110.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Misc. Nos.14052-53-C of 2015 in/and
Regular Second Appeal No.3623 of 2015
Date of decision:16.11.2015

Chunni Lal .... Appellant

versus

Sudesh Rani and another .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Anil Bansal, Advocate,
for the appellant.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. *(Oral)*

CM No.14052-C of 2015

For the reasons stated in the application, the same is allowed and the appeal is restored to file.

CM No.14053-C of 2015

Application is allowed, as prayed for. Annexures A1 and A2 are taken on record.

Regular Second Appeal No.3623 of 2015

1. The appeal is at the instance of the plaintiff whose suit for specific performance was dismissed by the trial court as affirmed

by the appellate court. The courts below held that the plaintiff had not proved his readiness and willingness to pay the balance of sale consideration and also further held that there was no appropriate evidence of the availability of the property in the manner described in the agreement, particularly in view of the fact of admission that the property of similar extent which was agreed to be sold, had been acquired by the government for the benefit of the Highway Authority for expansion of highway.

2. In the manner of assessment of plaintiff's readiness, the court took note of two following circumstances: (i) The agreement had been executed on 12.08.1997 on payment of ₹2 lakhs @ ₹1 lakh each for the defendants 1 and 2 and the balance of ₹8,24,500/- was required to be paid on or before 30.09.1997. Admittedly, the amount had not been paid and it was in evidence that the plaintiff did not have the said money. The inference was possible by virtue of the fact that fresh agreement had been written on 05.11.1997 which stipulated that the plaintiff was liable to pay also interest of ₹24,000/- for non-payment of the balance of consideration as originally agreed. A fresh target date was fixed for completion of sale till 31.01.1998. The court, therefore, observed that fresh agreement itself proved that he did not have adequate balance as originally agreed on 12.08.1997; (ii) At the trial, it was elicited in evidence by the plaintiff that his claim to be ready and willing to pay

the balance could not be true. The plaintiff would state that 31.01.1998 and 01.02.1998 were public holidays and he waited at the Registrar's office on 02.02.1998 for getting the sale deed registered. He stated in the cross-examination that he had withdrawn money from his bank for payment of the balance of consideration but did not produce the bank passbook or any other evidence to prove that he had with him the necessary resources to pay the balance of sale consideration.

3. It is most essential that the readiness and willingness is not merely symbolic in the sense of a necessary averment in the plaint but it is also proved when such readiness is put to test. The counsel would argue that Section 16(c) of Specific Relief Act does not require the cash to be actually tendered in court, unless the court directs the plaintiff to do so. The point is well taken but if he was attempting to prove the readiness by a statement that he had withdrawn the money from the bank just on that date, it was imperative that he produced proof for the same. This becomes relevant by virtue of the past conduct of the plaintiff who admittedly did not have the balance of consideration within the time originally agreed, namely, 30.09.1997 and a fresh document itself came to be executed with recital that the plaintiff would be liable to pay interest for the amount not paid within time. The court was justified in finding that there had been no readiness and willingness by the past

conduct and his own evidence about the availability of cash which was not proved in the manner that became essential.

4. There was another weighty reason why the court did not extend a discretion in favour of the plaintiff. This was by reason of the fact that the property agreed to be sold was an extent of 2 kanals 3 marlas out of 8 kanals 12 marlas without actually stipulating which portion of the property was actually agreed to be sold. It could have been a matter of oral evidence, for, the plaintiff was claiming that he was already a lessee in respect of the property for 20 years from the defendants and he was running a petrol pump and the agreement was to purchase the property of which he was already in possession of. The court brought out in evidence that an extent of 2 kanals 3 marlas had already been acquired by the government and the plaintiff had volunteered no evidence of whether the property acquired was the property in his possession or any portion of property that remained with the vendors. The exact nature of acquisition and the extent of holding by him in spite of acquisition was commented by the court as capable of creating mischief at a later stage of execution and the court, therefore, observed that specific performance could not be granted.

5. I find the approach of the courts below both as regards the want of readiness and willingness on the part of the plaintiff for performance of his part as well as the special circumstances when

the discretionary relief could not be extended to be well reasoned and would require no intervention in appeal.

6. Before parting, I must observe that the plaintiff's conduct at the trial itself has not been appropriate. An agreement of the year 1997 that was sought to be enforced through a suit instituted in the year 1998 was allowed to linger on for more than 15 years before it was finally concluded. The courts' delays are proverbial but the plaintiff himself was in some way contributing to the delay where such delay benefited him in a situation where he was actually in possession and he was neither paying the balance of money nor was there any proof that he was paying the lease to the owners. I can understand that at some point of time the defendants had remained ex parte and the ex parte order was set aside within 1-2 years after the institution of the suit but after restoration, the suit was allowed to linger on. To compel specific performance in such a situation where the real value of the property had gone several times fold would be grossly inequitable.

7. The learned counsel for the appellant states that he would be willing to pay even bank interest for the balance of sale consideration. The peace are parleys that can be worked out by the plaintiff if he is so interested outside court but I am loathe to make any intervention in favour of the plaintiff on the basis of the evidence already let in and on the inferences made against the

plaintiff by the courts below, which I have approved.

8. The second appeal is dismissed as devoid of merits and as involving no substantial question of law.

(K.KANNAN)
JUDGE

16.11.2015
sanjeev