

RSA No.5424 of 2017 (O&M)

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

RSA No.5424 of 2017 (O&M)

Date of decision:29.01.2019

Asgar and another

... Appellant(s)

Vs.

Babu (since deceased) through LRs

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. J.S.Brar, Advocate for
Mr. Sunil Saharan, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.14435-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 89 days in re-filing the appeal is condoned.

C.M. stands allowed.

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The appellant-defendants have not been successful in defending the concurrent finding of fact and law in a suit for specific performance of the agreement to sell dated 09.07.2007 alleged to have witnessed by Iqbal-PW2 and Raj Kumar-PW3. The defendants denied the agreement to sell, stated to be a loan transaction of Rs.20,000/-.

The plaintiff in support of the aforementioned pleadings examined the witnesses, much less stamp vendor-PW4 and brought on record Ex.P1 to Ex.P8, i.e., affidavit, jamabandi, mutation, receipts of

earnest money and part payment of earnest money whereby another amount was received. On the other hand, defendants examined three witnesses.

Learned counsel appearing on behalf of the appellant-defendants submitted that on bare perusal of the agreement to sell, signatures of the defendants are totally different. The plaintiff did not deny the agreement, in such circumstances, failed to prove the existence and intention of the party and thus, discretionary relief could not have been granted.

I am afraid the aforementioned argument is not sustainable, for, if the defendants were sure about the forgery of the agreement, nothing prevented them to examine the handwriting expert. Bhisham- PW4 deposed that on 09.07.2007, the stamp paper worth Rs.10/- was sold to Asgar which was entered in his register at serial no.3825 dated 9.7.2007. Raj Kumar PW3 deposed that on 14.5.2008, defendants received a sum of Rs.50,000/- as part payment from the plaintiff and due date of the sale deed was extended from 8.6.2008 to 9.1.2009. The suit was filed on 17.1.2009. The readiness and willingness has been proved to the hilt.

The findings of fact and law, in my view, cannot be faulted with. No ground for interference is made out.

Resultantly, the regular second appeal is dismissed.

January 29, 2019	(AMIT RAWAL)
savita	JUDGE
Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No