
(2013) 08 P&H CK 0715

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2321 of 2013 (O and M)

Hakikat Singh and
Another

APPELLANT

Vs

Malkiat Singh

RESPONDENT

Date of Decision: Aug. 1, 2013

Acts Referred:

Specific Relief Act, 1963 " Section 20

Citation: (2013) 08 P&H CK 0715

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Advocate: D.K. Bhatti, for the Appellant;

Final Decision: Dismissed

Judgement

Rakesh Kumar Garg, J.

CM No. 6335-C of 2013

1. For the reasons mentioned in the application, delay of 19 days in filing this appeal is condoned.

CM stands disposed of.

CM Nos. 6337-38-C of 2013

2. Counsel for the applicant-appellants states that the documents sought to be placed on record of this appeal are part of the trial Court record.

3. CMs are allowed subject to all just exceptions.

RSA No. 2321 of 2013 (O & M)

4. This is plaintiffs' second appeal challenging the judgments and decrees of the Courts below, whereby, in a suit for specific performance of

agreement to sell dated 5.8.2001, appellants have been denied the specific performance and the suit has been decreed for alternative relief of

refund of Rs. 1,00,000/- which was paid as earnest money to the defendant-respondent.

5. Counsel for the appellants has vehemently argued that once execution of the agreement in question stood proved then they should have not been

denied the relief of specific performance of the agreement to sell. Counsel for the appellants has relied upon the judgment of this Court reported as

Abhey Singh and Others Vs. Ramesh Kumar and Others, wherein it has been held that normal rule is to allow specific performance and it is rarely

that the said relief may be denied. To support his argument, counsel for the appellants has further submitted that the case in hand is not a case

where rare circumstances existed for denying the said relief to him. According to the learned counsel for the appellants, the following substantial

question of law arises in this appeal:

Whether the Courts below while refusing to grant the relief of specific performance of agreement to sell in question have exercised its discretionary

powers u/s 20 of the Specific Relief Act, arbitrarily and illegally?

6. However, it may be seen that the last date for execution of the sale deed was fixed as 31.8.2002 and after the said date was over, the plaintiff-

appellants did nothing to show their readiness and willingness for performance of their part of the agreement and kept quiet for a long period.

Though it is their case that before filing of the suit, which was filed within limitation of 3 years, the appellants had issued a legal notice dated

15.6.2004 (Ex. P-3) asking the defendant-respondent to execute the sale deed in pursuance of the agreement to sell in question, however, a

finding has been recorded by the Courts below that there is no evidence on record to prove the factum of issuance of said notice to the defendant-

respondent. Even before this Court, counsel for the appellants could not point out any evidence to prove the fact that said notice was ever sent to

the defendant-respondent. Thus, in view of the aforesaid fact, the findings of the Courts below on issue No. 3 cannot be found faulted with.

7. At this stage, it may further be noticed that u/s 20 of the Specific Relief Act, grant of specific performance is a discretionary relief and the Court

is not bound to grant such relief merely because it is lawful to do so. The only requirement of law, of course, is that the said discretion should not

be arbitrary but sound and reasonable and guided by judicial principles. In the facts and circumstances of the case, counsel for the appellants could

not argue that the discretion used by the Courts below while not granting relief of specific performance of the agreement to sell in question is

arbitrary in any manner.

8. No other point has been argued.

9. Thus, no substantial question of law, as raised in this appeal, arises. Dismissed.