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

**CM No.721 & 722-C of 2025 in/and
RSA No.5298 of 2019
Date of Decision : 24.03.2025**

Pratap Singh and another

.....Appellant

Versus

Devender Saini

.....Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Balkar Singh, Advocate
for the applicants/appellants.

Dr. Pankaj Nanhera, Advocate
for the non-applicant/respondent.

PANKAJ JAIN, J.(Oral)

CM-721-C-2025

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 42 days in filing the application under Order XLI Rule 19 for restoration of the main appeal.

For the reasons recorded in the application, this Court is satisfied that the applicants/appellants have made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 42 days in filing the application for restoration of the main appeal is hereby condoned.



CM-722-C-2025

Prayer in this application filed under Order XLI Rule 19 read with Section 151 CPC is for restoration of the main appeal, which was dismissed for want of prosecution on 06.11.2024.

For the reasons recorded in the application, the same is allowed. Main appeal is restored to its original number and taken on Board today itself for hearing.

RSA No.5298 of 2019

Defendants are in second appeal aggrieved of the judgments and decrees passed by the Courts below. For convenience, parties hereinafter are referred to by their original position in the suit i.e. appellants as defendants and respondent as plaintiff.

2. Plaintiff filed suit seeking decree of specific performance *qua* agreement to sell dated 09.12.2013. Further prayer was made for grant of permanent prohibitory injunction restraining the defendants from interfering in his peaceful possession over the suit property. In the alternate, plaintiff sought decree for recovery of Rs.5,00,000/- along with future interest @ 24% per annum.

3. Plaintiff pleaded that defendants are owners of the suit property as mentioned in the plaint. They entered into agreement dated 09.12.2013 whereby they agreed to sell suit property to the plaintiff for a valuable sale consideration of Rs.5,00,000/-. Agreement to sell was a registered



document. Actual physical possession of the property was handed-over to the plaintiff by the defendants. Plaintiff paid earnest money of Rs.4,50,000/- to the defendants in the presence of witnesses before the Sub Registrar. Separate receipt regarding the same was executed by the defendants. The parties agreed to get the sale deed executed on or before 09.06.2014. On 09.06.2014, plaintiff reached office of Sub Registrar, Faridabad at 10.00 AM along with balance sale consideration and expenses of stamp papers and registration charges. Plaintiff waited for defendants till 5.00 PM. However, defendants failed to turn up. Plaintiff served defendants with the legal notice dated 24.11.2024 calling upon them to execute and get the sale deed registered on receipt of balance sale consideration on 10.12.2014. The notice remained un-responded. On 10.12.2014, plaintiff reached O/o Sub Registrar, Faridabad at 10.00 AM and waited till 5.00 PM. Plaintiff got his presence marked before the O/o Sub Registrar by way of affidavit dated 10.12.2014. Plaintiff further claimed that despite having requested defendants several times to execute the sale deed, defendants are avoiding the claim of the plaintiff.

4. Suit was contested by the defendants. Execution of agreement to sell dated 09.12.2013 was denied. Defendants claimed that they borrowed a sum of Rs.4,50,000/- from the plaintiff in the month of December, 2013. They agreed to pay back the same in equal monthly installments of Rs.25,000/- per month. On the pretext of loan agreement, defendants were

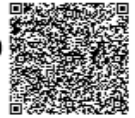


called in the O/o Sub Registrar, Faridabad and were made to thumb-mark documents. Defendants claimed fraud and cheating by the plaintiff. They further claimed that defendants have paid 8 EMIs of Rs.25,000/- each to the plaintiff. However, the plaintiff did not issue any receipt. It was thus claimed that agreement to sell dated 09.12.2013 is illegal, sham and bogus document.

5. On the basis of the pleadings of the parties, Court of First Instance framed the following issues:

- “1) Whether the plaintiff is entitled to decree of specific performance of agreement to sell dated 9.12.2013 are prayed for? OPP
- 2) Whether the plaintiff is entitled for injunction, whereby defendants be restrained from interfering into the peaceful possession of the plaintiff over the suit property, dispossessing the plaintiff from the suit property and from alienating the suit property to any other person in any manner? OPP
- 3) Whether the plaintiff is entitled to recover Rs.5,00,000/- in alternative, if plaintiff failed to prove the plea of specific performance of agreement to sell? OPP
- 4) Whether the suit of the plaintiffs is not maintainable in the present form? OPD
- 5) Whether the plaintiff has no locus-standi and cause of action to file the present suit? OPD
- 6) Whether the plaintiff has not come to the court with clean hands and suppressed the true and material facts from the court? OPD
- 7) Relief.”

6. Plaintiff appeared as PW-1. Agreement to sell was tendered in

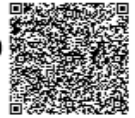


evidence as Exhibit P-2. One of the attesting witnesses Nanak Chand was examined as PW-4. Scribe of the agreement M.K. Gaur, Advocate was examined as PW-3.

7. Court of the First Instance held that the agreement to sell was a loan transaction between the parties. It held that despite the fact that plaintiff paid 90% of the sale consideration, it is unbelievable that date of execution of sale deed would be postponed for a period of six months. Holding that the agreement to sell was a loan transaction, Court of the First Instance granted decree to the plaintiff *qua* alternate relief and dismissed his suit for specific performance of agreement to sell, dated 09.12.2013.

8. In appeal preferred by the plaintiff, Lower Appellate Court held that the execution of agreement to sell stood proved by the plaintiff by examining scribe and attesting witnesses thereof. The agreement to sell is a registered document. No evidence has been adduced by the defendants to prove the defence of the same being loan transaction. Though defendants specifically claimed to have paid 8 installments out of 20 installments, but no evidence could be brought on record to prove the same. Lower Appellate Court held that there being no reason to hold the agreement to sell as a loan transaction, granted plaintiff decree of specific performance and allowed the appeal.

9. Ld. Counsel for the appellants while assailing the findings recorded by the Lower Appellate Court submits that the Appellate Court



failed to appreciate that the transaction between the parties was a loan transaction and the agreement to sell was entered into only as a security for such loan. Relief of specific performance being discretionary relief, Lower Appellate Court ought not have interfered with the exercise of discretion by the Court of First Instance.

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

11. Execution of document, Exhibit P-2, stands fully proved. It is a registered document executed as agreement to sell. Defendants claim the same to be a security document and the transaction between the parties to be a loan transaction. However, no evidence has been adduced by the plaintiff to prove that the transaction was a loan transaction. Though, defendants claim to have paid back 8 EMIs of Rs.25,000/- each however, there is no evidence brought on record by the defendants to prove such payment. Legal notice, dated 24.11.2014 (Exhibit P-4) has been proved on record. Exhibit P-5 to Exhibit P-6 are the postal receipts. Likewise, legal notice dated 17.03.2015 has been brought on record as Exhibit P-8. Exhibit P-9 to Exhibit P-11 are the postal receipts. The legal notices remained unresponded. Had it been a loan transaction, defendants ought not have remained inert and would have responded to such legal notices issued by the plaintiff through his counsel. In these circumstances, Lower Appellate Court rightly held that there was no reason for the Court of the First Instance



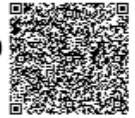
to decline exercising discretion in favour of the plaintiff and has rightly reversed findings recorded by the Court of the First Instance *qua* issues No.1, 2 and 3.

12. Pure findings of fact have been recorded by the Lower Appellate Court. There being no question of law involved in the present appeal, this Court finds no reason to interfere in the second appeal.

13. Scope of second appeal under Section 41 of the Punjab Courts Act, 1918 came up for consideration before Apex Court in **Randhir Kaur Versus Prithvi Pal Singh & Ors. 2019(17) SCC 71** wherein it was held as under :-

“14. The Division Bench of Punjab and Haryana High Court in a judgment reported in *Sadhu v. Mst. Kishni, 1980 AIR (Punjab) 85* set aside the judgment of the learned Single Bench in an intra court appeal in terms of the provisions of law as it existed prior to 1976, and held as under:

"12. The scope of second appeal as envisaged by section 100 of the Civil Procedure Code and section 41 of the Punjab Courts Act has been a matter of judicial scrutiny a number of times by this court as well as by the final court, that is, the Supreme Court of India. The learned counsel for the appellant has actually made a reference in this regard to **Detty Paitabhiramaswami v. S. Hanymayya [AIR 1959 Supreme Court 57.]**, **Madamanchi Ramappa v. Muthaluru Bojjappa [AIR 1963 Supreme Court 1633.]**, **Bithal Dass Khanna v. Hafiz Abdul Hai [1969 S.C. Notes 481.]** and **Afsar Shaikh v. Soleman Bibi [(1976) 2 SCC 142: AIR 1976 Supreme Court 163.]**. These pronouncements; in a nutshell, lay down that there is no



jurisdiction to entertain a second appeal on the ground of a erroneous finding of fact, however gross or inexcusable the error may seem to be. Nor does the fact that the finding of the first appellate Court is upon some documentary evidence make it any the less a finding of fact. A Judge of the High Court has, therefore, no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate court based upon an appreciation of the relevant evidence. Their Lordships have further observed that the only ground on which such an appeal can be said to be competent is where there is an error in law or procedure and not merely on an error on a question of fact.

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14. In view of the above discussion, we are clearly of the view that the learned Single Judge exceeded his jurisdiction in setting aside the findings of the fact on issue No. 2. The provisions of section 100 being clear and unambiguous, there was no scope for interference with those findings. We thus allow the appeal and set aside the judgment of the learned Single Judge and affirm the judgment and decree passed by the District Judge. The parties are, however left to bear their own costs.

15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact.”



14. The said dictum was further elaborately echoed by three Judges Bench in **Satyender and Ors. Versus Saroj and Ors. 2022 AIR (Supreme Court) 4732** as under :-

“XXXX XXXX XXXX

17. Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a "question of law". In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court.....”

15. Resultantly, finding no merit in the present appeal, the same is ordered to be dismissed.

16. Pending application, if any shall also stands disposed off.

March 24, 2024
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No