

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

**RSA No.4583 of 2013 (O&M)
Date of Decision: 11.09.2015**

Baljit Singh

....Appellant

Vs

Meet Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Munish Gupta, Advocate
for the appellant.

Mr. Naresh Kaushal, Advocate
for the respondent.

1. *Whether Reporters of 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?*

RAJ MOHAN SINGH, J.

[1]. Plaintiff is in second appeal in a suit for joint possession though specific performance of agreement dated 16.11.2005 which was dismissed by Civil Judge (Jr. Divn.) Kharar vide judgment and decree dated 20.05.2010 and lower appellate Court affirmed the same vide judgment and decree dated 30.07.2013.

[2]. Plaintiff filed suit for joint possession against the defendant of 3/8th share and 5/8th share on the basis of agreement to sell dated 16.11.2005. Defendant is owner in joint possession of the suit land which he agreed to sell i.e. 8 *Kanals* of land out of total land mentioned in the headnote of the plaint and executed agreement to sell dated 16.11.2005. Rate of land was settled Rs.11,00,000/- per

acre and date for execution of sale deed was fixed on or before 30.04.2006. The earnest amount to the tune of Rs.1,50,000/- was paid to the defendant. The plaintiff remained present in Tehsil Complex, Kharar on 28.04.2006 and 01.05.2006 i.e. the day prior to the target date as well as a day afterward because of intervening holidays on 29.04.2015 and 30.04.2015, but the defendant did not come. The plaintiff was present in the Tehsil Complex, Kharar along with requisite balance amount of sale consideration and other expenses of sale deed i.e. stamp papers and registration fee etc., and was ready and willing to perform his part of contract.

[3]. The suit was contested by the defendant. According to defendant vide notice dated 24.01.2006, the agreement to sell was rejected by him for non-compliance of the condition of agreement to pay Rs.6,50,000/- as further earnest amount on 15.01.2006. Therefore, the suit is claimed to be not maintainable on the basis of agreement to sell. Even otherwise the last date for execution of sale deed was fixed as 30.04.2006 and the plaintiff never came present in the office of Sub-Registrar on 28.04.2006 and 01.05.2006 (29.04.2006 and 30.04.2006 being holidays). Defendant claimed that he remained present on both the dates in the office of Sub-Registrar.

[4]. Execution of agreement to sell dated 16.11.2005 and receipt of Rs.1,50,000/- as earnest amount are admitted facts between the parties. Further recital at the back of the agreement to sell in respect of second payment of Rs.6,50,000/- upto 15.01.2006 is also an admitted fact. According to defendant due to non-payment

of earnest amount of Rs.6,50,000/- by the plaintiff, he could not complete the bargain of the plot and this action of the plaintiff caused huge loss to him.

[5]. Defendant issued registered legal notice on 24.01.2006 canceling the agreement to sell for violating the condition of agreement to sell. He also claimed forfeiture of earnest amount to the tune of Rs.1,50,000/-. In the said notice, defendant also gave 30 days time to the plaintiff to get his earnest money back, but the said notice was not received by the plaintiff and was returned with the report that the plaintiff did not meet the postman despite best efforts made by the postman. Defendant claimed that the plaintiff did not fulfill the obligation to pay additional amount on 15.01.2006 as per condition of agreement to sell and, therefore, no question of his readiness and willingness can be foreseen.

[6]. After filing of replication, following issues were framed by the trial Court:-

- “1. *Whether the plaintiff is entitled for joint possession by way of specific performance of agreement to sell dated 16.11.2005? OPP.*
2. *Whether the plaintiff is entitled for permanent injunction, as prayed for? OPP.*
3. *Whether the plaintiff is entitled to the recovery of Rs.3,00,000/-, as prayed for alternatively? OPP.*
4. *Whether the plaintiff is/was ready and willing to perform his part of contract? OPD.*
5. *Whether the suit is not maintainable? OPD.*

6. *Whether the suit is bad for non-joinder of necessary parties? OPD.*
7. *Whether the plaintiff has no locus-standi to file the present suit? OPD.*
8. *Relief.”*

[7]. Trial Court after discussing the evidence under different issues came to the conclusion that failure on the part of plaintiff to fulfill conditions of agreement to sell dated 16.11.2005 i.e., non-payment of Rs.6,50,000/- to the defendant on 15.01.2006 and further non-acceptance of the notice of the defendant dated 24.01.2006 and thereafter filing of only suit for permanent injunction without disclosing any fact regarding payment of Rs.6,50,000/- and non-fulfillment of conditions thereof are the issues which make plaintiff liable for dismissal of the suit. The conduct of the plaintiff was such which was quite evident that he was not ready and willing to perform his part of obligation and, therefore, trial Court held that he is not entitled to the relief of specific performance of agreement to sell and any permanent injunction as prayed for by him. His prayer for alternate relief of recovery of Rs.3,00,000/- i.e. Rs.1,50,000/- paid as earnest amount along with damages was also negated by the trial Court.

[8]. The appeal filed by the appellant also met with the same fate.

[9]. In view of Full Bench judgment of this Court in **Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I,** framing of question

of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clause (a) to (c) of Section 100(i) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim "*interest reipublicae ut sit finis litium*".

[10]. In the grounds of appeal, appellant craves indulgence of this Court to consider following substantial questions of law formulated in the appeal:-

- “(a) *Whether the findings recorded by both the Ld. Courts below are result of mis-reading and mis-appreciation of the evidence in question?*
- (b) *Whether the judgments of both the Ld. Courts below are bad law and are not sustainable in the eyes of law?*
- (c) *Whether the entry on the back side of the agreement Ex. PW1/C can be treated as part/terms of the Agreement and whether the part payment is to be paid amounts to earnest money.*
- (d) *Whether in the absence of grant of decree of specific performance, in view of the pleadings of the defendant, the Court was duty bound to grant*

decree for recovery of Rs.3 lacs with interest @ 12% per annum from the date of advancement till payment as admitted by the defendant himself?

(e) *Whether the judgments of both the Ld. Courts below are based on surmises and conjectures and the same are liable to be set aside and suit of the plaintiff/appellant is worth to be decreed?"*

[11]. I have considered the rival submissions of both the sides.

[12]. It is relevant to state here that at the time of issuance of notice of motion on 10.01.2014, the plaintiff-appellant restricted his relief in the appeal only to the extent of refund of earnest amount of Rs.1,50,000/- admittedly paid by him at the time of execution of agreement to sell. Notice of motion was issued only to the aforesaid extent of refund of earnest amount of Rs.1,50,000/-, therefore, there is no necessity of going into all the questions of law as formulated by the appellant except questions No.18(c) and 18(d).

[13]. Learned counsel for the appellant has contended that if the version of the defendant is accepted that he was present on the date of execution of sale deed in the office of Sub-Registrar with all readiness and willingness to execute the sale deed, then the very forfeiture of earnest amount goes and the defendant cannot rely upon non-fulfilment of condition of second payment towards earnest amount upto 15.01.2006. In view of evidence on record showing that both the parties appeared before the Sub-Registrar on 28.04.2006 and 01.05.2006, refund of earnest amount becomes necessary.

[14]. The Courts have dislodged plaintiff on the basis of non-

fulfilment of clause of making second payment of additional earnest amount as well as by highlighting the conduct of the plaintiff. Defendant has admitted the execution of agreement to sell-Ex.PW1/C and has also admitted receipt of earnest amount to the tune of Rs.1,50,000/- from the plaintiff on 16.11.2005. Writing Ex.DX at the back of the 3rd page of the agreement to sell set out an obligation to make second payment towards additional earnest amount to the tune of Rs.6,50,000/- on 15.01.2006. This condition was also one of the condition of agreement to sell which was decided between the parties on 16.11.2005. Plaintiff has not mentioned anything about this prominent condition between the parties despite the fact that agreement to sell-Ex.PW1/C has contained this clause as condition Ex.DX. The document has come from the custody of the plaintiff himself. The defendant has specifically raised this condition in para No.3 of his written statement, but despite that plaintiff did not explain this in his replication, rather preferred to give vague replication.

[15]. Factum of Ex.DX already stood admitted by the plaintiff when he tried to give explanation in his cross examination as PW-1. The effort to explain omission was in the context of visiting the defendant on 15.01.2006 along with one Gama Parshad PW-2. It has come on record that the alleged visit was on 16.01.2006 in the alleged context of making payment of Rs.6,50,000/-, but the defendant-Meet Singh had refused to receive the amount as he wanted to sell the land at higher price.

[16]. The assertion of the plaintiff that he had gone to the defendant with the amount after drawing the same from the Bank and remaining amount of Rs.1,00,000/- from the Commission Agent remained unproved for want of any such entry in his account book or in the ledger of the Commission Agent. The explanation sought to be introduced by the plaintiff remained unproved for want of evidence. The plaintiff must have issued legal notice to the respondent in this regard on the factum of his readiness and willingness. Even the alleged visit of the plaintiff was not on 15.01.2006, rather the same was shown to be on 16.01.2006, therefore, readiness and willingness in the context of visit of the plaintiff to the defendant cannot be appreciated after expiry of the stipulated date.

[17]. Question No.18-C cannot be considered to be mean that Ex.DX recorded at the back of 3rd page of agreement to sell cannot be considered to be part of condition of agreement to sell and the same was not to be on account of any earnest amount. Once both the parties undertook to formulate a condition in the agreement to sell, whether such condition was at the back of the page or otherwise loses significance in overall performance of the obligation. This is an admitted fact that Ex.DX, endorsement at the back of 3rd page was duly written and agreed to be followed between the parties, therefore question No.18-C of the grounds cannot be appreciated to hold that the additional amount cannot be weighed in deciding entitlement of the plaintiff qua refund of original earnest amount, particularly when the plaintiff has also demonstrated his presence

before the Sub-Registrar.

[18]. Question of law as formulated in ground No.18-D has to be answered in conjunction with the observation given in the preceding para. Plaintiff is not entitled to any refund of the earnest amount or double of the earnest amount in view of the fact that the condition of additional payment towards earnest amount was also part and parcel of the original agreement to sell. The presence of plaintiff and the defendant before the Sub-Registrar cannot dilute the violation of condition at the instance of plaintiff. The presence of defendant on the day of execution of sale deed before the Sub-Registrar cannot be read in favour of the plaintiff to claim refund of earnest amount as the plaintiff has to stand on his own legs.

[19]. Plaintiff has to show his readiness and willingness after fulfilling terms and conditions of agreement to sell. It is the conduct of the plaintiff vis-a-vis his conspicuous silence in the pleading on the issue of additional earnest amount of Rs.6,50,000/- which disentitles to claim refund of the earnest amount which stood forfeited by express notice of the defendant.

[20]. Consequently, no subsisting claim of the plaintiff can be entertained in the appeal. Resultantly, this appeal is totally bereft of merit and the same is dismissed, leaving both the parties to bear their own costs.

September 11, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE