

105.

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

Regular Second Appeal No.3190 of 2014 (O&M)

Date of decision: 08.12.2015

Chander Kanta

... Appellant

versus

Pawan Sharma

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Divanshu Jain, Advocate,
for the appellant.

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)

1. The appeal is at the instance of the defendant who has suffered a decree for specific performance. The plaintiff was suing on an agreement of sale dated 27.08.2004 under the terms of which ₹ 1 lakh had been paid as advance and it was directed that a further payment of ₹2 lakhs was to be made on or before 10.09.2004 and the remaining balance out of total consideration of ₹16 lakhs was required to be paid on or before 02.12.2004. A specific clause was also that the seller would clear all the outstanding dues against the house and would obtain a No Objection Certificate pertaining to the

property from the concerned department/authorities before the completion of the bargain.

2. The plaintiff would aver that apart from ₹1 lakh, a further payment of ₹2 lakhs had been made and a separate receipt had been obtained on 08.09.2004. A further advance of ₹1,50,000/- had been made subsequently and endorsed on the document on 01.12.2004. The time was extended for performance on 20.02.2005. The suit came to be filed in 2006 on a plea by the plaintiff that he had been always ready and willing and he was even present at the Registrar's office on the date when the sale was to be executed as per the agreement and got his presence noted on his own affidavit by the Registering Authority.

3. The defendant contended that there had been a suit pending in relation to the property by his brother and on that account, No Objection Certificate could not be obtained. His contention therefore was that the plaintiff was only to secure a power of attorney after payment of balance of consideration but he did not however do so because he did not have the necessary funds for payment of balance. According to him, there was no justification for the plaintiff to still wait for nearly a year before the suit was filed. That betrayed his lack of readiness and willingness. The trial court rejected the contention of the defendant and decreed the suit. The appellate court confirmed the same. The defendant is aggrieved

and hence in second appeal.

4. The learned counsel reads to me the so-called admission of the plaintiff that he knew that the defendant had applied for No Objection Certificate and No Objection Certificate could not be given because there was a litigation going on. I cannot understand as to how this statement can relieve the defendant of an obligation which was stated in the document as necessary before the bargain could be completed. If whole of the evidence of the plaintiff in the cross-examination is seen, he adds in the same sentence regarding the issue of NOC by the Estate Officer by adding “ but I was not informed that the Estate Officer has not issued No Objection Certificate due to the pendency of any case”. Unless there had been a novation of contract setting out different terms to what was brought out specifically in the original agreement relieving the vendor of his obligation to secure NOC, the defendant was not competent to plead his own difficulty arising out of a suit instituted by her husband's brother as a justification for non-production of NOC or compel the plaintiff to obtain a power of attorney in stead of a sale deed. It has been laid down by the decision of the Supreme Court in **Suraj Lamp and Industries Pvt. Ltd. Versus State of Haryana and another-2012(1) SCC 656** that modern contrivances with like irrevocable power of attorney or Will by the vendor shall all be not competent to substitute the requirements of law for a

transfer of property to take effect as a sale. I will not allow for any pleading to be brought which will be against law and which the court frowns upon as not a legitimate transaction.

5. The substantive point which was urged was that the plaintiff had admitted in the cross-examination that as per the bank passbook as on 10.02.2005, there was only a balance of ₹18,092.10 and, therefore, he did not have the necessary funds to get the sale deed done after payment of balance of sale consideration. If a party is to be bound by an admission, a statement of the party must be read as a whole and it cannot be truncated. He was saying in the same sentence that he was having FDRs for the payment of the remaining sale consideration. He has further stated that he has not produced the FDRs as those have been got encashed by him. The cross-examination was only to the effect that he had not given the details of FDR but I find nothing suggested in the cross-examination that he did not have money to pay and, therefore, he did not secure the sale deed. On the other hand, a general suggestion is only that the plaintiff was trying to compromise the matter and the entire sale consideration was required to be paid at the time of execution of power of attorney and which the plaintiff was denying. I have already observed that there could have been compulsion to obtain only a power of attorney and what was denied by the plaintiff was the defendant's poser that the compromise was to secure a power of

attorney and payment of balance of sale consideration. I do not find that there was anything lacking on the part of the plaintiff to prove which was required to be proved in a suit for specific performance. The two courts have come to correct conclusion and I will not fault the reasoning adopted on the basis of what was argued before me by the learned counsel for the appellant.

6. The second appeal is without merit and it is dismissed.

(K.KANNAN)
JUDGE

08.12.2015
sanjeev