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

CM-4140-C-2020 in/and RSA-1437-2020

Date of Decision: August 12, 2024

GURMUKH SINGH

.....Appellant

Versus

GURMEET SINGH AND ANR

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Harmeet Singh, Advocate for
Mr. Vikram Anand, Advocate for the appellant.

HARKESH MANUJA, J. (ORAL)

CM-4140-C-2020

This is an application filed under Section 151 CPC for condonation of delay of 676 days in refilling the appeal, which is supported by an affidavit Mr. R.K. Bhardwaj, Clerk in the office of Mr. Vikram Anand, Advocate.

I have gone through the contents of the application wherein, the reason expressed for delay in refilling is that the brief pertaining to the present appeal was tied up along with the admitted case and the same could not be traced.

In the given facts, the reason appears to be sufficient and justified for the purpose of condonation of delay of 676 days in refilling the appeal and thus, the prayer made herein is allowed.

MAIN CASE

By way of present appeal, challenge has been laid to the judgments and decrees dated 23.10.2013 and 22.12.2017 passed by the Courts below whereby, a suit for possession by way of specific

performance filed at the instance of respondent No.1-plaintiff stands decreed.

2. Briefly stating, the dispute between the parties relates to 2 kanals and 13 marlas of land being 1/3rd share out of land measuring 8 kanals comprised in Khewat/Khata No.49/101, bearing Khasra No.22//2/8-0, situated in village Lakhan Khurd, Tehsil and District Kapurthala. The aforementioned land was owned by appellant-defendant No.1. As per the plaint, an agreement to sell dated 17.10.2003 was executed between the appellant and respondent No.2 for a sum of Rs.1,10,000/- with 05.10.2006 being the target date and Rs.55,000/- been paid as earnest money. Based on the aforesaid agreement wherein, the right of assignment was conferred upon the vendee-purchaser Nishan Singh-respondent No.2, he entered into an agreement to sell dated 05.09.2006 with respondent No.1-plaintiff for a total consideration of Rs.1,32,500 having received Rs.55,000/- as earnest money with 05.10.2006 being the target date. As the sale deed was not executed in favour of respondent No.1-plaintiff, despite he being ready and willing to perform his part of the agreement to sell, he filed suit for possession by way of specific performance.

3. Upon notice, the appellant-defendant No.1 appeared and filed his written statement while denying the execution of any such agreement to sell dated 17.10.2003 and also denying any authorization conferred upon respondent No.2-Nishan Singh to execute any agreement in favour of a third party. It was further pleaded that the suit filed at the instance of respondent No.1-plaintiff was hit by delay

and latches and thus, he was not entitled for grant of any decree in his favour. Based on the pleadings of the parties, following issues were framed:-

- “1) Whether the plaintiff is entitled to the relief of possession of suit land from the defendants? OPP
- 2) Whether the plaintiff is entitled to relief of permanent injunction as prayed? OPP
- 3) Whether the plaintiff is entitled to recover amount of Rs. 1,10,000/- from the defendants?OPP
- 4) Whether any agreement between the plaintiff and defendant No.2 is binding upon defendant No. 1? OPP
- 5) Whether the suit is not maintainable in the present form? OPD
- 6) Whether the suit is not within limitation? OPD
- 7) Whether the suit is barred by limitation? OPD
- 8) Whether the plaintiff has suppressed material facts from the Court? OPD
- 9) Relief.”

4. Learned trial Court vide judgment and decree dated 23.10.2013 decreed the suit in favour of plaintiff-respondent No.1 while granting decree of possession by way of specific performance. Aggrieved thereof, appellant-defendant No.1 filed first appeal, the same came to be dismissed vide judgment and decree dated 22.12.2017 passed by the Court of learned District Judge, Kapurthala.

5. Aggrieved of the judgments and decrees passed by the Courts below, learned counsel for the appellant-defendant No.1 submits that no such agreement dated 17.10.2003 as alleged by the respondent No.1-plaintiff was ever executed between appellant-respondent No.1 as well as respondent No.2 and thus, there was no question of execution of any subsequent agreement to sell dated 05.09.2006 between respondent No.1-plaintiff and respondent-defendant No.2 and as such

the suit was liable to be dismissed. No other argument has been addressed.

6. I have heard learned counsel for the appellant and gone through the paper-book. I am unable to find substance in the submissions made by learned counsel for the appellant.

7. In the present case, upon due appraisal of pleadings as well as the evidence led by the parties, a concurrent finding of fact has been recorded by the Courts below that the appellant-defendant No.1 being owner of the property in question executed the agreement to sell dated 17.10.2003 (Ex. P-1) in favour of respondent-defendant No.2. The said agreement was proved on record through one of the marginal witnesses i.e. PW-3 Ajit Singh as well as the son of deed writer Narenderpal Singh who appeared as PW-2 having identified the signatures of his father upon the document in question. Still further, even the agreement to sell dated 05.09.2006 executed by respondent-defendant No.2 in favour of respondent No.1-plaintiff was proved on record as Ex.P-2 besides even proof of readiness and willingness on the part of respondent No.1-plaintiff through reply dated 23.09.2006 (Ex.P-4) to the legal notice dated 08.09.2006 (Ex.P-3) served upon him by the appellant-defendant No.1 as well as through his affidavit dated 16.10.2006 (Ex.P-7) pertaining to his appearance in the office of Sub-Registrar, Kapurthala.

8. On the contrary, no evidence was produced from the side of appellant-defendant No.1 so as to establish any kind of fraud been played upon him at the time of execution of agreement to sell dated 17.10.2003 (Ex.P-1) in favour of respondent-defendant No.2 except he himself having appeared as DW-1.

9. Accordingly, in view of the detailed discussion made herein-
above, finding no illegality or perversity with the concurrent findings of
fact recorded by the Courts below, there being no overlooking of the
material available on record, re-appreciation of pleadings and evidence
being impermissible, the present appeal being devoid of merits is thus,
dismissed.
10. Pending application(s), if any, shall also stand disposed of.

12.08.2024

Tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>