

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

Sr. No.125

**RSA-310-2022 (O&M)
Date of decision : 17.02.2022**

Nand Kumar

..... Appellant

VERSUS

Surender Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. N.S. Kamboj, Advocate, for the appellant.

SUDHIR MITTAL, J. (Oral)

A suit for specific performance was filed in respect of agreement to sell dated 19.11.2015. As per the plaint, the suit land was mortgaged with the Punjab National Bank and the defendant would redeem the same. However, he could not do so and thus, the plaintiff paid a sum of Rs.99,000/- on 27.04.2016 for redemption and clearance certificate was obtained from the bank. Further, the case of the plaintiff is that earnest money amounting to Rs.19,50,000/- was paid in the presence of eye-witnesses and the date for execution of the sale deed was fixed as 10.05.2016. The plaintiff remained present in the office of Sub-Registrar, Sirsa on 10.05.2016, but the defendant did not come present.

Both the Courts below have held that there was a loan transaction between the plaintiff and the defendant and thus, specific performance has not been ordered. The defendant has been directed to pay the money received by him and receipt of which has been proven on the record.

Learned counsel for the appellant has argued that a sum of Rs.10,00,000/- has been repaid by the defendant and thus, the said amount

payment of a sum of Rs.19,50,000/- by the plaintiff has not been proved on record.

The arguments cannot be accepted. Receipt of amount of Rs.19,50,000/- has been acknowledged by the defendant in writing and thus, it does not lie in his mouth to say that the money was not received. Return of Rs.10,00,000/- by him as argued by learned counsel for the appellant has not been proved on record and both the Courts below have returned a finding of fact that money was not returned.

No error or perversity has been pointed out in the aforementioned findings. Thus, the appeal has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

17.02.2022
Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes / No
Yes/ No