

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

**RSA-1243-2022 (O&M)
Decided on:-29.11.2022**

Vinod Kumar

....Appellant

vs.

Charanjit Singh and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Parampreet Singh Paul, Advocate,
for the appellant.

HARKESH MANUJA J. (Oral)

CM-4096-C-2022

Prayer in this application is for condonation of delay of 28 days
in filing the appeal.

Heard.

For the reasons mentioned in the application, delay of 28 days
in filing the appeal is condoned.

CM stands disposed of.

CM-4097-C-2022

Application for exemption from filing court fees in the present
appeal.

No ground is made out to exempt the applicant/ appellant from
filing the Court fee.

Dismissed.

Main case

By way of present appeal, challenge has been made to
judgment and decree dated 09.10.2019 passed by the learned Additional

District Judge, Rupnagar, thereby modifying the judgment and decree dated 13.10.2014 passed by the Court of learned Civil Judge (Senior Division), Rupnagar.

2. The facts of the case are that based on an agreement to sell dated 04.01.2006, appellant-plaintiff filed a suit for possession by way of specific performance regarding land measuring 49 bighas 1 biswas as detailed in the plaint and situated within the area of village Purkhali, Tehsil and District Ropar. The agreement of sale was between the appellant-plaintiff and respondent No.1/defendant No.1. As per the plaint, the land was agreed to be purchased at the rate of Rs.16.25 lakhs per acre, against which, a sum of Rs. 40 lakhs was paid as earnest money as on the date of agreement and another sum of Rs. 10.50 lakhs was paid on 18.04.2006. It was pleaded that at the time of execution of agreement, respondent No. 1/defendant No. 1 had shown power of attorney as well as an agreement to sell having been got executed from the original owners i.e. respondent No. 2 to 4, however, later it came to the notice of appellant-plaintiff that the original owners i.e. respondent No.2 to 4 sold the suit land vide sale deed dated 17.07.2007 in favour of respondents No. 7 and 8 through their attorneys i.e. respondent No. 5 and 6. In view of the aforesaid facts, appellant-plaintiff prayed for grant of decree for possession by way of specific performance based on the agreement to sell dated 04.01.2006, besides even seeking declaration as regards the sale deed dated 17.07.2007 to be null and void. In the alternate, appellant-plaintiff also prayed for refund of double of the earnest money i.e. Rs. 1.10 crores as damages.

3. Upon notice, respondents filed their separate sets of written statements. Respondents No.1 and 2 to 4 admitted the execution of

agreement to sell dated 10.12.2005 between themselves regarding the property in question alongwith assignment of rights therein, with 15.05.2006 being the target date. Besides it, respondent No.1 admitted the execution of agreement to sell dated 04.01.2006 with appellant, though inter alia submitted that in fact a sum of Rs.30 lakhs was given as the earnest money and 10.05.2006 was the target date of the extention on which,, appellant did not come forward to execute the sale deed showing that he was neither ready nor willing to perform his part of agreement in question.

4. Trial Court vide judgment and decree dated 30.10.2014 recorded a finding in favour of appellant-plaintiff as regards the execution of agreement to sell dated 04.01.2006 along with payment of Rs.30 lakhs as earnest money. The trial Court further recorded that since the agreement in question dated 04.01.2006 was never executed in favour of appellant-plaintiff by the original owners i.e. respondent No. 2 to 4 and neither they were party to it nor even signatory to same, as such, the relief of possession by way of specific performance could not be granted. However, the trial Court passed a decree for refund of double of the earnest money along with interest at the rate of Rs.6% per annum in favour of appellant-plaintiff by recording that respondent No.1 being not the owner could not challenge readiness and willingness on the part of appellant.

5. Aggrieved against the judgment and decree passed by the trial Court, respondent No. 1/defendant No.1 filed first appeal before the Court of Learned Additional Judge, Rupnagar. The First Appellate Court vide its judgment and decree dated 09.10.2019 having recorded that the appellant herein also did not comply with the terms and conditions of the agreement dated 04.01.2006, modified the judgment and decree passed by the trial

Court and instead of refund of double of the earnest money, ordered for refund of earnest money along with interest at the rate of 7.5% per annum from the date of decree till realisation.

6. It is the aforesaid judgment and decree dated 09.10.2019 passed by the first Appellate Court, which has been impugned by way of present appeal.

7. Learned counsel for the appellant submits that once the agreement to sell dated 04.01.2006 as well as the payment of earnest money of Rs.30 lakhs was duly proved on record, appellant was entitled for refund of double of the earnest money as per the terms of the aforesaid agreement to sell, as respondent No. 1/ defendant No. 1 on account of his own fault of being not the original owner was not in a position to execute the sale deed in favour of the appellant-plaintiff.

8. Having heard learned counsel for the appellant and gone through the paper book, I am unable to accept the submissions made on behalf of the appellant. Admittedly, even as per the pleadings set up by appellant-plaintiff himself it was with-in his knowledge that respondent No. 1/defendant No. 1 was not the original owner of the property in dispute. The appellant also knew that respondent No.1/ defendant No.1 entered into an agreement to sell dated 04.01.2006 in his favour on the basis of an agreement to sell dated 10.12.2005 (Ex.D3) admittedly executed between respondent No.1 and the original onwers i.e. respondents No.2 to 4 vide which, respondent No.1 was even empowered to assign his rights further.

9. In the facts and circumstances of the present case, rather it was the appellant who could not fulfill and abide by the terms of agreement to sell dated 04.01.2006. Neither any evidence was brought on record to the

effect that the appellant ever made himself available in the office of Sub-Registrar on the target date along with the balance sale consideration despite having been served with a reminder/legal notice (Ex.P3) in this regard nor even filed the present suit with reasonable promptness and thus he was himself to be blamed. Therefore, having failed to prove his readiness and willingness, the appellant could not have been granted the relief of refund of double of the earnest money as the same would have resulted in granting undue advantage to the appellant despite he being at fault while performing his part of the agreement in question by making respondent No.1 to suffer for no mistake on his part.

10. In view of the above, I do not find any reason to interfere with the findings recorded by the First Appellate Court. As such, the present appeal is dismissed with no orders as to cost.

11. Pending application(s), if any, shall also stand disposed of.

29.11.2022
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/ No