreement to sell, therefore, there was forger and fabrication of document.

The plaintiff in support of the averments examined 04 (four) witnesses and defendant examined 02 (two) witnesses and brought on record the documentary evidence, i.e., Ex.D1 to Ex.D5.

The trial Court dismissed the suit. However, in appeal, the respondent-plaintiff moved an application for additional evidence to bring on record the complaint lodged by the appellant-defendant with regard to forgery of the agreement to sell.

Mr. Veneet Sharma, learned counsel appearing on behalf of the appellant submitted that the tenor and mode of the judgment of the Lower Appellate Court does not reveal whether the application was allowed or remained un-decided as no opportunity was given to rebut the document. The judgment of reversal is not sustainable in the eyes of law as the plaintiff did not succeed before the trial Court.

I am afraid the aforementioned argument is not sustainable, for, categoric stand of the appellant-defendant before the trial Court was that it was a loan transaction and the signatures were obtained on the blank papers. Even if the Lower Appellate Court could have given a passing reference with regard to application for additional evidence that can always be ignored in view of the stand as noticed above. The decree confining to refund of Rs.1,00,000/- alongwith interest @ 6% per annum, is most

innocuous and cannot be said to be erroneous or perverse.

No ground for interference is made out.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 09, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No