



In the High Court of Punjab and Haryana, at Chandigarh

Second Appeal Order No. 53 of 2017 (O&M)

Date of Decision: 11.07.2024

Sunil Taxak

... Appellant(s)

Versus

Harjot Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. C.R.Dahiya, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. In this second appeal, the defendant assails the correctness of the First Appellate Court's order remitting the matter back to the Trial Court for deciding the case on merits after granting an opportunity to the parties to lead evidence. In fact, the Trial Court rejected the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") on the ground that the suit was filed beyond the period of limitation. The First Appellate Court has reversed the aforesaid order while directing the Trial Court to decide the case on merits.

2. The learned counsel representing the appellant submits that as per the agreement, the sale deed was to be executed on 10.12.2005, whereas the suit was filed on 10.12.2008. He, hence, submits that the suit as filed was beyond the period of limitation.

3. Clause 4 of the agreement to sell, as extracted by the First Appellate Court, reads as under:-

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“That the last date for full and final payment has been fixed on or before 10.2.2005 or within 10 days of the grant of NOC by the Estate Officer, Chandigarh Administration, Chandigarh, whichever is later and both the parties shall present themselves in the office of Sub-Registrar, Chandigarh as per time fixed through the above said seller and purchaser.”

4. It is evident that as per Clause 4 of the agreement to sell, the sale deed was to be executed on 10.12.2005 or within a period of ten days from the date on which the “NOC” is issued by the Estate Office permitting the execution of the sale deed. Thus, a triable issue has arisen in the present case. The plaint can be rejected only if the Court is in a position to come to a definite conclusion that the suit is filed beyond the period of limitation. In this case, the aforesaid issue is debatable. Moreover, the date of agreement to sell will have to be excluded while calculating the period of limitation.

5. In view of the aforesaid discussion, the appeal lacks merits and hence, the same is dismissed.

6. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 11, 2024
“DK”

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