

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No.1947 of 2013 (O&M)

Date of Decision: 30.04.2015

Dinesh Kumar

..... APPELLANT

VERSUS

Pawan Devi

..... RESPONDENT

PRESENT: - Mr. Sanjay Verma, Advocate
for the appellant.

Mr. Lal Singh Thakur, Advocate with
Mr. Bhim Singh, Advocate
for the respondent.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

- 1) Whether Reporters of the local papers may be allowed to see the judgment?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

SHEKHER DHAWAN, J.

The present Regular Second Appeal against judgment and decree dated 22.03.2013 whereby appeal against judgment and decree dated 15.12.2012 passed by Civil Judge (Sr. Divn.), Gurgaon was modified.

For convenience sake, hereinafter, reference

to the parties is being made as per their status in the Civil Suit.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that the plaintiff had filed suit for specific performance dated 18.08.2009 for a total sale consideration of ₹4,25,000/-. The earnest money of ₹2,60,000/- was received on the same day and possession was handed over. The sale deed was to be executed on or before 20.09.2009. Subsequently, payments of ₹15,000/- and ₹30,000/- were made as additional earnest money and date for execution and registration of sale deed was extended upto 20.10.2009. As per plaintiff, she was always ready and willing to perform her part of agreement but the defendant failed to perform said agreement and, as such, suit before the Court of first instance.

Defendant appeared but failed to file the written statement despite availing sufficient opportunities and defence of defendant was struck off vide order dated 14.01.2011.

The Court of first instance on the basis of oral as well as documentary evidence adduced before the same, returned the findings thereby passing an order of recovery

of sum of ₹3,05,000/- along with interest @ 12% per annum from the date of agreement till realisation. The plaintiff preferred appeal against the said judgment and the First Appellate Court modified the findings thereby directing the defendant to execute the sale deed in respect of the house in dispute in favour of the plaintiff as per agreement. The defendant is in appeal against the said judgment and decree.

Mr. Sanjay Verma, learned counsel for the appellant took the plea that the subject matter of agreement of sale was small house measuring 25 square yards only and the defendant is residing in the same. He is a poor person. The agreement was allegedly executed on 18.08.2009 and the sale deed was to be executed upto 20.09.2009. Thereafter, with mutual consent of the parties, date was extended upto 20.10.2009. However, the plaintiff himself was not willing and ready to perform her part of agreement on 20.10.2009. She had not filed any application before Registration Authority on 20.10.2009 to get recorded her presence. The only evidence available on file is by way of affidavit Ex.P-2 and the same was attested by the Executive Magistrate on 28.10.2009. As such, the plaintiff was not willing and ready to perform her part of agreement on 20.10.2009 and the plaintiff is not entitled for specific

performance of the said agreement. The findings recorded by the Courts below be reversed and the suit of the plaintiff be dismissed.

Learned counsel for the appellant also took the plea that remedy for specific performance is an equitable remedy and the same is in the discretion of Court, which discretion requires to be exercised according to settled principles of law. As per Section 20, Court is not bound to grant relief just because there was valid agreement of sale rather as per Section 16(c) of Specific Relief Act, 1963, plaintiff himself pleaded and proved that he had performed or has always been ready and willing to perform the essential terms of contract which are to be performed by him, other than those terms the performances of which has been prevented or waived by defendant. Continuous readiness and willingness is a condition precedent to grant the relief of specific performance. Learned counsel for the appellant has placed reliance upon judgment of Hon'ble Supreme Court in case of **Syed Dastagir Vs. T.R. Gopalakrishna Shetty**, 1999(3) RCR (Civil) 643 wherein such a law was laid down. On the same point, reliance was placed upon judgment of Hon'ble Supreme Court in case of **N.P. Thirugnanam (Dead) by LRs. Vs. Dr. R. Jagan Mohan Rao**, 1995(2) RCR (Rent)

647 wherein such a law was laid down.

Mr. Lal Singh, learned counsel for the respondent took the plea that the defendant is in second appeal before this Court where interference is limited only as per provisions of Section 100 of the Code of Civil Procedure. The interference by this Court can be on substantial question of law only but in this present case, there is absolutely no substantial question of law involved. The defendant failed to file any written statement before the trial Court despite availing sufficient opportunities and, as such, the defence of the defendant was struck off. There could not be any evidence from the respondent side as there were no pleadings by way of written statement from defendant side. More so, both the Courts below have already appreciated the evidence available on file and the findings of facts have already been recorded and the same do not call for any interference.

On this point, reliance was placed upon judgment of Hon'ble Supreme Court in case of **Hardeep Kaur Vs. Malkiat Kaur**, 2012(2) Capital Law Judgment 30.

Learned counsel for the respondent also took the plea that the arguments raised by learned counsel for the appellant are devoid of any force because even if some words are missing while making prayer for specific

performance of the agreement, the suit of the plaintiff for specific performance cannot be dismissed. On this point reliance was placed upon judgment of Hon'ble Supreme Court in case of **Biswanath Ghosh (Dead) by LRs. and others Vs. Gobinda Ghosh @ Gobindha Chandra Ghosh and others**, 2014(2) CLJ 720 SC wherein such a law was laid down.

Having considered the rival contentions, this Court is of the considered view that findings recorded by both the Courts below are against defendant-appellant. Interference of this Court by way of the present Regular Second Appeal is restricted one as per provisions of Section 100 of the Code of Civil Procedure as well as law laid down by Hon'ble Supreme Court in case of **Hardeep Kaur Vs. Malkiat Kaur (supra)**. No substantial question of law is involved in this case because agreement of sale dated 18.08.2009 stands proved on the basis of evidence adduced by the plaintiff-respondent. There being no pleadings contrary to the same by way of written statement as defence of defendant was struck off. The said order was never reversed by any Appellate Court. Merely, taking the plea that the appellant is a poor person and the size of the house is very small does not make out a case for reversal of findings of both the Courts below without their being any

material or evidence available on file in support of that.

In view of the above, the facts of the present case are entirely distinguished from the facts of **Syed Dastagir Vs. T.R. Gopalakrishna Shetty (supra)** and **N.P. Thirugnanam (Dead) by LRs. Vs. Dr. R. Jagan Mohan Rao(supra)** and the same are not of any help for the appellant.

More so, it is a matter of common knowledge that rise in price is a normal change of circumstance and, therefore, on that ground decree for specific performance cannot be reversed. Similar matter had gone before a three Judges Bench of Hon'ble Supreme Court in case of **Nirmala Anand Vs. Advent Corporation (P) Ltd. and others**, (2002) 8 SCC 146 and Hon'ble Supreme Court observed that the plaintiff is not to be denied the relief of specific performance only on account of phenomenal increase of price during the pendency of litigation. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the other party by directing specific performance. The totality of circumstances is required to be seen. In the case in hand, both the Courts below have already recorded the findings of fact keeping in view the pleadings and entire evidence adduced by the parties.

In view of the above, there are no grounds to interfere in the said findings by way of the present Regular Second Appeal. The appeal is without any merit and the same stands dismissed.

**(SHEKHER DHAWAN)
JUDGE**

April 30, 2015
jt