

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

**RSA No.3262 of 2013 (O&M)
Date of Decision: 04.05.2015**

Jai Singh

.....Appellant

Versus

Krishan Gopal and another

..... Respondents

CORAM : HON'BLE MS.JUSTICE RITU BAHRI

Present: Mr. Navneet Singh, Advocate
for the appellant.

RITU BAHRI, J. (Oral)

The appellant has come up against the judgment and decree of the trial Court and Lower Appellate Court. Appellant-defendant has led against the judgment whereby suit of the plaintiff for specific performance has been decreed which has been filed for benefits to agreement dated 31.03.2006 of land measuring 6 kanal 17 marlas.

On 31.03.2006, the plaintiff-respondent had entered into an agreement to sell with the defendant-appellant Jai Singh of land measuring 12 kanals 14 marlas @ 21,71,000/- per acre and a sum of Rs.5,20,000/- was paid by the plaintiff as earnest money. It was agreed to execute the sale deed on 29.09.2006. The sale deed could not be executed as defendant had failed to get the NOC from DTP Sonipat for registration of sale deed. The date was extended on 29.06.2006 to 06.11.2006 by mutual consent. The said extension was also reduced in writing and was signed and thumb marked. On 06.11.2006, the defendant had again failed to get NOC and the sale deed could not be executed. The time was thereafter extended to 06.12.2006 by writing. On 06.12.2006, the plaintiff remains present in the office

of Sub Registrar/Executive Magistrate and got their presence marked. The sale deed could not be executed on account of fault on the part of the defendant. A legal notice was served to the defendant to execute sale deed on 18.12.2006. The plaintiff got their presence marked before the Sub Registrar/Executive Magistrate on 18.12.2006. In the meantime, part of land was acquired by State of Haryana for express highway and plaintiffs filed the suit for specific performance as against remaining land i.e. 6 kanal 17 marlas by relinquishing their rights against acquired land measuring 5 kanals 17 marlas. Before the Lower Appellate Court, the ground for not executing the sale deed by the present defendant was that the plaintiff had not informed the name of the person in whose favour the sale deed was to be executed therefore he could not obtain NOC and further he had cancelled the agreement to sell dated 31.03.2006 on account of the fault on the part of the plaintiffs. The defendant did not place on record any cancellation of the agreement to sell dated 31.03.2006. Moreover, the presence of the plaintiff-respondent was duly marked before the Sub Registrar/Executive Magistrate on each and every date when the time to execute the sale deed has been extended i.e. 06.11.2006, 06.12.2006 and finally 18.12.2006 as per Ex.P6/A.

Taking into consideration the fact that the NOC was never obtained by the defendant and the plaintiff was ready and willing to perform his part of the contract, as out of the total consideration of agreement to sell of 12 kanals @ Rs.21,71,000/- per acre a sum of Rs.5,20,000/- had been paid by the plaintiffs to the defendant. After execution of sale by the State of Haryana for express highway, plaintiffs sought specific performance as against remaining land i.e. 6 kanals 17 marlas by relinquishing their rights

against acquired land measuring 5 kanals 17 marlas.

In this view of the matter, the suit was rightly decreed by the Courts below.

No substantial question of law arises for consideration in this Regular Second Appeal, hence the same is dismissed.

May 04, 2015
ps-I

(RITU BAHRI)
JUDGE