



SAO-64-2019 (O&M)

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

SAO-64-2019 (O&M)

Date of decision: 10.01.2025

Monica Rana

....Appellant

Versus

Harbans Lal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Mandeep S Sachdev, Advocate
and Ms. Meher Sachdev, Advocate for the appellant

Mr. Arun Takhi, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

This second appeal against order of the First Appellate Court's order remitting the matter back to the trial court has been filed by the plaintiff. The trial court decreed the plaintiff's suit for the specific performance of the agreement to sell on the basis of statement given by the defendant conceding to the case of the plaintiff. The First Appellate Court has accepted the appeal and set aside the judgment passed by the trial court on the ground that the admission of the defendant cannot be treated as unequivocal.

The relevant facts in brief, are required to be noticed in order to comprehend the issues involved in the present case.

The plaintiff Smt.Monica Rana filed a suit for specific performance on 21st, July 2008. It was claimed by the plaintiff that the defendant agreed to sell 16 kanals land vide the agreement to sell dated 24th

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March, 2008. In the alternative, the plaintiff also prayed for recovery of Rs.14,00,000/-. The defendant entered appearance through counsel and made a statement that he is conceding to the plaintiff's case. At that stage, the plaintiff disputed the amount of sale consideration. In fact, as per the agreement to sell, the land was agreed to be sold at the rate of Rs.7,00,000/- per acre whereas the plaintiff claimed the rate to be Rs.6,75,000/- per acre. Thereafter, the suit remained pending. On 24th April, 2012 defendant alongwith his counsel Sh. J.S.Dehriwal suffered the following statement:-

“I am defendant in the present suit which has been filed by the plaintiff pertaining to the specific performance of the agreement to sell dated 24.03.08 filed by plaintiff against me. In the head note of the plaint as well as in the relief clause the plaintiff has sought the specific performance by confirmation of possession of the agreement to sell dated 23.4.08, pertaining to the suit property on the payment of balance sale consideration of Rs.9,75,000/-. As an adjunct relief of permanent injunction had also been sought, collateral to the primary relief of specific performance. I submit in the court that I have no objection if the suit of the plaintiff is decreed in absolute terms and he is granted the relief which he seeks. I am ready to execute the sale deed in furtherance to agreement to sell dated 24.3.08 on the receipt of balance sale consideration of Rs.9,75,000/- as asserted in the plaint.

RO&AC
Harbans Lal
Sd/- J.S.Dehriwal”

Sd/-
CJJD/24.4.12

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On the basis of the aforesaid statement, judgment and decree was passed by the trial court on the same day i.e. 24th. April, 2012, while directing the plaintiff to pay the balance sale consideration of Rs.9,75,000/- within a period of two months. The plaintiff filed the first appeal against the judgment. However, he deposited the amount of Rs.9,75,000/- on 9th June, 2012. Subsequently, the defendant also filed the appeal. The plaintiff withdrew his appeal on 24th March, 2015 whereas, defendant's first appeal has been allowed by the impugned judgment passed on 30th May, 2019.

Heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

Learned counsel representing the appellant contends that the suit was decided as the defendant accepted the plaintiff's claim in the suit. Hence, no further appeal was maintainable. He relies upon Section 96(3) of the **Code** and the judgment passed by the Supreme Court in **Himani Alloys Ltd. vs. Tata Steel Ltd. 2011(15) SCC 273**.

Per contra, learned counsel representing the respondent has submitted that the plaintiff's appeal is liable to be dismissed as he concealed the material facts from the court. It is submitted that the plaintiff had filed an application for amendment of the plaint and he concealed the factum of filing the first appeal before the First Appellate Court. He further submitted that conduct of the plaintiff is sufficient to deny relief, which is discretionary. He submitted that originally the plaintiff claimed that there was agreement to sell with respect to 4 acres of land vide receipt dated 22nd April 2007, for a total sale consideration of Rs. 27,00,000/- i.e at the rate of Rs. 6,75,000/- per acre. While filing the suit, the plaintiff relied upon the

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agreement to sell dated 24th March, 2008, whereas it was clearly recited that the land is agreed to be sold at the rate of Rs.7,00,000/- per acre. At the first instance, when the defendant conceded to the plaintiff's case, the plaintiff did not allow the court to pass decree. Hence, the conduct of the plaintiff disentitles him for any relief. The plaintiff was not ready and willing to perform his part of the contract.

This Court has considered the submissions made by the learned counsel representing the parties.

Order XII Rule 6 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') enables the court to pass a decree once the parties are not in dispute. In this case, the defendant in the presence of his counsel suffered a statement, which has already been extracted above. The plaintiff accepted the aforesaid statement, which led to the passing of the judgment and decree. As per Section 96(3) CPC appeal was not maintainable against the judgment and said decree. The First Appellate Court has overlooked this fact. First Appellate Court was also wrong in recording that such admission cannot be treated as unequivocal. The plaintiff filed the suit on the basis of the agreement to sell dated 24th March 2008 wherein the rate of sale consideration was Rs. 7,00,000/- per acre (8 kanals). The defendant categorically admitted that fact and conceded that a decree in favour of the plaintiff can be passed in terms of the agreement to sell. Hence, the statement of defendant recorded by the court on 24th April, 2012 was categoric and clear-like crystal. In such circumstances, the trial court correctly passed the judgment and decree on the same day. Hence, the conclusion of the First Appellate Court is not correct.

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The next argument of the learned counsel is with regard to the concealment has no substance because filing of first appeal, by the plaintiff is a matter of fact, however, that is not relevant for the decision of the present case. Moreover, in the impugned judgment passed by the First Appellate Court, it is recorded that the plaintiff has withdrawn the appeal, which is part of the paper book. Similarly filing of an application for amendment after the case was remanded back to the trial court would also not debar the plaintiff to press this appeal.

The last argument of the learned counsel representing the respondent also lacks substance because once a decree has been passed, the plea of the defendant that plaintiff was not ready and willing pales into insignificance, particularly when the plaintiff deposited the entire sale consideration on June 9, 2012.

Learned counsel representing the respondent relies upon the judgment passed in **S.M.Asif vs. Virender Kumar Bajaj** 2015(4) SCC (Civil) 589. In the aforesaid judgment, the Supreme Court laid down that it is not necessary for the court to pass a decree in terms of concession given because Order XII Rule 6 of the CPC uses the word 'may' and not 'shall'. However, in this case, the decree was, in fact, passed. Similarly, learned counsel representing the respondent relies upon the Judgment passed in **Hari Steel and General Industries Ltd. And another vs. Daljit Singh and others** 2019 (20) SCC 425. The facts of the aforesaid case are different because the alleged admission was only based on statement of Advocate in the bail application. Hence, the court held that Order XII Rule 6 CPC would not be applicable.

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Keeping in view the aforesaid discussion, the impugned order passed by the judgment, being unsustainable is set aside and that of the trial court is restored. Appeal, stands allowed .

All the pending miscellaneous applications, if any, are also disposed of.

10.01.2025

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE