

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

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2023:PHHC:097508

**RSA-455-2019(O&M)
Date of decision: 31.07.2023**

GURDIAL SINGH

..Appellant

Versus

**BAHADUR SINGH SINCE DECEASED
THROUGH HIS LRS**

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sunil Agnihotri, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

CM-992-C-2019

1. For the reasons stated in the application for condonation of delay which is supported by an affidavit, the application is allowed.
2. The delay of 82 days in refiling the appeal is condoned.
3. CM stands disposed of.

Main case

4. The correctness of concurrent findings of fact arrived at by the Courts below is challenged by the plaintiff in this appeal. In his suit for the grant of decree of possession by way of specific performance of the agreement to sell and in the alternative, a suit for recovery of Rs.1,25,000/-, the Courts have ordered refund of the amount of Rs.1,10,000/- paid by him to the defendant along with the interest. Both the Courts on the appreciation of evidence have come to a conclusion that the transaction between the parties was in fact a loan transaction and there was no intention to sell the property. It has come on record that on 31.10.2008, the defendant entered into an agreement to sell a small piece of land measuring 1 kanal 2 marlas for a total sum of Rs.1, 25,000/-. Earnest money of Rs.50,000/- was paid and

the parties agreed to get the sale deed executed and registered on 30.12.2008. Thereafter, the plaintiff is alleged to have been paid another sum of Rs.60,000/- on 24.12.2008 and extended the date of sale deed upto 30.04.2009. Thereafter, it was further extended upto 30.06.2009. Another agreement was also executed between the parties on 12.06.2009. Both the Courts have found that on 24.12.2008, the plaintiff was only required to pay another sum of Rs.15,000/- to get the sale deed executed. In these circumstances, on the preponderance of evidence, both the Courts have concluded that in fact there was a loan transaction as the defendant has stated that he borrowed a sum of Rs.50,000/- for the treatment of his wife. He has repaid the same amount, whereas, the remaining amount of Rs.85,000/- is still payable.

5. This Bench heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook.

6. The learned counsel representing the appellant submits that as per findings of the Courts below the execution of the agreement to sell has been proved by examining both the marginal witnesses, therefore, there is no justification to decline the relief of specific performance of the agreement to sell.

7. Before 01.10.2018, the unamended Specific Relief Act, 1963 (hereinafter referred to as the “1963 Act”) was applicable. As per Section 20 of the 1963 Act, the jurisdiction to decree specific performance was discretionary. Before the amendment of 2018, grant of specific performance was not a rule but depended upon the facts and circumstances in each case.

In the present case, the agreement to sell was executed in the year 2008. The

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trial Court decided the suit on 06.12.2014. In such circumstances, it is not mandatory for the Court to grant relief of specific performance particularly in view of the unamended Section 20 of the 1963 Act. Both the Courts have exercised the discretion after evaluating the evidence led by the parties. The learned counsel representing the appellant has failed to prove that such exercise of discretion is not in accordance with law.

- 8. Hence, no ground to interfere is made out.
- 9. Dismissed accordingly.
- 10. All the pending miscellaneous applications, if any, are also disposed of.

July 31st, 2023 (ANIL KSHETARPAL)
Ay JUDGE

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