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

Date of decision : 15.10.2025

- 1. RSA-1522-2022 (O&M)**
- 2. SAO-23-2022 (O&M)**

Smt. Devi

....Appellant

Versus

Birwati

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Johan Kumar, Advocate
for the appellant.

Mr. Satish Choudhary, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

CM-4772-C-2022 in RSA-1522-2022

This is an application filed under Section 151 CPC seeking condonation of delay of 1414 days in re-filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 1414 days in re-filing the instant appeal is hereby condoned.



CM-8575-CII-2022 in SAO-23-2022

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 653 days in filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 653 days in filing the instant appeal is hereby condoned.

RSA-1522-2022 (O&M)

Plaintiff is in second appeal.

2. For convenience and to avoid confusion, the parties hereinafter are referred to as by their original position before the Court of the First Instance i.e., the appellant as plaintiff and the respondent as defendant.

3. Plaintiff filed suit seeking decree of specific performance of agreement to sell dated 07.03.2006. As per the plaintiff, defendant entered into an agreement to sell dated 07.03.2006 in favour of the plaintiff whereby she agreed to sell land ad-measuring 1 Kanal 5 Marlas for a total sale consideration of Rs.9,75,000/-. The entire sale consideration was paid on the date of agreement to sell. Even though no date was fixed for execution of sale deed, plaintiff served legal notice dated 16.01.2009 calling upon the defendant to execute the sale deed within 15 days. Defendant refused to



adhere to the request made by the plaintiff. Accordingly, the present suit was instituted on 06.03.2009.

4. Suit was contested by the defendant denying the execution of agreement to sell.

5. On the basis of pleadings, following issues were framed:

- “1. Whether the defendant had entered into an agreement to sell the suit property with the plaintiff? OPP
2. Whether the plaintiff was/is still ready and willing to perform his part of the agreement? OPP
3. Whether the plaintiff is entitled to a decree for specific performance as prayed for? OPP
4. Whether suit of the plaintiff is not maintainable in the present form? OPD
5. Whether plaintiff has got no cause of action and no locus standi to file the present suit? OPD
6. Whether the plaintiff has concealed the true and material facts while filing the present suit? OPD
7. Relief.

6. Even though Trial Court answered the material issues in favour of the plaintiff including that of readiness and willingness. However, relief of possession by way of specific performance was declined holding that no prayer was made in the plaint seeking possession. Accordingly, suit filed by the plaintiff was decreed but for alternate relief of recovery of Rs.9,75,000/- along with interest @ 6% per annum for the period commencing from 07.03.2006 till the date of realization.

7. Plaintiff preferred not to file appeal.

8. Defendant preferred appeal.



9. The same stands dismissed affirming the judgment and decree passed by the Trial Court.

10. Plaintiff is before this Court in Regular Second Appeal aggrieved of the alternate relief granted by the Court of the First Instance.

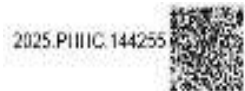
11. In the considered opinion of this Court, the plaintiff having preferred not to file appeal impugning the judgment and decree passed by the Court of the First Instance wherein his suit was decreed for alternate relief, he cannot be allowed to maintain the present appeal. Subsequently, the appeal was filed on 19.03.2016 which also stands rejected on the ground that no plea raised by the plaintiff pressing for the alteration of the relief. Against the said judgment, SAO No.23 of 2022 has been filed.

12. In the considered opinion of this Court, neither in RSA nor in SAO any relief can be granted to the plaintiff.

13. The issue w.r.t. exercise of power under Order XLI Rule 33 CPC is squarely covered by the judgment rendered by Supreme Court in the case of **‘Banarsi and others vs. Ram Phal’**, 2003 (9) SCC 606 wherein it was observed as under:

“6. The appeals raise a short but interesting question of frequent recurrence as to the power of the appellate court to interfere with and reverse or modify the decree appealed against by the appellants in the absence of any cross-appeal or crossobjection by respondent under Order 41 Rule 22 of the Civil Procedure Code and the scope of power conferred on appellate court under Rule 33 Order 41 of the Civil Procedure Code.

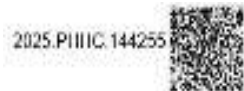
7. The first question is whether without cross objection by the respondent, could the Appellate Court have set aside the decree



passed by the Trial Court and instead granted straightaway a decree for specific performance of contract ? This would require reference to the principles underlying right to file an appeal and right to prefer cross objection or when does it become necessary to prefer cross objection without which decree under appeal cannot be altered or varied to the advantage of the respondent and/or to the disadvantage of the appellant. Rule 22 Order 41, as amended by Civil Procedure Code Amendment Act 104 of 1976, with effect from 1.2.1977 is reproduced hereunder in juxtaposition with the text of the provision as it stood prior to the amendment.

Order 41 Rule 22

Text as amended by the Act 104 of 1976 (w.e.f. 1.2.1977)	Text pre-amendment.
R. 22. Upon hearing, respondent may object to decree as if he had preferred a separate appeal. - (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree (but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any crossobjection) to the taken by way of appeal :	R. 22. Upon hearing, respondent may object to decree as if he had preferred a separate appeal. - (1) Any respondent, though he may not have appealed form any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to



	allow.
Provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.	
[<i>Explanation.</i> - A respondent aggrieved by a finding the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.]	
(2) xxxx xxxx xxxx	(2) xxxx xxxx xxxx
(3) xxxx xxxx xxxx	(3) xxxx xxxx xxxx
(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to	(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and



the other parties as the Court thinks fit.	determined after such notice to the other parties as the Court thinks fit.
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8. Sections 96 and 100 of the Civil Procedure Code make provision for an appeal being preferred from every original decree or from every decree passed in appeal respectively; none of the provisions enumerates the person who can file an appeal. However it is settled by a long catena of decisions that to be entitled to file an appeal the person must be one aggrieved by the decree. Unless a person is prejudicially or adversely affected by the decree he is not entitled to file an appeal (See *Phoolchand & Anr. v. Gopal Lal*, 1967(3) SCR 153; *Smt. Jatan Kanwar Golcha v. M/s Golcha Properties (P) Ltd.*, 1970(3) SCC 573; *Smt. Ganga Bai v. Vijay Kumar & Ors.*, (1974)2 SCC 393). No appeal lies against a mere finding. It is significant to note that both Sections 96 and 100 of the Civil Procedure Code provide for an appeal against decree and not against judgment.

9. Any respondent though he may not have filed an appeal from any part of the decree may still support the decree to the extent to which it is the already in his favour by laying challenge to a finding recorded in the impugned judgment against him. Where a plaintiff seeks a decree against the defendant on grounds (A) and (B), any one of the two grounds being enough to entitle the plaintiff to a decree and the Court has passed a decree on ground (A) deciding it for the plaintiff while ground (B) has been decided against the plaintiff, in an appeal preferred by the defendant, in spite of the finding on ground (A) being reversed the plaintiff as a respondent can still seek to support the decree by challenging finding on ground (B) and persuade the appellate court to form an opinion that in spite of the finding on ground (A) being reversed to the benefit of defendant-appellant the decree could still be sustained by reversing the finding on ground (B) though the plaintiff-respondent has neither preferred an appeal of his own nor



taken any cross objection. A right to file cross objection is the exercise of right to appeal though in a different form. It was observed in *Sahadu Gangaram Bhagade v. Special Deputy Collector, Ahmednagar and Anr.*, (1971) 1 SCR 146, that the right given to a respondent in an appeal to file cross objection is a right given to the same extent as is a right of appeal to lay challenge to the impugned decree if he can be said to be aggrieved thereby. Taking any cross objection is the exercise of right of appeal and taken the place of cross-appeal though the form differs. Thus it is clear that just as an appeal is preferred by a person aggrieved by the decree so also a cross objection is preferred by one who can be said to be aggrieved by the decree. A party who has fully succeeded in the suit can and needs to neither prefer an appeal nor take any cross objection though certain finding may be against him. Appeal and cross-objection - both are filed against decree and not against judgment and certainly not against any finding recorded in a judgment. This was well-settled position of law under the unamended Civil Procedure Code.

10. Civil Procedure Code Amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22 sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross objection against a finding. The difference which has resulted we will shortly state. A respondent may defend himself without filing any cross objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree he must take cross objection. The amendment inserted by 1976 amendment is clarification and also enabling and this may be made precise by analysing the provision. There may be three situations :-

- (i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent.



(ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent.

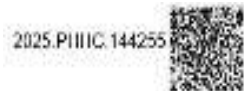
(iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.

11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross objection. The law remains so post amendment too. In the type of cases (ii) and (iii) pre-amendment Civil Procedure Code did not entitle nor permit the respondent to take any cross objection as he was not the person aggrieved by the decree. Under the amended Civil Procedure Code, read in the light of the explanation, though it is still not necessary for the respondent to take any cross objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross objection to a finding recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross objection is spelled out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default the cross objection taken to any finding by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any finding recorded against the respondent.

12. The fact remains that to the extent to which the decree is against the respondent and he wishes to get rid of it he should have either filed an appeal of his own or taken cross objection failing



which the decree to that extent cannot be insisted on by the respondent for being interfered, set aside or modified to his advantage. The law continues to remain so post-1976 amendment. In a suit seeking specific performance of an agreement to sell governed by the provisions of the Specific Relief Act, 1963 the Court has a discretion to decree specific performance of the agreement. The plaintiff may also claim compensation under Section 21 or any other relief to which he may be entitled including the refund of money or deposit paid or made by him in case his claim for specific performance is refused. No compensation or any other relief including the relief or refund shall be granted by the Court unless it has been specifically claimed in the plaint by the plaintiff. Certainly the relief of specific performance is a larger relief for the plaintiff and more onerous to the defendant compared with the relief for compensation or refund of money. The relief of compensation or refund of money is a relief smaller than the relief of specific performance. A plaintiff who files a suit for specific performance claiming compensation in lieu of or in addition to the relief of specific performance or any other relief including the refund of any money has a right to file an appeal against the original decree if the relief of specific performance is refused and other relief is granted. The plaintiff would be a person aggrieved by the decree in spite of one of the alternative reliefs having been allowed to him because what has been allowed to him is the smaller relief and the larger relief has been denied to him. A defendant against whom a suit for specific performance has been decreed may file an appeal seeking relief of specific performance being denied to the plaintiff and instead a decree of smaller relief such as that of compensation or refund of money or any other relief being granted to the plaintiff for the former is larger relief and the latter is smaller relief. The defendant would be the person aggrieved to that extent. It follows as a necessary corollary from the above said statement of law that in an appeal filed by the defendant laying challenge to the relief of compensation or refund of money or any other relief while decree for specific performance



was denied to the plaintiff, the plaintiff as a respondent cannot seek the relief of specific performance of contract or modification of the impugned decree except by filing an appeal of his own or by taking cross objection.”

14. In view of above, finding no merit in the present appeal, the same is ordered to be dismissed.

SAO No.23 of 2022 (O&M)

Since the regular second appeal has been dismissed, the instant SAO is also ordered to be dismissed.

2. Pending applications, if any, shall also stands disposed off.

October 15, 2025
Dpr

(Pankaj Jain)
Judge

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