**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****121****RSA-3265-2023 (O&M)****Date of decision: 09.03.2026****Harjinder Singh and another****...Appellant(s)****Vs.****Bikramjit Singh and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Ranjit Saini, Advocate
for the appellants.

NIDHI GUPTA, J.**CM-11678-C-2023**

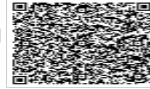
Prayer in this application filed under Section 151 CPC is for
condonation of delay of 65 days in refiling the accompanying appeal.

2. Heard.

3. For the reasons mentioned in the application which is duly
supported by an affidavit of the applicant/appellant No.2, the same is
allowed and delay of 65 days in refiling the appeal is condoned.

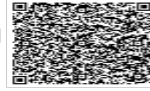
RSA-3265-2023 (O&M)

Defendants are in Second Appeal against the concurrent
judgments and decrees of the Id. District Courts; whereby suit filed by the
plaintiffs/respondents herein, seeking specific performance of Agreement
to Sell dated 16.11.2011, has been decreed for specific performance of
Agreement to Sell, by both the District Courts.



2. Brief facts of the case as pleaded in the plaint are that, that as per the Jamabandi for the year 2008-2009, defendants are owners of the suit property measuring 2K as described in the plaint. It was stated that defendants entered into Agreement to Sell dated 16.11.2011 for the land measuring 2K in favour of the plaintiff for a total sale consideration of Rs.10 lacs. Defendants had received Rs.7 lacs by way of earnest money. Date of execution of Sale Deed was decided on 16.12.2011. The suit land and other land of the defendants had been mortgaged by father of defendants Ajit Singh during his lifetime with Allahabad Bank, Ghoman. The said loan had not been cleared either by Ajit Singh or by defendants. It was agreed that defendants shall redeem the loan before 16.12.2011. However, the defendant had failed to do so and had accordingly requested for more time to redeem the mortgage. The plaintiffs acceded to the request of the defendants to extend the contract date to 25.12.2011 by making endorsement at the back of the Agreement dated 16.11.2011. Defendants also received another sum of Rs.1 lac in order to repay the loan but still failed to redeem the land. 25.12.2011 being holiday, plaintiffs went to the office of Sub Registrar on 26.12.2011 but defendants did not turn up. Thereafter, plaintiffs requested defendants to admit their claim, but the defendants refused to do so. Accordingly, present suit was filed on 14.05.2012.

3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Additional Civil Judge (Senior Division), Batala had

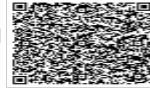


decreed the suit of the plaintiffs vide judgment and decree dated 20.02.2017, in the following terms: -

“10. In view of my aforementioned discussion and findings on above said issues, the suit of the plaintiffs is decreed with costs for possession by way of specific performance to the effect that defendants are directed to execute and register the sale deed in favour of the plaintiffs on payment of balance sale consideration regarding the suit property, in terms of the agreement dated 16.11.2011, within the period of two months, failing which the plaintiffs shall be at liberty to get the sale deed executed through the court.”

4. The Civil Appeal filed by the defendants was dismissed with costs by the learned District Judge, Gurdaspur vide judgment and decree dated 01.04.2023. Hence, present second appeal by the defendants.

5. It is *inter alia* submitted by learned counsel for the appellants that the learned Courts below were in error in decreeing the suit of the plaintiffs as they failed to appreciate that in the proceedings before the learned Trial Court, appellant No.1 had been proceeded against *ex parte*. It is submitted that the appellant No.2 had duly appeared and filed written statement however, thereafter his lawyer had failed to pursue the matter diligently resulting in passing of impugned judgments and decrees. It is contended that the appellants cannot be made to suffer for the fault on part of their lawyer. Learned counsel for the appellants reiterates that the plaintiffs were not cross-examined due to the negligence of the lawyers; and it is settled law that due to the negligence of the lawyer the parties



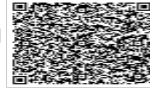
should not be allowed to suffer. It is submitted that for this reason alone, the matter ought to be remanded back to the learned District Courts.

6. Ld. Counsel further submits that the positive defence taken by the appellants in the written statement was that plaintiffs are Commission Agents and might have taken signatures of the defendants on blank papers and have fabricated the same into alleged Agreement to Sell dated 16.11.2011. The plaintiffs have not controverted these facts by leading any evidence to show that they are not Commission Agents. Therefore, the parties have fiduciary relations and there was every possibility that after taking signatures of the appellants, Agreement to Sell was fabricated.

7. It is submitted by learned counsel for the appellants that it is settled law that the plaintiffs' case has to stand on its own legs. Even if due to the negligence of their counsel the witnesses of the plaintiffs were not cross-examined, the same has no effect of the merit of the case as the onus is always on the plaintiffs to prove their case. Thus, the suit filed by the plaintiffs should have been dismissed by both the courts below but instead the same has been illegally decreed.

8. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of District Courts be set aside; and the suit of the plaintiffs/respondents be dismissed.

9. No other argument is raised by Id. counsel for the appellants. I have heard Id. counsel and perused the case file in detail. I find no merit in the submissions made on behalf of Id. counsel for the appellants.



10. It is undisputed fact on record that notice was served upon the defendants through munadi and affixation. As they still did not come present before the Court, therefore, they were proceeded against exparte. However subsequently defendant No.2 had appeared and moved application dated 11.03.2015 for setting aside the exparte proceedings; which was allowed only qua defendant No.2 on 15.05.2015. Thereafter written statement was filed on 22.07.2015; and issues were framed on 20.10.2015. From this fact itself, it is clear that the appellants have pursued the present case with utmost casualness.

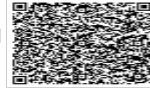
11. It is further to be noted that it has been categorically recorded by the learned Trial Court that although defendant No.2 had come present in Court on each and every date through counsel, but he had not even cross-examined the plaintiffs' witnesses despite grant of numerous opportunities in this regard. Resultantly cross-examination of the plaintiffs' witnesses was ordered to be declared nil. Further despite grant of numerous opportunities, defendants had not led any evidence.

12. From the facts noted above, the conduct of the defendants is writ at large on record of the case. In this situation, appellants cannot blame their counsel. In this situation, it would be apposite to refer to judgment of the Delhi High Court in **Moddus Media Pvt. Ltd. v. M/s. Scone Exhibition Pvt. Ltd., (Delhi): Law Finder Doc Id # 887148** holding that:



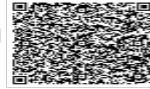
“11. The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. The litigant cannot be permitted to cast the entire blame on the Advocate. It appears that the blame is being attributed on the Advocate with a view to get the delay condoned and avoid the decree. After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory put forth by the appellant/applicant/defendant company, which cannot be accepted and ought not to have been accepted.”

13. Now proceeding to the merits of the case, a Perusal of the record would show that defence taken by defendant No.2 in the written statement was that although it was admitted that suit land was owned by defendants however the execution of the Agreement to Sell dated 16.11.2011 was denied. Receipt of earnest money of Rs.7 lacs was also denied. Rather, it was alleged that plaintiffs are running business of Commission Agents and defendants used to bring their produce to the shop of plaintiffs and plaintiffs used to get signatures of the defendants on blank paper/stamp papers as well as on the book maintained by the plaintiffs. It is contended that therefore, the question of getting the suit land redeemed from the Bank did not arise. Thus, defendants have admitted their signature on the Agreement to Sell.



14. Furthermore, the plaintiffs had duly proven the execution of the Agreement to Sell dated 16.11.2011 (Ex. P-1) and the endorsement on the back side of the said Agreement from the evidence of marginal witnesses PW2 Kulwant Singh; and PW3 Joginder Singh, Lambardar. Besides, the plaintiff himself has appeared as PW1. The case of the plaintiffs was corroborated from the evidence of PW4 Gopal Singh Lambardar. Plaintiffs have even examined PW5 Rajinder Kumar Deed Writer, who had proved the execution of the said Agreement to Sell Ex.P1; and also proved copy of Register Ex.P4 which was having endorsement qua the execution of the Agreement, and which bore the signatures of the defendants. Thus, the Agreement in questions to duly proved in accordance with law.

15. Furthermore, the above said evidence led by the plaintiffs' witnesses regarding due execution of the Agreement to Sell, remained unrebutted as, as noted above, the defendant had not only not cross-examined the plaintiffs witnesses, but had also failed to lead any evidence in their own behalf. Despite the fact that numerous opportunities were granted to them in this regard. In this situation, contention of the appellants that they were not properly represented by their counsel is uncalled for; especially in view of the specific observations made by learned Trial Court in para 7 of the judgment dated 20.02.2017 to the effect that after filing of written statement although defendant "*Has come present in the court on each and every date through counsel but has not shown his interest to pursue with this case and resultantly, he has not*



cross-examined any of the plaintiff's witnesses and all the cross-examination of the plaintiff witnesses were ordered to be declared as Nil after giving an opportunity to conduct cross-examination of the defendant. Not only this, inspite of availing numerous opportunities, the defendant has not led any evidence."

16. Besides the above, it is also to be seen that defendants had taken totally contradictory pleas before the District Courts. In the written statement, defendants have alleged the Agreement in question to be illegal, null and void, without consideration and result of fraud. However, contradictorily, defendants have also alleged that their signatures were obtained by the plaintiffs on some blank papers/stamp paper et cetera. Therefore, in actual fact, defendants have admitted their signatures on the Agreement to Sell. It was in this situation, that the District Courts have decreed the suit of the plaintiffs for specific performance.

17. Further, the readiness and willingness of the plaintiff to perform the contract was proved from the fact that out of total sale consideration of Rs.10 lacs, Rs.8 lacs already stood paid to the defendants by the plaintiffs. It was also proved on record that plaintiffs remained present in the office of Sub Registrar on target date of 26.12.2011 alongwith balance sale consideration of Rs.2 lacs and other expenses.

18. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings.

19. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees of the learned District Courts. The present Regular Second Appeal is accordingly **dismissed**.
20. Pending applications, if any, stand disposed of.

09.03.2026

Divyanshi

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No

(NIDHI GUPTA)
JUDGE