

RSA-2667-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-2667-2023 (O&M)
Decided on : 11.08.2023

Sukhpal Singh

. . . Appellant(s)

Versus

Davinder Singh and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Kanwar Abhay Singh, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)

CM-9027-C-2023

i. This is an application, under Rule 3(A)(i), Chapter 6, Part-B, Volume-V, of the High Court Rules and Orders, seeking leave to appear, act or plead before this Court.

ii. For the reasons mentioned in the application, the same is allowed as prayed for.

CM-9028-C-2023

i. Prayer in this miscellaneous application is for condoning the delay of 04 days in filing the present appeal.

ii. In view of the averments made in the application, which is duly supported by an affidavit of the applicant-appellant, the delay of 04 days in filing the appeal is hereby condoned.

Civil Miscellaneous application stands disposed of.

CM-9029-C-2023

For the reasons set out in the application, the same is allowed.

Consequently, the delay of 13 days in re-filing the accompanying appeal is

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hereby condoned.

Civil Miscellaneous application stands disposed of.

RSA-2667-2023 (O&M)

1. Present Regular Second Appeal (RSA), has been filed by defendant No.1 (appellant herein) against the concurrent finding of decreeing the suit partly, filed by the plaintiff (respondent No.1 herein), in regard to the return of earnest money amounting to Rs.10,00,000/-, received by defendant No.1/appellant.

2. From the pleadings of the plaint and the written statement, both the learned Courts below have concluded that there being no dispute regarding the execution of agreement to sell dated 10.02.2009, in regard to the property/plot measuring 500 sq. yards, comprised in Khasra No.63, 76, Khata No.1411/367 (0-2-0), 1408/366 (0-4-04), 1414/369 (0-0-9), 1410/366 (1-10-0), 1413/367 (1-12-0), 1416/369 (1-0-18), 374 (0-5-4), 732 (0-4-0), 373 (2-3-0), 1407/363 (1-7-0), 1405/363 (0-7-0), 375 (0-5-0), 370 (2-11-14), 371(2-4-0), as per Jamabandi for the year 2007-08, situated at village Threekay, H.B. No.156, Tehsil and District Ludhiana, for a total sale consideration of Rs.90,00,000/-, out of which Rs.10,00,000/- already stood received by the defendant No.1 from the plaintiff at the time of execution of agreement to sell.

In alternative, plaintiff also prayed for recovery of Rs.45,00,000/-, including the amount of earnest money of Rs.10,00,000/- and the damages, charges, and the interest @ 24% per annum.

3. Both the learned Courts below have given categoric finding that though the agreement to sell in question, was executed by defendant No.1 with the plaintiff, yet there is no material available on record that defendant No.1 was the owner of the property. Rather, while deciding issue No.1 & 2,

it has been held that undistputedly, and even at the time of decision of the suit, defendant No.2 is the owner of the suit property.

4. Thus, considering the aspect that defendant No.1 was not in a position for even entering into the agreement to sell or even to execute the sale-deed, in the absence of having any title in his favour, learned Trial Court directed defendant No.1 to return the amount of Rs.10,00,000/-, received by him as earnest money from the plaintiff. Said amount was directed to be returned along with interest @ 12% per annum from the date of filing of the suit till its realization, within a period of three months from the date of judgment and decree dated 24.03.2017, passed by the learned Trial Court.

5. Counsel for the appellant (defendant No.1) vehemently argues before this Court that regarding the return of the earnest money received by him, there is no issue framed by the learned Trial Court, therefore, no such evidence is led by defendant No.1. Counsel further submits that in fact, two cheques dated 25.05.2009 i.e. Ex.RW1/C and RW1/D, were given to the plaintiff for its encashment, amounting to Rs.9,65,000/-, and an endorsement was also given on the back of the agreement to sell.

However, nothing was brought on record by defendant No.1 in regard to the pleaded fact that the said cheques had been got encashed.

6. On the other hand, a contrary stand is taken at the time of the arguments that both the cheques were later on returned to defendant No.1 by the plaintiff, after receiving of the cash amount of Rs.10,00,000/- from him.

7. On arguing so, counsel is asked to refer any such pleading from the written statement filed by defendant No.1. Despite giving reasonable opportunity to the counsel for the appellant (defendant No.1) to go through the written statement, he could not point out any such pleading mentioned in

the written statement.

Thus, obviously there was no occasion or reason with the Court to frame any issue in that regard, rather, this Court is of the view that arguing beyond the pleadings, reflects that the conduct of the appellant/defendant No.1 is not fair. Once it is found by both the Courts below that the amount of Rs.10,00,000/-, received by him is admitted, in the eventuality of the cancellation of the agreement, that too without there being any fault on the part of the plaintiff (respondent No.1), it would be obligatory for defendant No.1 (appellant) to return back the earnest money.

8. Therefore, this Court does not find any illegality, irregularity or perversity in the findings recorded by both the learned Courts below. Even no question of law, much less, any substantial question of law arises for consideration in the present appeal for interference in the impugned judgments & decrees passed by the learned Courts below.

Thus, for the reasons recorded herein-above, instant appeal being devoid of merits, stands dismissed. The judgments & decrees passed by both the Courts below are affirmed.

Pending civil miscellaneous application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

August 11, 2023

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*