



IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH

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**CM-8406-07-C-2018 in/and
RSA-5629-2014 (O&M)
Date of decision: 18.03.2025**

Balwinder Singh

...Appellant(s)

Vs.

Pritpal Singh

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr. Gaurav Mohunta, Advocate and
Mr. Satyendra Kumar, Advocate
for the applicant/appellant (Legal Aid Counsel).

NIDHI GUPTA, J.

CM-8406-C-2018

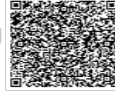
Prayer in this application filed under Section 5 of the Limitation Act read with Section 151 CPC is for condonation of delay of 272 days in filing the accompanying restoration application.

Heard.

For the reasons mentioned in the application which is supported by an affidavit of the applicant, the same is allowed and delay of 272 days in filing the accompanying restoration application is condoned.

CM-8407-C-2018

Prayer in the present application filed under Order 41 Rule 19 read with Section 151 CPC is for restoration of the main case to its original number by way of recalling of order dated 25.07.2017.



2. Perusal of the order sheets reveals that though the present appeal is of the year 2014, notice has not yet been issued in the same, as the matter has been repeatedly adjourned either due to non-appearance, or due to request for adjournment made on behalf of the appellant. As such, vide order dated 25.07.2017, the matter was dismissed for non-prosecution. Thereafter, the present application for restoration was filed on 22.05.2018 in which notice was issued on 01.06.2018. However, process fee was not filed in the application for restoration till 22.03.2024. Thereafter upon filing of process fee, notice was issued to non-applicant/sole respondent. Office report has been received that the sole respondent stands duly served. However, none appeared on his behalf.

3. In view of the above stated facts, application is allowed, and the main case is restored to its original number by recalling order dated 25.07.2017. The main case is taken up on Board today itself.

RSA-5629-2014 (O&M)

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below whereby the suit filed by the plaintiff for possession by way of specific performance of contract dated 08.01.2010 in respect of the suit property, has been decreed by giving alternative relief of money decree for refund of earnest money of Rs.1,50,000/- by the learned trial Court vide judgment and decree dated 22.04.2013; do affirmed by the lower Appellate Court vide common



judgment and decree dated 19.05.2014 thereby dismissing the appeals filed by the plaintiff and the defendant. Hence, the present second appeal.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and the respondent is the 'defendant'.

3. Brief facts of the case as stated in the plaint are that the Defendant is the owner of shop in question measuring 3 3/4 sarsai having Dimensions-8' 8" x 12' 3", and situated in Village Bir Sarkar, Tehsil and District Sri Muktsar Sahib. The defendant had entered into an Agreement to Sell dated 08.01.2010 to sell the shop in question to the plaintiff for total sale consideration of Rs.3 lakh. At the time of execution of Agreement, the Defendant received a sum of Rs.1,50,000/-in presence of witness and scribed the agreement. The date for execution of sale deed was fixed as 7.6.2010. On 7.6.2010, the Plaintiff came to the office of Sub Registrar along with remaining sale consideration, but the Defendant did not come present to execute sale deed. Hence, the suit. In the alternative recovery of Rs.3 lakh i.e. Rs.1,50,000 (already paid on date 8.01.2010 as earnest money) and Rs.1,50,000 (damages) was sought; and decree for permanent injunction restraining Defendant from alienating suit property was also prayed for.

4. Learned counsel for the appellant/plaintiff *inter alia* submits that the suit of the plaintiff has been wrongly decreed for alternative relief



of money decree, as the plaintiff had led voluminous cogent evidence and had tendered his affidavit (Ex.PW5/A), as per which he had proven his case. The appellant had duly proved the Agreement to Sell (Ex.P5) by his own evidence. After seeing the Agreement (Ex.P5), the plaintiff identified his signatures on Ex.P5 at point mark E; and affidavit of appearance before the Sub Registrar dated 7.6.2010 (Ex.P6), which was duly attested by the Executive Magistrate. The Agreement in question stood proved even as per the evidence of Gurdev Singh PW3, marginal witness to the Agreement. PW3, while appearing in the witness box fully supported the case of the plaintiff and also identified the signatures of defendant/Pritpal Singh at point Mark B. PW3 deposed that he and plaintiff/Balwinder Singh belong to the same village and Balwinder Singh is working as a Postman. PW3 further deposed that on the date of execution of the Agreement, he came to the Court in connection with some bail matter. The Agreement (Ex.P5) was drafted by Vishwa Mittar and thereafter, Pritpal Singh/defendant got it typed. Vishwa Mittar also obtained his signatures in the Register. PW3 even withstood the test of lengthy cross-examination.

5. It is submitted that even the plaintiff Balwinder Singh had categorically deposed regarding execution of the Agreement in question. However, during cross-examination, appellant deposed he did not obtain permission from the department for purchasing the shop; that he is having salary account; and earnest money of Rs.1,50,000/- was paid to Pritpal Singh which he had borrowed from Ramji Dass son of Mehnga



Dass. He was also having Rs.50,000/-at home. He admitted registration of FIR under Section 420 IPC against him on behalf of Pritpal Singh. He also admitted that one case of outraging the modesty of mother of Pritpal Singh was registered against him. The plaintiff further stated that Stamp paper was purchased by Pritpal Singh. He does not know from whom the defendant got typed the Agreement. Plaintiff also examined PW4 Vishwa Mittar Sharma, who deposed that after scribing, the Agreement (Ex.P5) was read over and explained to Pritpal Singh in the presence of witnesses, who after admitting the same to be correct and on receipt of Rs.1,50,000/- earnest money, had signed it. Ld. Counsel submits that from the close scrutiny of the evidence adduced by plaintiff-appellant, it is clear that the Agreement was executed by the defendant, and he had received earnest money of Rs.1,50,000/-.

6. It is further submitted that as per the Agreement (Ex.P5), Sale Deed was to be executed on or before 07.06.2010. On the said date, the plaintiff had duly got marked his present in the office of Sub Registrar by way of affidavit (Ex.P6). As such, statement of defendant that the plaintiff did not have necessary funds, or that the signatures of the defendant were obtained on the pretext of expansion of shop or on account of employment, were clearly not proven being an after thought. Even the original site plan (Ex.P1) was proved by the appellant. It is accordingly prayed that the present appeal be allowed; and the judgments and decrees of the learned Courts below be set aside.

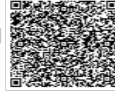


7. No other argument is raised on behalf of the appellant/plaintiff.

8. I have heard learned counsel for the appellant/plaintiff and perused the case file in great detail.

9. The short grievance of the appellant/plaintiff is that though the Agreement to Sell dated 08.01.2010 (Ex.P5) stood proven in accordance with law, yet the suit of the plaintiff was decreed for alternative relief of money decree. However, perusal of the record of the case reveals that the said grievance of the appellant is misconceived. It is firstly not disputed that the Agreement in question stands proven in accordance with law. However, the Plaintiff/PW5 while facing cross-examination, admitted that he had not obtained any permission from his department for purchasing Suit property. The appellant further admitted that amount of Rs. 3 lakh is not shown in his account.

10. More importantly, it was admitted by the plaintiff in his cross-examination that the suit shop was in joint ownership of the defendant along with his brother as they have jointly purchased it. Revenue record also indicates the same. Thus, when property is joint, Pritpal/defendant alone is not competent to enter into Agreement to Sell. Even further, the property being joint between the defendant and his brother and since the Agreement is only executed by the defendant, therefore specific performance will be hurdle for its execution.



11. It has also come on record that in the police enquiry plaintiff had made a statement (Ex.D4) in which he has claimed refund of money. In inquiry, the plaintiff did not claim that he was seeking specific performance of the Agreement; on the contrary, he insisted that he wanted his money back. The plaintiff further stated that the matter was compromised between him and Pritpal Singh Defendant who had agreed to return the amount of earnest money by June 2011. From the statement (Ex.D4), it is apparent that plaintiff is satisfied if earnest money is returned to him. Therefore, since the plaintiff had made a statement before the police during enquiry (Ex.D4) that he is ready to take the earnest money back from the defendant. Therefore, the alternative relief for refund of earnest money Rs.1,50,000/- along with interest @ 9% per annum from 8.01.2010 to 7.2.2011 and future interest @ 6%. per annum, was granted by the Id. Courts below which is perfectly justified and legal in the above noted facts and circumstances of the case.

12. In this regard, reference may also be made to the findings as recorded in para 23 of the judgment and decree dated 19.05.2014 passed by the learned lower appellate Court which reads as under: -

“Now, question arises whether the learned lower court has erroneously declined relief to the plaintiff for specific performance, the answer comes in the negative. Firstly, it has come in the statements of the parties that the shop in question is joint between Pritpal Singh and his brother. This fact is admitted by Balwinder Singh in cross examination that the shop in question is owned by Pritpal Singh and his brother as they



have jointly purchased it. Revenue record also speaks same. So, when the property is joint the defendant Pritpal Singh alone is not competent to enter into an agreement to sell. Secondly, the matter was taken up for amicable settlement between the parties and statement of Balwinder Singh is Ex.D4 in which he stated that the matter was compromised between him and Pritpal Singh, who agreed to return the amount of earnest money upto June, 2011 but, he did not return the same nor executed the sale deed. He made efforts for amicable settlement but, the defendant did to come to terms rather, he is threatening him. So, from the statement Ex. D4, it is apparent that plaintiff' Balwinder Singh is satisfied if the earnest money is returned to him."

13. In view of the above, no ground to interfere in the impugned judgments and decrees is made out.

14. The present regular second appeal is **dismissed**.

15. Pending applications, if any, stand disposed of.

18.03.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No