

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

**RSA No. 3200 of 2013 (O&M)
Date of Decision: 29.01.2020**

Bhagwan Dass

.... Appellant

Versus

Kalu Ram

... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Peeush Gagneja, Advocate
for the appellant.

Mr. Sandeep Punchhi, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

In this regular second appeal, discretion exercised by the learned First Appellate Court while granting alternative relief of refund of earnest money in place of decree for possession by way of specific performance of agreement to sell has been challenged.

Learned First Appellate Court has recorded that the plaintiff is running a commission agency which deals with agriculturalists. Farmers sell their produce through the arhtiyas (commission agents) and also borrow amount from them from time to time. It is also admitted by the plaintiff that the defendant remained his customer for 2/3 years.

It has been noticed that out of total sale consideration of Rs. 5,00,000/-, Rs. 4,50,000/- is stated to have been paid as earnest money, which is 90% of the total sale consideration. However, the plaintiff did not take possession. As per the agreement to sell, parties had agreed to execute the sale deed on 26.03.2006 but the plaintiff did not file the suit immediately.

Keeping in view the fiduciary relationship between the commission agent and farmers/agriculturalists, learned First Appellate Court has exercised discretion.

Learned counsel for the appellant has submitted that execution of the agreement to sell and payment of earnest money has been proved. He, hence, submitted that the appellant is entitled to the decree of specific performance of agreement to sell.

In the considered view of this Court, the learned First Appellate Court has correctly exercised discretion as provided under Section 20 of the Specific Relief Act, 1963.

In view thereof, there is no ground to interfere.

Dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

(ANIL KSHETARPAL)
JUDGE

29.01.2020
Maninder

Whether speaking/reasoned : Yes
Whether reportable : No