

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

RSA-4926-2013(O&M)

Date of decision: 06.02.2020

Bachan Lal

.....Appellant

Versus

Jaswinder Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Vijay Lath, Advocate for the appellant

Ms. Alisha Soni, Advocate for the respondent

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in Regular Second Appeal against the findings of fact arrived at by the learned First Appellate Court granting an alternative relief of refund of earnest money alongwith interest in place of decree for possession by way of specific performance of the agreement to sell. Learned First Appellate Court has recorded three reasons to exercise discretion in accordance with Section 20 of the Specific Relief Act:-

i) The plaintiff admits that he has entered into similar agreements with various other persons.

ii) In a similar suit filed by the plaintiff against another person, finding was returned that the plaintiff is a money lender and therefore, entitled to only refund of earnest money alongwith interest and such agreements to sell are only the security documents to secure the loan transaction.

iii) Out of the total agreed sale consideration of

Rs.1,50,000/-, Rs.1,28,000/- was paid as earnest money. Thus, the balance money was only Rs.22,000/-. But the plaintiff has failed to furnish any reasonable explanation as to why the date for execution and registration of sale was fixed after a period of exactly one year.

This Court has heard learned counsel for the parties at length and with their able assistance has gone through the judgments passed by the Courts below and the requisitioned record.

Learned counsel appearing for the appellant has submitted that the defendant-respondent has signed in Gurmukhi language apart from putting his thumb impression. He cannot hence claim, that he is an illiterate. The signatures on the agreement to sell are not denied. Both the Courts have held that the execution of the agreement to sell is proved. Hence, he submits that the First Appellate Court has erred in reversing the decree for possession by way of specific performance of the agreement to sell by substituting it with a decree for refund of earnest money.

This Court has considered submission. There is no dispute on the contentions raised by learned counsel for the plaintiff-appellant. Section 20 of the Specific Relief Act, 1963, enables the Court to exercise discretion after considering the facts of the case. Such discretion, of course, has to be applied in accordance with well settled principles of law. In the present case, learned First Appellate Court has exercised the discretion after due application of mind and for the reasons which have been noted above. Correctness of the reasons recorded by learned First

Appellate Court are not disputed.

Keeping in view the aforesaid facts, this Court does not find any good ground to interfere in the discretion exercised by the learned First Appellate Court.

Hence, the present appeal is dismissed.

06.02.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No