

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

**Regular Second Appeal No.5130 of 2012 (O&M)
Date of Decision: October 31, 2015.**

Harpreet Kaur

.....APPELLANT(s).

VERSUS

Brahm Dutt and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. M.L. Saggar, Senior Advocate with
Mr. Navdeep S. Gill, Advocate
for the appellant (s).

Mr. T.N. Gupta, Advocate
for respondent No.1 to 3.

SURINDER GUPTA, J.

This is appeal against the concurrent judgments of the Courts below decreeing the suit of the plaintiffs-respondents No.1 to 3 for specific performance of the agreement to sell dated 19.07.1992 with regard to land measuring 16 kanals 9 marlas as fully defined in the head note of the plaint, situated in village Daulatpur, Tehsil Pathankot.

2. The case of the plaintiffs-respondents No.1 to 3, in brief, is that defendant No.1 Harpreet Kaur(appellant) agreed to sell 16 kanals 9 marlas of land @ ₹7,200/- per marla vide agreement dated 19.07.1992 and received a sum of ₹4 lacs as earnest money. The date for execution and registration of the sale deed was fixed as 31.03.1993 on which date, the plaintiffs had to pay the balance sale consideration. It was stipulated in the agreement that in the

event of appellant-defendant failing to perform her part of agreement, she was liable to pay ₹4 lacs as stipulated damages besides refund of earnest money. Plaintiff Ajay Kumar contacted defendant No.1 a few days before the date fixed for execution and registration of the sale deed with balance sale consideration and requested her to do the needful on 31.03.1993. She offered the plaintiffs co-operation in the matter. He came to Tehsil Premises, Pathankot along with sufficient funds and waited for defendant No.1 during the working hours but she failed to turn up. He got his presence marked by getting an affidavit scribed and attested from Executive Magistrate, Pathankot, who was also functioning as Sub Registrar. On being contacted on 16.04.1993, defendant No.1 agreed to extend the period of execution and registration of the sale deed till 15.06.1993 and a writing to this effect was made on the back of the agreement. Again Surinder Mahajan plaintiff met defendant No.1 with balance sale consideration and requested her to perform her part of the contract. He remained present and waited for defendant No.1 on 15.06.1993 in Tehsil Premises, Pathankot during working hours but she did not turn up. In the evening he got his affidavit typed and attested from Tehsildar, Pathankot. The plaintiffs remained always ready and willing to perform their part of agreement but it was defendant No.1 who committed breach of agreement and executed fraudulent and bogus sale deed in favour of defendant No.2, her real brother, which is collusive and without consideration. Thereafter, the plaintiffs requested defendant No.1 to perform her part of agreement but of no avail, resulting in filing this suit.

3. Defendant No.1-Harpreet Kaur, in her written statement, contested the claim of plaintiffs inter-alia pleading that the suit was not

maintainable and was not properly valued for the purpose of court fee and jurisdiction. The plaintiffs had assessed the valuation of the suit for the purpose of court fee as ₹9,86,400/- while as per the agreed case of the parties, the transaction of land measuring 16 kanals 9 marlas @ ₹7,200/- per marla was for a consideration of ₹23,68,800/-.

4. On merits, she admitted execution of agreement dated 19.07.1992 for sale of 16 kanals 9 marlas of land @ ₹7,200/- per marla and receipt of ₹4 lacs as earnest money. The date for execution of the sale deed was fixed as 31.03.1993. The plaintiffs could not arrange the balance sale price and expenses for executing the sale deed by 31.03.1993 and did not approached her for execution of the sale deed. The averments in this regard in the plaint were denied. The defendant remained present in the Tehsil Premises, Pathankot on 31.03.1993 and also got her affidavit attested from Tehsildar-cum-Sub Registrar Pathankot.

5. Husband of defendant No.1 had been murdered. She had engaged Sardar Harbhajan Singh, Advocate Gurdaspur as her counsel in the murder trial case against the accused and had highest regard for him. Plaintiffs approached her with Sardar Harbhajan Singh, Advocate and regretted their failure to arrange the funds to get the sale deed executed. On the persuasion of Sardar Harbhajan Singh, Advocate, she reluctantly agreed to extend the time for sale of the land upto 15.06.1993.

6. Again on the extended date of 15.06.1993, the plaintiffs failed to make arrangement of balance sale consideration and expenses for the registration of the sale deed and represented that they had to sell some property at Delhi for which they could not find a buyer. Defendant No.1

remained present in the premises of Sub Registrar Office, Pathankot on 15.06.1993 and got an affidavit attested to this effect. The agreement stood terminated on account of failure of plaintiffs to perform their part of agreement and the earnest money stood forfeited. The plaintiffs were never ready and willing to perform their part of the contract and all the averments made in this regard in the plaint were contested, controverted and denied.

7. Defendant No.1 alleged that she was in dire need of money. When the plaintiffs failed to make the balance payment to get the sale deed executed in their favour on 15.06.1993, she sold the land to defendant No.2- her brother. Plaintiffs have pleaded their helplessness in arranging the huge balance sale consideration and to purchase the suit land as the prices of land in Punjab have crashed. They were making attempts through police to pressurise the appellant for return of earnest money and made complaints to the various authorities including the High Court in this regard.

8. Plaintiffs reiterated their case in the replication. On the issue of court fee, they denied the averments of defendant No.1.

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

- (1) Whether defendant no.1 executed the agreements dated 19.7.92 and 16.4.93 in favour of the plaintiffs? OPP
- (2) Whether the plaintiffs have been ready and willing to perform their part of the contract? OPP
- (3) Whether the plaintiffs are entitled to decree of specific performance of the agreements dated 19.7.92 and 16.4.93? OPP
- (4) Whether in the alternative, the plaintiffs are entitled to decree for recovery of Rs.8 lakh?OPP
- (5) Whether the suit is not maintainable in the present form? OPD
- (6) Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD

(7) Relief.

10. Both the Courts below decreed the suit and allowed the relief of specific performance of the agreement to sell in favour of the plaintiffs on payment of balance sale consideration and the plea of appellant-defendant No.1 Harpreet Kaur that the plaintiffs were not ready and willing to perform their part of the contract was discarded.

11. Learned counsel for the appellant-defendant No.1 has argued that both the Courts below have committed grave error of law and fact while analysing the evidence on record. Appellant-defendant No.1 had admitted the execution of the agreement and receipt of ₹4 lacs as earnest money. She has also pleaded and proved her dire need for money which prompted the sale of her land to the respondents-plaintiffs. The husband of appellant-defendant No.1 had been murdered and for pursuing the murder trial, she required money. The sale deed was to be got executed and registered on or before 31.03.1993. On that day, appellant-defendant No.1 remained present in the office of Sub Registrar, Pathankot but the respondents-plaintiffs did not turned up. She got her affidavit Ex.D1 attested from the Executive Magistrate-cum-Sub Registrar, Pathankot as a token of her presence in his office. It is apparent from the writing on the back of the agreement that on 26.03.1993 appellant-defendant No.1 had not agreed for extension of time upto 15.06.1993. In fact, the respondents-plaintiffs have got this writing signed from her counsel Sardar Harbhajan Singh, Advocate on 26.03.1993. The appellant honoured the commitment of her counsel pursuing the murder trial of her husband and signed that writing on 16.04.1993. She again stood by the extension of time and remained present in the office of Sub Registrar

on 15.06.1993 and got her affidavit Ex.D2 attested from the office of Sub Registrar, Pathankot. It is specifically submitted in the affidavit that the plaintiffs had not turned up there. Though the time is usually not essence of the contract for the sale of immovable property but in view of the facts and circumstances of this case, the time was essence of the contract as the appellant urgently required the money because of murder of her husband. She had also sworn her affidavit before the Sub Registrar that on 31.03.1993, she remained present in his office from 09.00 A.M. To 5.00 P.M. and on 15.06.1993 for the same period and on her application, it was certified by the Sub Registrar that she had remained present on both the dates. This shows that it is the appellant who remained ready and willing to perform her part of the contract and respondents-plaintiffs were avoiding to perform their part of the agreement. Both the courts below have not appreciated the above evidence on record while recording the finding that the plaintiffs have proved their readiness and willingness to perform their part of the contract. Another factor which strongly reflect the absence of readiness and willingness on the part of plaintiffs-respondents to perform their part of contract is that they did not take any step after 15.06.1993 to get the sale deed executed and filed the suit only on 13.06.1996. They delay of about three years in filing the suit has not been explained. The matter did not end here. The total sale transaction was for ₹23,68,800/- and even at the time of filing of the suit, its valuation for the purpose of court fee and jurisdiction was assessed as ₹9,86,400/- and the court fee was paid on this amount only and the plaintiffs-respondents have expressed their readiness and willingness to pay the balance amount of sale consideration as per valuation of suit

assessed as ₹9,86,400/- and not of ₹23,68,800/-, the actual settled price of land agreed to be sold. The appellant-defendant No.1 took the objection regarding the under valuation of the suit but still the respondents-plaintiffs did not bother to pay the court fee on the actual amount. This reflects that they were not having sufficient funds, at the time of filing of suit, even to pay the actual court fee. It was only when the case was ripe for arguments in August, 2004 and the factum of deficiency of court fee came to the notice of the Court, the plaintiffs after taking few adjournments, made good the deficiency of the court fee by furnishing additional stamp papers worth ₹13,400/-. Plaintiffs were not having enough funds to pay the requisite court fee and just gained time of about eight years for this purpose. Either the respondents-plaintiffs deliberately assessed the valuation of the suit on the lower side or they were not aware of the total value of the transaction and if so, could not have requisite funds to get the sale deed executed.

12. Learned counsel for the appellant-defendant No.1 has further argued that though both the Courts below have recorded concurrent finding on the readiness and willingness of the plaintiff to get the sale deed executed but apparently, from the evidence on record, it is proved that respondents-plaintiffs were not ready and willing to perform their part of contract. Courts below have failed to consider that the respondents-plaintiffs were not possessing sufficient funds to perform their part of the contract and have not come forth with any evidence to prove that they had enough funds and were ready and willing on the stipulated dates to perform their part of contract.

Though the above is a question of fact, but when the Courts below have gone

astray while appreciating evidence on record, this Court in second appeal can

re-appreciate the evidence to reach appropriate and just conclusion.

13. Learned counsel for the respondents-plaintiffs has argued that it is a case where both the Courts below have recorded finding of fact that plaintiffs were ready and willing to perform their part of the contract, as such, that finding cannot be interfered in this regular second appeal. No other substantial question of law arises for determination. As to whether the plaintiffs were always ready and willing to perform their part of contract and entitled to a decree of specific performance is not a question of law as held in *Jogendra Ram and another Vs. Phullan Mian (D) by Lrs & Ors 2012 (3) Civil Court Cases 258(SC)*.

14. He has further argued that though there is delay of three years in filing the suit but the suit has been filed within limitation. Time was never the essence of the contract in this case. There is no averment in the agreement to sell that the appellant-defendant No.1 required the money urgently. The plaintiffs have proved on record that they were ready and willing to perform their part of contract on 31.03.1993 and it was appellant-defendant No.1 who did not execute the sale deed. They had appeared before the Sub Registrar and got the affidavit Ex.P4 attested. Even on the next date fixed for execution of sale deed i.e. 15.06.1993 they were present before the Sub Registrar and got their presence marked by attesting affidavit Ex.P5. The plaintiffs were required to prove their readiness and willingness to perform their part of contract by alleging that they had ready money to get the sale deed executed. It was not incumbent upon them to prove the source from which they had brought the balance sale consideration. He has argued

appeal, which has no merits.

15. On giving a careful thought to the rival contentions of learned counsel for the parties and on perusal of the lower Court's record, I find that this case call for a re-look on the evidence on file. Section 100 of Civil Procedure Code (for short-CPC) provides that second appeal lies before this Court only if a substantial question of law is involved. Hon'ble Apex Court in case of *Municipal Committee, Hoshiarpur Vs. Punjab State Electricity Board & Ors 2010(13) SCC 216*; while defining the scope of Sections 100 and 103 CPC has observed as follows:-

“22. Thus, it is evident that Section 103 C.P.C. is not an exception to Section 100 C.P.C. nor is it meant to supplant it, rather it is to serve the same purpose. Even while pressing Section 103 C.P.C. in service, the High Court has to record a finding that it had to exercise such power, because it found that finding(s) of fact recorded by the court(s) below stood vitiated because of perversity. More so, such power can be exercised only in exceptional circumstances and with circumspection, where the core question involved in the case has not been decided by the court(s) below.

23. There is no prohibition on entertaining a second appeal even on a question of fact provided the Court is satisfied that the findings of fact recorded by the courts below stood vitiated by non-consideration of relevant evidence or by showing an erroneous approach to the matter i.e. that the findings of fact are found to be perverse. But the High Court cannot interfere with the concurrent findings of fact in a routine and casual manner by substituting its subjective satisfaction in place of that of the lower courts. (*Vide: Jagdish Singh v. Natthu*

Singh, AIR 1992 SC 1604; Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan, AIR 1999 SC 3067; and Dinesh Kumar v. Yusuf Ali, AIR 2010 SC 2679).

24. If a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in the eyes of law. If the findings of the Court are based on no evidence or evidence which is thoroughly unreliable or evidence that suffers from the vice of procedural irregularity or the findings are such that no reasonable person would have arrived at those findings, then the findings may be said to be perverse. Further if the findings are either ipse dixit of the Court or based on conjecture and surmises, the judgment suffers from the additional infirmity of non-application of mind and thus, stands vitiated. (***Vide: Bharatha Matha & Anr. v. R. Vijaya Renganathan & Ors., AIR 2010 SC 2685***)”

16. Usually this court do not interfere with the concurrent finding of the Court below but this is not an absolute rule. Some of the well recognised exceptions have been discussed by the Hon'ble Supreme Court in ***Hero Vinoth (minor) Vs. Seshammal 2006(5) SCC 545***, which reads as follows.

“25(i)

(ii)

(iii) The general rule is that the High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognised exceptions are where (i) the Courts

below have ignored material evidence or acted on no evidence; (ii) the Courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it is not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

17. In case of *Bondar Singh and Ors Vs. Nihal Singh [2003(4) SCC 161]*, it was observed by Hon'ble Apex Court as follows:-

“4. An appeal under Section 100 C.P.C. can be entertained by the High Court only on a substantial question of law. There can be no quarrel with this legal proposition. The scope of powers of High Court under Section 100 C.P.C is a matter of settled law. The learned counsel for the appellant cited several judgments in support of his contention. We do not consider it necessary to discuss these decisions because so far as the question of powers of High Courts under Section 100 C.P.C. is concerned, it needs no discussion. If the findings of the subordinate courts on facts are contrary to evidence on record and are perverse, such finding can be set aside by the High Court in appeal under Section 100 C.P.C. A High Court cannot shut its eyes to perverse findings of the courts below. In the present case the findings of fact arrived at by the lower appellate court were contrary to evidence on record and, therefore, perverse and the High Court was fully justified in setting aside the same resulting in the appeal being allowed and suit being decreed.”

18. As observed in case of *Jogendra Ram and another Vs. Phullan Mian (D) by Lrs & Ors (supra)* referred by learned counsel for the respondents-plaintiffs, the question of readiness and willingness to perform their part of the contract is a question of fact but at the same time, this question of fact is to be decided on the basis of evidence on record and if the findings are erroneous, perverse, based on wrong inferences and by ignoring material evidence on record, the same can be looked into, rectified, altered, modified or even reversed by this Court in second appeal while exercising its power under Section 103 CPC. Before proceeding further, it will be pertinent to look into certain material facts proved on record which are as follows:-

(i) Appellant-defendant No.1 admitted the execution of the agreement and receipt of earnest money.

(ii) On the date fixed for execution of the sale deed i.e. 31.03.1993, if one of the plaintiffs Ajay Kumar has proved by way of affidavit Ex.P4 that he was present before Sub Registrar, Pathankot. Defendant No.1 has also proved vide affidavit Ex.D1 that she remained present in the office of Sub Registrar on that day.

(iii) **As per the plaintiffs, vide writing Ex.P3 dated 26.03.1993, the date for execution of the sale deed was extended upto 15.06.1993. It is here that the plaintiffs fell in their own trap for the reasons as follows:-**

(a) If the date for execution of the sale deed had been extended on 26.03.1993, there was no requirement for plaintiff Ajay Kumar to appear

before the Sub Registrar on 31.03.1993 to get the execution of the sale deed.

- (b) Defendant No.1 was not a signatory to this extension which was signed by her counsel Sardar Harbhajan Singh on 26.03.1993.
- (c) The case of the appellant-defendant No.1 is that due to the murder of her husband, she urgently required money. Sardar Harbhajan Singh Advocate was engaged by her in the trial of the case of murder of her husband, as such, she honoured the settlement with the plaintiffs by her counsel and agreed for this extension of time upto 15.06.1993. She signed this writing dated 26.03.1993 to extend the time upto 15.06.1993 on 16.04.1993. This shows that plaintiffs instead of contacting defendant No.1 for seeking extension of time to get the sale deed executed prevailed upon her counsel. This fact take the sheen out of the plea of plaintiffs that the date for execution of the sale deed was extended to 15.06.1993 with mutual consent. Had it been with mutual consent, defendant No.1 would have signed this writing on 26.03.1993 on the day on which it was got scribed. This writing dated 26.03.1993 Ex.P3 had not been signed by the deed writer or by any of the plaintiffs.

- (iv) The plaintiffs have placed on file affidavit (Ex.P5) to prove that they were present in the office of Sub Registrar, Pathankot on 15.06.1993, however, this fact was missing in the affidavit that they were present with entire balance sale consideration and other expenses. Defendant No.1 has also proved on file her affidavit Ex.D2 regarding her presence in the Tehsil

Premises, Pathankot on 15.06.1993 to execute the sale deed, which reflect

that she was also there on that day. While her presence on 15.06.1993 is sufficed to draw the inference that she was ready and willing to perform her part of contract as on that day she had only to come present to receive balance sale consideration. To the contrary, plaintiffs were required not only to prove their presence in the office of Sub Registrar, but also to prove that they had brought the required money to pay the balance sale consideration and registration charges.

(v) Defendant No.1 sworn another affidavit on 15.06.1993 that she was present on 31.03.1993 in the office of Sub Registrar, Pathankot but the plaintiffs did not turn up to get the sale deed executed. They could not arrange the balance sale consideration. Again on 15.06.1993 she remained present in the office of Sub Registrar, Pathankot from 09.00 A.M. To 5.00 P.M. Vide certificate (Ex.DW6/A), Executive Magistrate (Sub Registrar), Pathankot certified that defendant No.1(appellant) Harpreet Kaur had appeared in his Court on 31.03.1993 and 15.06.1993 from 09.00 A.M. To 5.00 P.M. for marking her presence regarding agreement with the plaintiffs for sale of 16 kanals 9 marlas of land.

(vi) The agreement Ex.P1 though was initially for 16 kanals 9 marlas of land but by adding one line at the end, the area agreed to be sold was increased to 19 kanals 9marlas by adding land bearing khasra No.938/2. The plaintiffs have filed the suit seeking specific performance of the agreement with regard to 16 kanals 9 marlas land only making no reference to the land bearing khasra No.938/2. However, this fact is not relevant as both the parties appeared to be in mental state of mind about the sale of 16 kanals 9

(vii) By taking sale agreement for 16 kanals 9 marlas of land, the total sale consideration @ ₹7,200/- per marla, works out to be ₹23,68,800/-, out of which ₹4 lac was paid as earnest money. It means that the plaintiffs had to pay remaining ₹19,68,800/- and have also to bear the expenses of registration etc. but they have not produced any evidence on record to show that they were having required funds at any point of time.

(viii) While filing the suit seeking the relief of specific performance of the agreement, the plaintiffs appeared to be under an impression (may be bona fide or deliberate) that the total valuation of the suit land is ₹9,86,400/- and they paid the court fee on this amount. Despite objection by defendant No.1 in the written statement, they did not realise their mistake (here it does not appear to be bona fide) and continued with their case till the year 2004 when near the final stage, they paid the remaining court fee. This may not have any bearing so far as the aspect of valuation of suit for payment of the court fee is concerned but certainly make a reference to the funds available with the plaintiffs even at the time of filing of the suit and reflects that they were not having sufficient funds even to pay the court fee on the total sale consideration amount.

(ix) The suit was filed on 13.06.1996 i.e. a day before expiry of the period of three years. There is no evidence that after 15.06.1993, the plaintiffs had given any notice to defendant No.1 calling upon her to execute the sale deed, as such, there is long unexplained delay of three years in filing the suit. This delay becomes all the more serious because as per the plaintiffs, defendant No.1 had executed a sale deed dated 18.06.1993 in

deed, the plaintiffs, if were interested in seeking the specific performance of the agreement in their favour, must have rushed to the Court immediately instead of waiting for a period of three years.

19. Above discussion of the facts reflects that the Courts below have not appreciated the facts of the case, evidence on record, conduct of plaintiffs and circumstances proved on record. This necessitate re-appreciation of evidence and conclusion drawn by the Courts below. As observed in case of *Hero Vinoth (minor) Vs. Sehsammal 2006(5) SCC 545*, concurrent findings of Courts below call for a re-look, based on evidence on record.

20. Substantial questions of law and fact which arise for determination in this appeal are as follows:-

(i) *Whether the findings of the Courts below that the plaintiffs have always been ready and willing to perform their part of agreement are based on proper appreciation of the evidence on record?*

(ii) *As per the evidence on record, who was at lapse whether plaintiffs or defendant No.1 in not getting the sale deed executed as per the agreement dated 19.07.1992 on the stipulated date 31.03.1993 and the extended date of 15.06.1993?*

(iii) *What is the impact and inference of delay of three years in filing the suit seeking the relief of specific performance?*

(iv) *Whether the time was essence of the contract in the instant case?*

21. Firstly, the lower Courts while examining the readiness and willingness of the plaintiffs to perform their part of the contract, did not look

into this aspect that writing for extension of time was scribed on 26.03.1993 and was signed by defendant No.1 on 16.04.1993 and 26.03.1993 it was signed by Sardar Harbhajan Singh, Advocate engaged by defendant No.1 in the case of murder of her husband. Even the first Appellate Court also failed to look into this fact. Failure of Courts below to look into this aspect, has resulted in failure to gauge the implications of this vital fact and important instance. If the version of plaintiffs that on 26.03.1993 vide writing Ex.P3, defendant No.1 agreed to extend the time for execution of the sale deed, is accepted, in that event, defendant No.1 would have signed this writing on 26.03.1993 but this did not happen. However, to persuade appellant-defendant No.1 for extension of time, they involved her counsel and obtained his signatures on 26.03.1993. It is evident that on 26.03.1993 defendant No.1 had not consented to this writing or she had agreed for extension of time upto 15.06.1993 from 31.03.1993. This is why the plaintiffs claimed that they appeared before the Sub Registrar and appellant-defendant no.1 had also proved her appearance before the Sub Registrar on the stipulated date for execution and registration of sale deed i.e. 31.03.1993.

22. Secondly, the vital question for consideration which arises at this stage is as to why the plaintiffs were seeking extension of time. The facts and circumstances, indicate in clear terms that extension of time was not at the behest of appellant-defendant No.1. This is indicative of the inability of the plaintiffs to arrange funds for execution of the sale deed.

23. Thirdly, the matter does not end here. Even on the extended date i.e. 15.06.1993, defendant No.1 had proved her presence in the office of Sub Registrar, Pathankot. Plaintiffs have also proved that one of them was

present in the office of Sub Registrar. Let it be believed that both were present in the office of Sub Registrar, in that event, the adverse inference goes against the plaintiffs that they were not having the required funds. Defendant No.1 had to do nothing except to sign the sale deed and receive balance sale consideration on 31.03.1993 and 15.06.1993. It was for the plaintiffs to purchase the stamp papers, get the sale deed scribed, bear the expenses of its registration and to pay the balance sale consideration. It is evident that no attempt was made by them either before or on 31.03.1993 to purchase the stamp papers or on 15.06.1993. The Courts below have failed to look into this aspect and have committed grave error of law while ignoring this vital piece of evidence on record.

24. Fourthly, this suit was filed a day before the expiry of period of limitation which further indicates that the plaintiffs had not been ready and willing to perform their part of contract. In case, they were ready and willing to get the sale deed executed, they would not have waited for three long years.

25. Hon'ble Supreme Court in case of ***K.S. Vidyasandam Vs. Vairavan 1997(3) SCC 1***, has observed that total inaction on the part of the plaintiff for a period of two and half years is a circumstance under which it would be inequitable to give the relief of specific performance of agreement.

26. The plaintiffs in order to be allowed discretionary relief of specific performance of the agreement have to prove on record their continuous readiness and willingness to perform their part of contract in terms of agreement from the date of its execution till date of filing of the suit

and subsequently till its final disposal. They were required to explain as to

they waited for a period of long three years after 15.06.1993 and filed the suit only a day before the period of limitation would have expired. The cause of action had accrued to them to file the suit on 31.03.1993 and again on 15.06.1993 but they kept silent till 13.06.1996. This fact greatly impact their plea of readiness and willingness to perform their part of the agreement.

27. Learned counsel for the appellant-defendant No.1 has argued that the appellant required money urgently due to murder of her husband, as such, time was essence of the contract in this case. Due to rise of Militancy and uncertain political condition and prevailing law and order problems in State of Punjab, the prices of land have initially crashed. Thereafter, the law and order situation improved around the year 1995, the prices of immovable property started increasing and plaintiffs in the year 1996 filed the instant suit. The long silence of plaintiffs clearly shows that they did not have ready money or were not coming forth for purchase of land due to other factors weighing in their mind. But the consequent inference which can be drawn from their conduct is that they were not ready and willing to perform their part of the contract.

28. In the case of *Zarina Siddiqui Vs. A.Ramalingam alias R. Amarnathan*, 2014(3) *Local Acts Reporter*, 212, which are as follows:

“25. It is well settled that remedy for specific performance is an equitable remedy. The Court while granting decree of specific performance exercises its discretionary jurisdiction. Section 20 of the Specific Relief Act specifically provides that Court’s discretion to grant decree of specific performance is discretionary but not arbitrary. Discretion must be exercised in accordance

with sound and reasonable judicial principles.

xxx..... xxx..... xxx..... xxx.....xxx.....

34. The equitable discretion to grant or not to grant a relief for specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the plaintiff so that discretion would be exercised judiciously in favour of the plaintiff. At the same time, if the defendant does not come with clean hands and suppresses material facts and evidence and misled the Court then such discretion should not be exercised by refusing to grant specific performance.”

29. Hon'ble Apex Court in case of *K.S. Vidyandam Vs. Vairavan (supra)*, has also dealt with the aspect of law as to whether the time is essence of the contract in India in case of agreement of sale relating to immovable property and has observed in para 10 as follows:-

“10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time limits stipulated in the agreement for doing one or the other thing by one or the other party. That would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it

be reasonable to say that because time is not made the essence of the contract, the time-limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the court by both Sections 10 and 20. As held by a Constitution Bench of this court in ***Chand Rani v. Kamal Rani, [1993] 1 S.C.C. 519***, "it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the court may infer that it is to be performed in a reasonable time if the conditions are (evident ?) : (1) From the express terms of the contract; (2) from the nature of the property; and (3) from the surrounding circumstances, for example, the object of making the contract". In other words, the court should look at all the relevant circumstances including the time-limits specified in the agreement and determine whether its discretion to grant specific performance should be exercised.”

30. The Apex Court in the above referred case while taking note of the fact that the plaintiff was sitting quite without taking any steps to perform his part of contract under the agreement for the period of 2½ years observed as follows :-

“.....Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties - evolved in times when prices and values were stable and inflation was unknown - requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so. learned Counsel for the plaintiff says that when the parties entered into the contract, they

knew that prices are rising; hence, he says, rise in prices cannot be a ground for denying specific performance. May be, the parties knew of the said circumstance but they have also specified six months as the period within which the transaction should be completed. The said time-limit may not amount to making time the essence of the contract but it must yet have some meaning. Not for nothing could such time-limit would have been prescribed. Can it be stated as a rule of law or rule of prudence that where time is not made the essence of the contract, all stipulations of time provided in the contract have no significance or meaning or that they are as good as nonexistent? All this only means that while exercising its discretion, the court should also bear in mind that when the parties prescribes certain time-limits for taking steps by one or the other party, it must have some significance and that the said time-limits cannot be ignored altogether on the ground that time has not been made the essence of the contract [relating to immovable properties].”

31. In view of the settled proposition of law as discussed above, facts and circumstances of the case and conduct of the respondents-plaintiffs, I am of the considered opinion that it is duly established on record that the exercise of discretion while allowing the relief of specific performance of the agreement by the Courts below is not only perverse, arbitrary but also against the settled judicial principles, calling for interference in this appeal. The long delay of three years in filing the suit, the presence of appellant-defendant No.1 on the stipulated date in the office of Sub Registrar, when read with other facts and circumstances discussed in detail above, lead to only one conclusion that the plaintiffs were not ready and willing to perform

their part of contract. All the substantial questions of law framed above are answered in favour of the appellant.

32. Consequently, the judgment and decree passed by the Courts below are modified to the extent that instead of allowing relief of specific performance of the agreement dated 19.07.1992, plaintiffs will be entitled to refund of the earnest money of ₹4 lacs paid by them to appellant-defendant No.1 with interest @ 9% per annum from the date of filing of the suit, till the date of payment. Keeping in view the facts and circumstances of the case, the parties are left to bear their own costs.

October 31, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE