



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

119 RSA-2410-2024 (O&M)
Date of decision: 13.02.2025

Gurdeep Singh ...Appellant(s)

Vs.

Niranjan Singh and another ...Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. M.B.Rajwade, Advocate with
Mr. Pawan Singh, Advocate for the appellant.

NIDHI GUPTA, J.

CM-9966-C-2024

Prayer in this application filed under Section 5 of the Limitation Act read with Section 151 CPC, is for condonation of delay of 39 days in filing the accompanying appeal.

Heard.

For the reasons mentioned in the application which is supported by an affidavit of the applicant/appellant, the same is allowed and delay of 39 days in filing the accompanying appeal is condoned.

CM-9967-C-2024

Prayer in this application filed under Section 5 of the Limitation Act, is for condonation of delay of 40 days in refiling the accompanying appeal.



Heard.

For the reasons mentioned in the application which is supported by an affidavit of the applicant/appellant, the same is allowed and delay of 40 days in refiling the accompanying appeal is condoned.

RSA-2410-2024 (O&M)

The defendant No. 1 is in second appeal before this Court against the concurrent judgments and decrees of the learned Courts below, whereby the suit for possession by way of specific performance of Agreement dated 15.02.2017 filed by the plaintiff/respondent No.1 herein, was decreed by both the courts below as money decree for recovery of Rs. 6 lacs which was paid as earnest money by the plaintiff/respondent No.1 herein to appellant/defendant No.1 along with interest @ 12% per annum.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'defendant No.1'; and the respondent No.1 is the 'plaintiff'.

3. Briefly stated, the facts of the case are that the plaintiff and appellant/defendant No.1 had entered into an Agreement to Sell dated 15.02.2017 to sell suit land as described in the plaint for a total sale consideration of Rs. 22,50,000/- per acre. In pursuance of Agreement, the defendant No.1 had admittedly received Rs. 6 lacs as earnest money. The appellant had agreed to execute the registered sale deed in favour of the plaintiff on 26.05.2017 after receiving balance sale consideration. On the basis of evidence adduced by both the parties, the Agreement to Sell



dated 15.2.2017 stood proven on record. It was further proven that the plaintiff went to the office of Sub Registrar on 26.05.2017 but the appellant did not appear on the said date to perform his part of contract.

4. As such, upon appraisal of the pleadings and the evidence led by the parties, the learned trial Court had categorically recorded in para 12 of the judgment and decree dated 24.11.2022, as under:

“12. Therefore, after informing defendant no. 1, the plaintiff went to the office of joint Sub Registrar Talwandi Bhai on 26.5.2017 for the registration and execution of sale deed along with balance sale consideration amount and other miscellaneous expenses for the execution and registration of sale deed and remained present there for whole day, but defendant no. 1 did not turn up and accordingly, he marked his presence before Joint Sub Registrar, Tehsil Talwandi Bhai, which is Ex.P2. The evidence of plaintiff is fully corroborated with the evidence of PW2 Gurcharan Singh. The ownership of defendant no. 1 is proved through the Jamabandi Ex.P3 appended with the judicial file. On the other hand, defendant no. 1 while stepping into the witness box has taken the plea that he did not ask for extension of time of stipulated dated for the execution and registration of sale deed. As per defendant no. 1, the plaintiff resiled from the term and condition of the agreement. It is pertinent to mention here that in his pleadings, he did not mention any reason of plaintiff being resiled from the term and condition of the agreement. It was during his cross examination, wherein he has said that plaintiff was not having sufficient balance sale consideration, therefore, he resiled from the term and condition of the agreement Ex.P1. It is pertinent to mention here that this is an oral plea of defendant without any documentary evidence. On the other hand, plaintiff has



duly proved in his rebuttal evidence that on the stipulated date for the registration of sale deed, he was having sufficient amount in his account book i.e. Ex.P7 and Ex.P8. As per learned counsel for the defendant, the defendant no. 1 also marked his attendance before the office of Sub Registrar, Talwandi Bhai Ke, to prove his ready and willingness for the execution of Ex.P1. Perusal of the application Ex.D1 appended with the judicial file, it reveals that the application contains wrong year i.e. 26.05.2016, which means that the document Ex.D1 is fabricated document. Ex.D1 failed to prove the ready and willingness on the part of defendant no. 1 for the execution and registration of sale deed. Further, as per arguments of learned counsel for the plaintiff, the sale deed in favour of defendant no. 2 by defendant no. 1 was got registered on 12.01.2018 without the knowledge of plaintiff and the suit for cancellation of agreement to sell was filed on 15.02.2017. In that suit, plaintiff appeared through counsel, but during the pendency of that suit, the defendant no. 1 sold the property to defendant no. 2. During the pendency of that suit, defendant no. 1 on his own, withdraw the suit from the court of Sh. Suresh Kumar Goyal, the then, Id. Civil Judge, (Sr. Division), Ferozepur, on 27.08.2019, on the false statement that compromise has been effected. In that suit, though the plaintiff was also appearing as defendant, but the said suit was withdrawn on the single statement of defendant no. 1. If there would be compromise with the plaintiff, then, the plaintiff would definitely suffered statement regarding the compromise. This court opined that though there was no entry regarding the agreement to sell in the revenue record, but filing of suit is notice to the general public. The agreement to sell dated 15.2.2017 is not cancelled by any court of law till date. Further, defendant no. 1 failed to prove the execution of alleged writing alleged to be done in the



presence of panchayat members wherein he has alleged that plaintiff has given undertaking that he will not claim his earnest money of Rs. 6 Lac from him. In the present suit, the learned counsel for the plaintiff prayed for the refund of his earnest money along with interest as the property is already sold to the defendant no. 2.”

5. In view of the above noted fact in last line of para 12 of the said judgment and decree dated 24.11.2022, of the learned Trial Court that *“in the present suit, the learned counsel for the plaintiff prays for refund of his earnest money along with interest as the property is already sold to defendant No.2.”*, the learned trial Court partly decreed the suit of the plaintiff with costs by granting alternative relief for recovery of Rs. 6 lacs paid as earnest money paid by the plaintiff to defendant No.1 along with interest @ 12% per annum from date of Agreement dated 15.02.2017 till the date of decree and future interest @ 6% per annum from the date of decree till realization of decretal amount. The appeal filed by the defendant No.1 was partly allowed by the learned first appellate Court vide judgment and decree dated 15.04.2024 modifying the decree dated 24.11.2022 only to the extent that *“earnest money of Rs. 6 lacs be refunded along with interest @ 9% from the date of agreement till date of decree along with future interest @ 6% per annum”*. Hence, present Second Appeal.

6. Ld. counsel for the appellant assails the concurrent judgments and decrees of the learned Courts below by submitting that on 26.05.2017, the appellant had entered in the office of Joint Sub Registrar Talwandi Bhai in order to execute the agreement and had got his presence marked and it was the respondent No.1 who had failed to appear. It is contended by the

learned counsel for the appellant/defendant that the appellant was always ready and willing to perform his part of the contract.

7. Heard.
8. In the face of above-noted undisputed facts, which are not controverted by the learned Counsel for the appellant, I find no merit in the present Appeal. The argument of learned counsel for the appellant that on 26.05.2017, the appellant had entered in the office of Joint Sub Registrar Talwandi Bhai in order to execute the agreement and had got his presence marked and it was the respondent No.1 who had failed to appear, is belied by the findings of learned trial Court as contained in above-reproduced para 12 of the impugned judgment dated 24.11.2022; duly affirmed by the learned first appellate Court vide judgment and decree dated 15.04.2024. It has also come on record that the suit filed by the appellant for rescission/cancellation of the contract/Agreement to Sell dated 15.02.2017 was also admittedly withdrawn by him on 27.08.2019. Thus, it has been proven by concurrent findings that the respondent No.1/plaintiff was ready and willing to perform his part of contract.
9. Hence, the present regular second appeal is hereby **dismissed.**
10. Pending applications, if any, stand disposed of.

13.02.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No