

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**R.S.A. No. 12 of 2011 (O&M)**

**Date of decision : August 24, 2015**

Manjit Kaur

... Appellant

vs.

Bakhtawar Singh

... Respondent

**CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. Sapan Dhir, Advocate  
for the appellant.

Mr. Sarju Puri, Advocate  
for the respondent.

**Surinder Gupta, J**

Bakhtawar Singh respondent-plaintiff filed Civil Suit No. 221 of 2002 seeking relief of specific performance of agreement dated 18.7.2001 vide which appellant-defendant had agreed to sell land measuring 20 kanals 0 marla for sale consideration of ₹3,75,000/-.

As per plaintiff's case, defendant vide agreement dated 18.1.2001 agreed to sell his 20 kanal 0 marla land @ ₹1,50,000/- per acre and received ₹1,00,000/- as an earnest money. The date for execution and registration of the sale deed was fixed as 18.7.2002 on which date both the parties reached the office of Sub-Registrar, Nawan Sahar and were apprised about pen down strike by officials in the office of Sub-Registrar, as a result of which, the sale deed could not be executed. With mutual consent, the date for execution of sale deed was extended to 18.10.2002 and writing to this effect was also made on the back of the original agreement in the presence of witnesses. However, when the writing was being scribed, the defendant suddenly walked off from the seat of scribe. The plaintiff waited till 5.00 p.m. and ultimately sworn an affidavit. The plaintiff alleged that he was always ready and willing to perform his part of contract but the defendant had resiled from the same.

In written statement, defendant contested the claim of plaintiff with the plea that he had failed to perform his part of contract, to make

payment of balance sale consideration and to get sale deed executed in terms of the agreement. He had failed to turn up on the stipulated date to get the sale deed executed. The defendant had agreed to sell the land to purchase other land and very purpose of agreement to sell executed by her got defeated by the act and conduct of plaintiff who was never ready and willing to perform his part of contract.

Pleadings of the parties led to the framing of issues as follows :-

1. *Whether plaintiff is entitled for possession by way of specific performance of contract dated 18.7.2001?OPP*
2. *Whether plaintiff is still ready and willing to perform his part of contract?OPP*
3. *Whether in the alternative, plaintiff is entitled for recovery of Rs.2 lacs?OPP*
4. *Whether plaintiff is barred by his act and conduct to file this suit?OPP*
5. *Whether suit is not in proper form?OPP*
6. *Relief.*

The suit was dismissed by learned Civil Judge (Sr. Division), Nawan Sahar, *inter-alia*, on the grounds as follows :-

- i) *The alleged writing to extend the date for execution of agreement from 18.7.2002 to 18.10.2002 was not proved.*
- ii) *In the affidavit of plaintiff dated 18.7.2002, this fact was not mentioned that he was ready with balance sale consideration.*
- iii) *The time was essence of the contract as defendant wanted to purchase other property with the sale consideration and this plea was not refuted by the plaintiff.*
- iv) *The affidavit of plaintiff dated 18.7.2002 was not attested by Sub-Registrar.*
- v) *Due to pen down strike in the office of Sub-Registrar dated 18.07.2002, the defendant appeared for execution*

*of the sale deed on 19.7.2002 and also got her affidavit attested which shows that she was always ready and willing to perform her part of contract. She had also served notice dated 16.8.2002 (after filing of the suit) to plaintiff informing him about the forfeiture of the earnest money and that notice was not replied*

On the basis of above observations, learned Civil Judge (Sr. Division), Nawan Sahar recorded finding that it was the plaintiff who could not perform the agreement to sell and also did not abide by the terms of the agreement Ex.P1.

In appeal filed by the plaintiff, the findings of the lower court were set aside by the learned District Judge, Saheed Bhagat Singh Nagar vide judgment dated 11.12.2010 and the suit of the plaintiff was ordered to be decreed.

While assailing the observations made by the lower court, the first appellate court observed that it was wrongly observed that the plaintiff was not ready and willing to perform his part of contract, rather breach was on the part of the defendant.

I have heard learned counsel for parties and have perused the paper book and the lower court record with their assistance.

Learned counsel for appellant has argued that the execution of agreement dated 18.7.2001 is not disputed. It is also not disputed that date for execution and registration of sale deed was fixed as 18.7.2002. On 18.7.2002, there was pen down strike in the office of Sub Registrar, Nawan Sahar as a result of which the defendant-appellant reached the office of the Sub Registrar on the next date i.e. 19.7.2002 but the plaintiff did not turn up on that date. The defendant also got attested his affidavit from the Sub Registrar in token of his presence which shows that the plaintiff had committed breach of terms of agreement. A notice dated 16.8.2002 (Ex.D2) was also sent to the plaintiff informing him about the forfeiture of earnest money which was never replied. The plaintiff very cleverly filed the suit on 30.7.2002 without serving any notice on the appellant. He even did not pay the court fee in the suit which was made good on 19.8.2002. No evidence was produced on record in the shape of bank record or withdrawal of money

from the bank to prove that the plaintiff was having sufficient funds to pay the sale consideration and to bear expenses of stamp fee and registration of sale deed. The plaintiff himself did not appear in the witness box to support his case and special power of attorney, who appeared for plaintiff, could not prove the readiness and willingness to perform his part of the contract as this fact was within personal knowledge of the plaintiff only. The first appellate court has committed grave error while reversing the findings of the lower court just on the basis of conjunctures and surmises.

Learned counsel for respondent has argued that the execution of agreement, payment of earnest money and the fact that on 18.7.2002 there was pen down strike in the office of Sub-Registrar, Nawan Sahar are admitted. The plea of plaintiff that both i.e. plaintiff as well as defendant were present in the office of Sub Registrar, Nawan Sahar on 18.7.2002 is un rebutted. It is no where the case of defendant that both the parties by mutual consent have agreed to appear before the Sub Registrar, Nawan Sahar (now S.B.S. Nagar) on 19.7.2002. The special power of attorney of plaintiff, namely, Pakhar Singh (DW1) has no where stated in his affidavit Ex.DW1/A that the plaintiff appeared in the office of Sub Registrar on 19.7.2002. The readiness and willingness to perform his part of agreement is evident from the fact that the plaintiff filed the instant suit without loosing any time, on 30.7.2002 and purchased stamp papers to pay the court fee of the suit on 06.08.2002. The court had allowed him time to make good deficiency of court fee till 19.8.2002. The plaintiff had appeared in this case as PW-3 and tendered his affidavit Ex.PW3/A on 9.8.2005. He thereafter presented himself for cross-examination, as is evident from the order dated 16.2.2006. The defendant avoided to cross-examine him and thereafter plaintiff had gone abroad and could not appear and appointed his real nephew who was fully aware of the facts of the case as his attorney, who has proved the readiness and willingness of the plaintiff to perform his part of contract. Even the evidence on record clearly establish the readiness and willingness of the plaintiff to perform his part of contract and the first appellate court has rightly observed that the breach was committed by the defendant and not by the plaintiff.

It is evident that the only stress of learned counsel for appellant is on the point that the plaintiff was not ready and willing to perform his part of contract.

This fact is admitted that the date for execution and registration of the sale deed was fixed as 18.7.2002 on which date there was strike in the office of Sub-Registrar. In para no.3 of the plaint, the plaintiff has alleged that both the parties reached the office of Sub-Registrar but due to pen down strike there the sale deed could not be executed. As per plaintiff's case, both agreed to extend the date for execution of the sale deed to 18.10.2002 and the writing to this effect was also scribed on the back side of the original agreement in the presence of both the parties but when the above writing was being scribed, the defendant suddenly walked off the seat of the scribe. The relevant pleadings to this effect in the plaint are reproduced as follows :-

*“..... Defendant agreed to execute the sale deed, on or before 18.7.2002, as per terms of the agreement, but on 18.7.2002, when both the parties reached in the office of Sub-Registrar, Nawanshahr for executing the sale deed in favour of the plaintiff on 18.7.2002, the parties to the suit found that due to the pen down strike of the Sub-Registrar the sale deed could not be executed on 18.7.2002 and then both the parties agreed to extend the date for execution of the sale deed in favour of the plaintiff, however the plaintiff was ready to get the sale deed executed in his favour on 18.7.2002 with balance sale consideration, stamp charges and registration expenses in the office of the Sub-Registrar, Nawanshahr. Thereafter, with the consent of both the parties and in the presence of the witness the date to execute the sale-deed was extended from 18.7.02 to 18.10.02 and a writing to this effect was also made on the back of the original agreement in the presence of the witnesses, but when the scribe was writing on the back of the original agreement of sale, the defendant suddenly walked off from the seat of the scribe by saying that she will come back within ten minutes as she is to meet her relatives but on that day she*

*never came back.”*

Strangely, defendant evaded to give any specific reply to the above averments in the plaint or to plead that she had appeared before the Sub-Registrar on 19.7.2002. Reply to the averments of plaintiff in para no.3 as given in written statement are reproduced as follows :-

*“3. That it is incorrect. Plff.never come present in the office of Sub Registrar, on the last stipulated date, as alleged. Plff.never remained ready and willing to perform his part of the contract and was not possessed of sufficient means/amount required for meeting the payment of balance sale-consideration and for purchase of stamp paper and regn.fee. It is he who has committed the breach of the terms of the agreement to sell. Defendant got her presence marked before the Executive Magistrate/Sub Registrar and thereafter served legal notice date 16.8.02, intimating the plff. that the contract stood rescinded and the earnest money paid stood forfeited. Copy of the legal notice, affidavit and postal receipt are attached. Plff.has no right to seek the specific performance of agreement to sell.”*

Even in para no.4 of the plaint the plaintiff reiterated his readiness and willingness to perform his part of contract as follows :-

*“4. That the plaintiff had always been ready and willing to perform his part of the agreement and he is still ready and willing to perform his part of the contract and the plaintiff had remained ready and willing to perform his part of the contract, from the date of the agreement, up to the filing of the suit and he is ready and willing to perform his part of the contract up to the final decision of the case. The plaintiff also approached the defendant along with the required balance sale consideration, stamp charges and registration expenses but defendant avoided. On 18-07-02 the plaintiff went to the office of the Sub-Registrar, Nawanshahr for having the sale deed as per terms of the agreement, along with the required balance sale consideration, stamp charges and registration expenses*

*and he waited for the defendant till five P.M., but the defendant did not turn up and the plaintiff swore an affidavit before the Notary Public to get his presence marked as the Executive Magistrate-cum-Sub Registrar along with the stamp vendors were on strike. The affidavit is attached herewith.”*

Very skeptic reply was given to this para in the written statement which reads as follows :-

*“4. That it is incorrect wrong & hence denied. Plff.never remained ready and willing to perform his part of agreement nor he ever visited the office of S/R as alleged.”*

The plaintiff examined Jagat Ram Lamberdar as PW-4 to prove his affidavit Ex.P3 dated 18.7.2002 wherein he has solemnly affirmed that he was present in the office of Sub-Registrar on that date with balance sale consideration. This affidavit was got attested from the Notary Public. Admittedly, there was pen down strike in the office of Sub-Registrar on 18.7.2002 as such, affidavit could not be got attested from Sub-Registrar. The testimony of Jagat Ram PW-4 to this effect is unshattered. Kulwant Singh Special Attorney of plaintiff appeared as PW-5 and has categorically stated that plaintiff was always ready and still ready to get the sale deed executed in his favour and his testimony is also unshattered in the cross-examination. So far as non examination of plaintiff is concerned, he had also appeared as PW-3 and tendered his affidavit Ex.PW3/A in evidence on 9.8.2005 on which date he was not cross-examined and next date was given as 16.2.2006 on which date he was again present but his cross examination could not be conducted. Though there may not be any lapse on the part of defendant in not conducting cross-examination of plaintiff, still the testimony of Kulwant Singh attorney which is unrebutted and unshattered in cross examination is sufficient to prove that plaintiff has always been ready and willing to perform his part of contract. This version of plaintiff deserves to be believed that both the parties were present in the office of Sub-Registrar on 18.7.2002. The defendant has nowhere declined this fact specifically. Even otherwise, if he had not gone to the office of Sub-Registrar on 18.7.2002, there was no occasion for him to state that there was pen down strike in the office of Sub Registrar.

Much stress of learned counsel for appellant was on the plea that the writing extending the date up to 18.10.2002 is not duly proved. This fact is not material at all because this writing was not duly executed by defendant and the plaintiff has not based his claim on this writing, as such, it was not required to be proved.

The plaintiff was not required to reply notice dated 16.8.2002, if served during pendency of the suit. Where the suit had been filed promptly by purchaser, it is sufficient indicator of their willingness and readiness to perform their part of contract.

The facts proved on file reflects that the plaintiff was eager to seek specific performance of the agreement dated Ex.P1 and had gone to the extent of spending money in filing the suit and on purchasing of stamp fee. If the appellant was so eager to perform his part of agreement he could call upon the plaintiff to get the sale deed executed as he had put in appearance on 23.9.2002 i.e. within two months of the date fixed for execution and registration of sale deed. The first appellate court has rightly observed that Pakhar Singh while appearing as DW-1 has never stated that on 19.7.2002 Manjit Kaur had gone to Bakhtawar Singh to inform him that she is ready and willing to perform her part of contract.

Learned counsel for appellant while referring to the observations of the Apex Court in the case of ***G. Jayashree & Ors. vs. Bhagwandas S. Patel & Ors.*** (2009) 3 SCC 141 has argued that the plaintiff in this case immediately did not file the suit seeking relief of specific performance of agreement. He filed the suit on 30.7.2002 without paying court fee and waited till 19.8.2002 to make good the deficiency of the court fee.

In the aforesaid case, the Apex court has observed in para 30 as follows :-

*“30. .... The civil courts, in the matter of enforcement of an agreement to sell, exercise a discretionary jurisdiction. Discretionary jurisdiction albeit must be exercised judiciously and not arbitrarily or capriciously. A plaintiff is expected to approach the court with clean hands. His conduct plays an important role in the matter of exercise of discretionary*

*jurisdiction by a court of law. In **Mohammadia Cooperative Building Society Limited v. Lakshmi Srinivasa Cooperative Building Society Limited & ors.** (2008) 7 SCC 310, this Court held:*

*“71. Grant of a decree for specific performance of contract is a discretionary relief. There cannot be any doubt whatsoever that the discretion has to be exercised judiciously and not arbitrarily. But for the said purpose, the conduct of the plaintiff plays an important role. The courts ordinarily would not grant any relief in favour of the person who approaches the court with a pair of dirty hands.”*

Applying the above ratio to the facts of the present case, it is evident that the above observations are in no manner helpful to the appellants. As already discussed above, the date for execution of agreement was fixed as 18.7.2002 and the plaintiff on refusal of defendant to execute the sale deed on that date, filed the suit seeking relief of specific performance on 30.7.2002. By that time, he could not get the required stamp fee to file suit and sought permission for grant of time to make good the deficiency of the court fee. Perusal of the lower court record shows that he was supplied the stamp papers on 6.8.2002, as such, there is no delay on the part of plaintiff to make out any case for denial of relief of specific performance of the agreement.

Learned counsel for appellant has though pressed the argument that plaintiff has not come to the court with clean hands but without elaborating the same. He has relied up on the judgment passed by Andhra Pradesh High Court in the case of **P. Purushotham Reddy and Another vs. M/s Pratap Steels Ltd.** AIR 2003 (A.P.) 141 and **Tatavarthi Jagannadham vs. Akkineni Radhakrishna** 1998 (1) RCR (Civil) 177.

As discussed above in the foregoing paragraphs, both the parties had gone to the office of Sub-Registrar on 18.7.2002 on which date, due to pen down strike in the office of Sub Registrar the sale deed could not be got executed. The writing regarding extending of time for execution of the sale deed till 18.10.2002 could not be materialized. The plaintiff

immediately, without any delay, rushed to the civil court seeking specific performance of the agreement. The citation referred above in no manner are applicable to the facts of the present case. Learned counsel for the appellant has also referred number of citations which are detailed as follows :-

- i) ***Spring Valley Finance and Trade Ltd. vs. Prakash Kaur (deceased) now represented by her L.Rs and Smt. Drashan Kaur, reported as 2008 (148) D.L.T. 767 (Delhi High Court).*** In this case, the defendant (vendor) had been taking steps for performance of their part of agreement and the lapse was on the part of vendee.
- ii) ***S.K. Mittal vs. Kalinga Estate (P) Ltd. & Ors. 2009 (162) D.L.T. 341 (Delhi High Court).*** It was observed that time was not essence of the contract, however, mere absence of stipulation as to the time does not relieve the parties from their obligation to perform the same within a reasonable time. As to what is the reasonable time would vary from case to case having regard to the attending facts and circumstances.
- iii) ***Naranji Makanji vs. Bhagwanji Makanji Patel and another, 1994 (3) L.J.R. 431 (Gujarat High Court).*** In this case, the plaintiff had not disclosed the true facts while seeking relief of specific performance of agreement and his plea regarding payment of particular amount to the vendor was disbelieved.
- iv) ***Khawani vs. Munshi and others, 1993 (1) Civ. C.C. 565 (Allahabad High Court).*** It was observed in this case that if the period of enforcement of agreement expires on a holiday, the last date would automatically stands extended to the next day after such holiday. In the instant case, the date for execution of the agreement was 18.7.2002 which was not a holiday and both the parties had gone to the office of Sub Registrar to get the sale deed executed. However, due to some rift regarding the date on which the sale deed was to be executed, they

have left without settling the next date.

- v) ***A.K. Laksmipathy (Dead) vs. Rai Saheb Pannalal H. Lahoti Charitable Trust, (2010) 1 SCC 287.*** The Apex Court in this case observed in para 18 as follows :-

*“18. Next is the question whether the appellants were ready and willing to complete their part of the agreement. It is well settled that in a suit for specific performance of a contract for sale, it has to be proved that the plaintiff who is seeking for a decree for specific performance of the contract for sale must always be ready and willing to complete the terms of the agreement for sale and that he has not abandoned the contract and his intention is to keep the contract subsisting till it is executed. This readiness and willingness on the part of the appellants in the facts and circumstances of the case, in our view, cannot be found in favour of the appellants. In this case, not only the trial court as well as the High Court on concurrent findings of fact and on consideration of the evidence on record came to the conclusion that the appellants were not ready and willing to perform the terms and conditions of the agreement for sale.....”*

- vi) ***Penumatsa Narasimha Raju vs. Valluri Jaya Prakasa babu, 2007 (5) RCR (Civil) 494 (Andhra Pradesh High Court).*** In this case, it was observed that plaintiff in order to seek relief of specific performance of agreement must indicate his readiness and willingness from the date of contract till the hearing of the suit.
- vii) ***Narinder Kumar Malik vs. Surinder Kumar Malik, (2009) 8 S.C.C. 743.*** In this case the Apex Court has observed in para 34 as follows :-

*“34. However, even without referring to the aforesaid judgments, from the facts as have been mentioned hereinabove, it is as clear as day light that respondent has committed default of the terms and conditions of the MOU and had neither been ready and willing nor has been so throughout the relevant period. Thus, MOU entered into between the parties cannot be given effect to. We accordingly hold so.”*

- viii) ***M.K. Watts v. Smt. Usha Sharma***, 2003 (4) RCR (Civil) 233 (Punjab and Haryana High Court), In this case, it was observed that though time was not the essence of the contract but in view of the observations of the Apex Court in the case of ***Chand Rani vs. Kamal Rani***, 1993 (2) RRR 46 (SC), in certain cases, the parties can make the time as essence of the contract.
- ix) ***M/s P.B. Deb and Associates vs. Sunanda Roy***, (1996) 4 SCC 423. The matter related in this case to seek extension of time allowed by the court while decreeing the claim of specific performance of agreement.

On perusal of all the above citations referred by learned counsel for appellant and the facts and circumstances as already elaborated in the foregoing paragraphs, I find that observations in the above citations are not helpful to the appellant in the facts and circumstances of the present case.

Perusal of the lower court record, paper book and judgment of first appellate court, reflect no error of law and fact calling for any interference.

No substantial question of law requiring determination arises in this appeal which has no merits and is dismissed.

**(Surinder Gupta)**  
**Judge**

August 24, 2015  
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