



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

**CM-16571 & 16572-C-2025 in
RSA-1791-2024 (O&M)
Date of Decision : 24.02.2026**

Yunus

....Applicant/Appellant

Versus

Aash Mohd. and others

.....Respondents

CORAM: HON'BLE MR JUSTICE PANKAJ JAIN

Present: Mr. Naresh Chhokar, Advocate
 for the applicant/appellant.

 Mr. Rajinder Goel, Advocate
 for the respondents.

PANKAJ JAIN, J. (ORAL)

CM-16571-C-2025

This is an application filed under Section 151 CPC seeking condonation of delay of 370 days in filing the application under Order XLI Rule 19 CPC for restoration of the main 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.

Accordingly, the application is allowed. The delay of 370 days in filing the accompanying application under Order XLI Rule 19 CPC, is hereby condoned.



CM-16572-C-2025

This is an application filed under Order XLI Rule 19 read with Section 151 CPC seeking restoration of the main appeal.

For the reasons recorded in the application, the same is allowed.

Main appeal is restored to its original number and accordingly taken on Board today itself for hearing.

CM-7082-C-2024

This is an application filed under Section 149 CPC seeking permission for making up the deficiency of Court Fee.

In view of the fact that the applicant/appellant has made deficiency in the Court Fee good, the application has been rendered infructuous. The delay in furnishing Court Fee is ordered to be condoned.

Application stands disposed off.

Main Appeal

Plaintiff is in appeal aggrieved of the concurrent judgment and decree passed by both the Courts below.

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 respondents as 'defendants'.

3. Plaintiff filed suit seeking decree of specific performance of agreement to sell, dated 03.12.2005. As per the plaintiff, Aash Mohd. Son of Shadi was the owner of suit land. He agreed to sell the same in favour of the

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plaintiff for a total sale consideration of Rs.5,80,000/-. As per plaintiff, the total sale consideration was paid to defendant No.1 on the date of agreement to sell i.e., 03.12.2005 and possession of the property was handed-over by defendant No.1 to plaintiff. Plaintiff further claims that defendant No.1 agreed to execute sale deed in favour of plaintiff as per his desire. Plaintiff claims to have served legal notice upon defendant No.1 on 29.01.2007 calling upon him to execute sale deed. Further plaintiff claims to have appeared before the office of Sub Registrar, Nuh, on 07.02.2007 and claims that he continuously remained ready and willing to perform his part. However, defendant No.1 refused to execute the sale deed. Plaintiff was later on amended incorporating challenge to the sale deed, dated 20.06.2006 executed by defendant No.1 in favour of defendant No.3. Plaintiff thus by way of instant suit, prays for setting aside of sale deed dated 20.06.2006 executed by defendant No.1 in favour of defendant No.3 and prays for decree of specific performance of agreement to sell, dated 03.12.2005.

4. Defendant No.2 admitted the claim of the plaintiff.
5. Defendant No.1 opted not to file written statement.
6. Defendant No.3 in her written statement claimed to be a *bona fide* purchaser for a valuable consideration of Rs.7,39,000/- and claimed that the suit was an act of collusion between plaintiff and defendants No.1 & 2 to defeat the rights of defendant No.3. As per defendant No.3, defendant No.1 executed agreement to sell, dated 21.02.2005 in her favour agreeing to sell suit property for a total sale consideration of Rs.7,39,000/-. Rs.1,39,000/-

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was paid on the date of execution of agreement to sell. Balance sale consideration amounting to Rs.6,00,000/- was paid on the date of execution of sale deed i.e., 20.06.2006. As per defendant No.3, plaintiff in collusion with defendants No.1 & 2 has created an ante-dated document to defeat her rights. Defendant No.3 also claimed to be in possession of the suit property by virtue of mutation bearing No.4555.

7. Suit filed by the plaintiff was put to trial by the Court of the First Instance, framing following issues:

1. Whether the plaintiff is entitled for specific performance of contract? OPP
2. Whether the suit is not maintainable? OPD.
3. Whether the plaintiff has no cause of action to file the present suit? OPD
4. Whether the plaintiff has concealed the true and material facts from the Court? OPD
5. Relief.

8. Defendant No.1 Aash Mohd, owner of the suit property appeared as PW2. He admitted execution of agreement to sell in favour of the plaintiff and denied execution of sale deed in favour of defendant No.3. He claimed the sale deed, dated 20.06.2006 to be bogus and a forged document. He further claimed that the sale deed was executed without making any payment to him and without giving any notice.

9. The Court of the First Instance found that there was an earlier *lis* in form of Civil Suit No.86 of 2007 preferred by present plaintiff Yunus

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against defendant No.1 and defendant No.3. It was a suit for specific performance of an agreement to sell dated 03.12.2005 alleged to have been executed by defendant No.1 in favour of plaintiff. The said suit was dismissed. In that suit also, plaintiff challenged sale deed No.1401, dated 20.06.2006 executed by defendant No.1 in favour of defendant No.3. The suit was dismissed on 28.02.2013. Against dismissal of the suit, Yunus (plaintiff) filed appeal. Another appeal was also preferred by defendant No.1 claiming that the agreement to sell in favour of defendant No.3 Maksoodan was bogus. The appeal preferred by defendant No.1 was dismissed.

9.1. Trial Court further found that in view of the specific plea raised by defendant No.3 that the agreement to sell propounded by the plaintiff was ante-dated, plaintiff was required to prove the same and to dispel the suspicion. He failed to examine Om Parkash Saini, the scribe. Even stamp-vendor was not examined. The Court further found that even though the property is situated in Tehsil Nuh, the agreement was executed at Palwal. The Court of the First Instance accordingly, found that the plaintiff having failed to dispel the suspicious circumstances surrounding the agreement to sell, he is not entitled for decree of specific performance.

10. The findings stand affirmed by the Lower Appellate Court.

11. Ld. Counsel appearing for the appellant has assailed the findings recorded by the Courts below. He submits that the agreement to sell propounded by the plaintiff, stands proved by examining attesting

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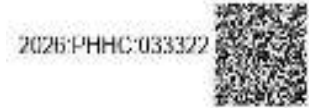


witnesses. Defendant No.1, the executant of the agreement to sell has fully supported the case of the plaintiff, yet the Courts below have disbelieved the agreement to sell propounded by the plaintiff.

12. Per contra, counsel for the respondents has supported the judgment and decree passed by the Courts below. Mr. Goyal submits that the collusion between the plaintiff and defendants No.1 & 2 is evident on record. Defendant No.1 could not gather courage to file written statement, but he appeared in the witness-box admitting the claim of the plaintiff. He admitted that it is plaintiff, who always remained ready and willing to perform his part. Agreement to sell propounded by the plaintiff has been rightly disbelieved by the Courts below. It is highly unbelievable that the plaintiff paid the entire sale consideration to defendant No.1 on 03.12.2005, yet did not get the sale deed executed. He waited till the month of January, 2007 to call upon the plaintiff to come present before the Sub Registrar to execute the sale deed before filing present suit on 14.02.2007 when the sale deed had already been executed by defendant No.1 in favour of defendant No.3.

13. I have heard counsel for the parties and have carefully gone through records of the case.

14. The present *lis* is nothing short of an attempt by an unscrupulous litigant trying to hoodwink the process of law. Earlier also plaintiff filed similar suit propounding agreement to sell executed by defendant No.1 in his favour to defeat the rights of defendant No.3. Having



lost the said suit, he again filed present suit creating an ante-dated document in his favour to defeat sale deed executed by defendant No.1 in favour of defendant No.3. Act and conduct of defendant No.1 is even more deplorable. He despite having executed sale deed in favour of defendant No.3, claims the same to be a fake document. He has opted to admit the claim of the plaintiff only to defeat the right of defendant No.3. The facts of the present case demonstrate that plaintiff and defendants No.1 & 2 are acting in cahoots with each other. This is not only an act of fraud being committed upon defendant No.3, but also upon the process of law.

15. Resultantly, finding no merit in the present appeal, the same is ordered to be dismissed.
16. It is only on the request made by counsel for the appellant that this Court is restraining from imposing heavy costs.
17. Pending application, if any, shall also stand disposed off.

February 24, 2026

Dpr

Whether speaking/reasoned

Whether reportable

(Pankaj Jain)

Judge

:

:

Yes/No

Yes/No