

CM-4968-C-2023, CM-4972-C-2023 IN/AND
RSA-2409-2022 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM-4968-C-2023, CM-4972-C-2023 IN/AND
RSA-2409-2022 (O&M)**

Date of decision: May 10, 2023

Jagtar Singh

....Appellant

versus

Shamsher Singh (deceased) through his legal heirs

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Brijeshwar Singh Bhalla, Advocate
for applicant-respondents.

None for non-applicant-appellant.

ARUN MONGA, J. (ORAL)

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This is an application for preponing the hearing of main case which has been fixed for 04.09.2023.

None appears on behalf of non-applicant-appellant, despite advance service of application through e-mail and also being informed telephonically, which is deemingly suggestive that there is no opposition to the prayer made in the application.

For the reasons stated in the application, same is allowed. Main case is taken on Board for hearing today itself. Registry to do the needful.

Main case (O&M)

Appellant herein is defendant seeking to set aside judgment/ decree dated 26.03.2018 passed by learned Civil Judge (Junior Division), Moga whereby suit of the plaintiff for alternative relief of recovery of earnest money of Rs.8 lakh was decreed with proportionate costs; plaintiff was held entitled to recovery Rs.8 lakh along with interest at the rate of 9 % per annum on the above said amount from the date of execution of agreement to sell i.e., 30.12.2013 till the date of decree and future interest at the rate of 6% per annum till realization of decretal amount; the relief of

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specific performance of agreement to sale and permanent injunction was declined. He also seeks to set aside judgment/ decree dated 20.11.2019 passed by learned Additional District Judge, Moga whereby appeal filed by plaintiff against aforesaid judgment/ decree dated 26.03.2018 was allowed and same was set aside and suit filed by plaintiff for specific performance of impugned agreement to sell dated 30.11.2013 was decreed; and connected appeal filed by defendant was dismissed.

2. Despite knowledge of the case being listed, none appears on behalf of appellant. Be that as it may, while issuing notice of motion, following order was passed by me on 16.02.2023:

“Inter alia contends that defendant/appellant is ready and willing to pay the decretal amount with interest to plaintiff/respondent(s) as per judgment and decree dated 26.03.2018 rendered by Ld. Trial Court. However, Ld. Appellate Court misread the evidence qua endorsement of agreement to sell while reversing the cogent findings rendered by Ld. Trial Court that defendant/appellant had denied the extension of time and qua any endorsement on the original agreement to sell.

Notice of motion.

Post it on 04.09.2023.

However, liberty is granted to defendant/appellant to file application for stay in case the execution proceedings are initiated.”

3. *Apropos* learned counsel for respondents states that he is under instructions by his client that in case, aforesaid offer, as noted in the Court order is made good by the appellant, respondents would be willing for modification of judgment/ decree in above terms.

4. Be that as it may, appeal is dismissed in default.

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

(ARUN MONGA)
JUDGE

May 10, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No