

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1545-2022 (O&M)

DATE OF DECISION: SEPTEMBER 13, 2022

RAMESH CHAND

...APPELLANT

VERSUS

MAHESH KUMAR

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. PARVEEN KUMAR, ADVOCATE
FOR MR. ABHIMANYU SINGH, ADVOCATE
FOR THE APPELLANT.

MANOJ BAJAJ, J.(ORAL)

CM-4837-C-2022

This is an application under Section 151 CPC for condonation of delay of 101 days in refiling the appeal.

For the reasons mentioned in the application, the same is allowed and the delay is condoned.

Main Case

The appellants-defendant is aggrieved against the judgement and decree dated 21.9.2017, passed by the first appellate Court in Civil Appeal No.81 dated 7.10.2015, upholding the judgement and decree dated 1.9.2015, passed by Civil Judge(Jr.Divn.), Hathin, whereby the suit for possession by way of specific performance with consequential relief of permanent injunction was decreed against the defendant.

Learned counsel for the appellant has argued that the suit filed by the respondent-plaintiff seeking possession by specific performance of

contract dated 26.5.2011 was decreed against the evidence as the plaintiff

failed to establish his readiness and willingness to perform his part of the contract. He submits that though Ex.P3 (affidavit of the plaintiff) was adduced in evidence, which shows that he visited the office of the Sub Registrar on dated 30.1.2012, fixed for execution of the sale deed, but thereafter he remained silent and issued a legal notice dated 26.9.2013 and it shows that his continuous readiness and willingness to perform the contract is missing. He submits that the appellate Court has also failed to appreciate this material deficiency in the case of the plaintiff while upholding the judgement and decree passed by the trial Court. He prays that interference is warranted by this Court by exercising jurisdiction under Section 100 CPC.

After hearing the learned counsel and considering the evidence on record, this Court finds that the agreement to sell dated 26.5.2011 is not disputed by the parties as one of the attesting witness, namely, DW1 Shiv Charan, Namberdar, appeared as defendant witness and admitted the said document. The total sale consideration fixed for this transaction was Rs.9 lakhs and at the time of executing the agreement, 2/3rd of the same, i.e. Rs.6 lakhs stood paid to the defendant. Thus, the sole argument raised at the stage of second appeal regarding lack of readiness and willingness on the part of the plaintiff to seek execution of the sale deed to challenge the findings returned by both the Courts is without any merit. Besides, the legal notice dated 26.9.2013 issued by the plaintiffs is not disputed by defendant in his written statement, who tried to explain that, if, the vendor did not attend the office of the Sub Registrar on the date fixed, then it is for the plaintiff to explain the delay in issuing the legal notice.

A perusal of the judgement and decree passed by the trial Court

as well as the appellate Court shows that the same are based on proper appreciation of evidence on record, and the findings on material issues do not suffer from perversity. Thus, this Court has no hesitation in holding that the appeal is without any merit, and does not involve any substantial question of law.

Resultantly, the appeal fails and is dismissed.

September 13, 2022
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No