

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

**RSA No.6487 of 2017 (O&M)
Date of decision:26.3.2019**

Lakhbir Singh ... Appellant(s)
Vs.

Anand Kumar and another ... Respondent(s)

RSA No.193 of 2018 (O&M)

Lakhbir Singh ... Appellant(s)
Vs.

Anand Kumar and another ... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr.Rajesh Bansal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.16724-C of 2017 in RSA No.6487 of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 136 days in re-filing the appeal is condoned.

C.M. stands allowed.

Main appeals

This order of mine shall dispose of two regular second appeals bearing nos.6487 of 2017 and 193 of 2018 arising out of decision rendered in civil suit no.320 of 2014 wherein the appellant-plaintiff sought the

possession of the suit property claiming specific performance.

It was alleged that plaintiff sought the aforementioned relief on the premise that plaintiff was inducted as a tenant in a house no.270 situated at New Housing Board Colony, Sector 11-12, Panipat since 1992 at the monthly rent of Rs.750/-. However, on 27.10.2000, defendant no.1/vendor offered to sell the suit property for a total sale consideration of Rs.1,50,000/- against the receipt of Rs.21,000/- as earnest money received by defendant no.1. Since defendant no.1 did not have conveyance deed, the sale deed could not be executed. Defendant no.1 during the subsistence of the oral agreement sold the suit property to defendant no.2, vide sale deed dated 03.08.2007. After sending the notice, the suit was filed on 11.03.2011.

The defendants filed the joint written statement and denied the status of the plaintiff as tenant, his possession and as well as receipt of earnest money and oral agreement. It was explained that conveyance deed was executed on 04.04.2007. Thereafter, the property was sold to defendant no.2.

The plaintiff in support of the averments aforementioned examined six witnesses and brought on record umpteen number of documents spanning from Ex.P1 to Ex.P8, Mark P-1 to Mark P-25 and various other documents. On the other hand, defendants examined two witnesses and brought on record copy of the plaint dated 17.8.2007 as Ex.D1.

The trial Court on the basis of the evidence by holding that there was oral agreement declined the discretionary relief and as well as

alternative relief on the ground of suit being barred by law of limitation. Two appeals were filed. The appeal of respondent-defendant no.1 qua the finding oral agreement has been reversed, in essence, the suit has been dismissed in toto while dismissing the appeal of appellant-plaintiff.

Mr. Rajesh Bansal, learned counsel appearing on behalf of the appellant-plaintiff submitted that finding of fact and law arrived at by the Lower Appellate Court in para 17 noticing that in the previous suit filed against respondent no.1, there was no averment qua oral agreement which is factually incorrect. During the course of hearing, he read out the contents of the said para and it was so mentioned but did not deny the execution of the conveyance deed on 04.04.2007 and sale deed. He further submitted that time was not the essence of the agreement and whenever the breach came to the knowledge, the suit was filed by invoking the provisions of Article 54 of the Limitation Act.

I have heard the learned counsel for the appellant, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Bansal.

Assuming for an argument sake that in case of non-execution of the conveyance deed, resulting into non-occurrence of any cause to seek specific performance, to be admitted, the same was executed on 04.04.2007 whereas the suit was filed on 11.03.2011 i.e. after four years. No explanation has come forward in not filing the suit within a period of limitation.

Even if the findings of the Lower Appellate Court allowing the cross-objection are incorrect, would not come in the way of the plaintiff in view of the reasons assigned above.

As an upshot of my findings, arguments of Mr.Bansal have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeals.

Resultantly, the appeals are dismissed.

(AMIT RAWAL)
JUDGE

March 26, 2019
savita

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