

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

-.-

R.S.A No. 6184 of 2015

Date of Decision: 19.12.2015.

Vijay Kumar & Ors.

..... Appellants

Versus

Om Parkash

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present:- Mr. Arun Jain, Sr. Advocate, with
Mr. Chetan Siarhia, Advocate, for the appellants.

Mr. Sardavinder Goyal and Mr. Sarwinder Goyal, Advocates,
for the respondent.

- 1. Whether Reporters of Local Newspapers 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?*

KULDIP SINGH, J

Impugned in the present Regular Second Appeal is the judgment and decree dated 28.09.2015 passed by the learned Additional District Judge, Barnala (hereinafter referred to as the 'first appellate Court') reversing the judgment and decree dated 12.02.2013 passed by Civil Judge (Senior Division), Barnala, (hereinafter referred to as the 'trial Court') thereby decreeing the suit of the plaintiff for specific performance and directing the plaintiff to deposit the balance sale consideration within a period of two months and also directing the defendant to get the sale deed executed in favour of the plaintiff within one month failing which the plaintiff shall be at liberty to get the sale deed executed through Court of law.

The brief facts so far necessary for the purpose of disposal of this regular second appeal are that on 09.11.2011, defendants-petitioners

entered into an agreement to sell of one shop bearing unit No.B-11/572/41/11 situated near bus stand main road, Barnala for total consideration of Rs.26 lacs. Rs.04 lacs was received as earnest money. The sale deed was to be executed and registered on 31.03.2008, but the defendants did not appear in the office of Sub Registrar, Barnala for the execution and registration of sale deed though the plaintiff remained present in the office of Sub Registrar, Barnala with balance sale consideration and money to meet ancillary charges for execution of the sale deed. Thereafter, he requested the defendants to execute the sale deed, but they flatly refused to do so on 15.04.2008. Hence, the plaintiff filed the suit for specific performance of the agreement.

In the written statement, the defendants admitted the agreement to sell and receiving of earnest money. However, it was submitted that the plaintiff was never ready and willing to perform his part of the agreement and the plaintiff did not have the amount of Rs.22 lacs on 31.03.2008. It was also submitted that the defendants remained present in the office of Sub Registrar, Barnala and got their presence marked, but plaintiff did not turned up.

Learned trial Court after going through the evidence recorded the findings that the plaintiff could not explain that he had balance sale consideration with him on 31.03.2008 and also could not explain from where he arranged the money, therefore, it was held that the plaintiff was not having the balance sale consideration with him on the material date and consequently observed that the plaintiff was never ready and willing to perform his part of the agreement. Consequently, the suit was dismissed. In

the appeal, learned first appellate Court reversed the findings.

I have heard learned counsel for the parties and gone through the records of the case.

The only contention raised before this Court is that on the date fixed for the execution of the sale deed, plaintiff was not ready and willing to perform his part of the contract on the ground that he did not have Rs.22 lacs, the balance sale consideration with him. For this purpose the reliance has been placed on cross-examination of the plaintiff wherein, though, he had claimed that he had borrowed the money from his friends, but he could not tell the name of the friends from whom the money was borrowed. Therefore, it is contended that since the plaintiff could not explain the source of money, therefore, his statement that Rs.22 lacs was available with him cannot be believed. Learned counsel has also placed reliance upon the judgment of the Hon'ble Supreme Court in Man Kaur Vs. Hartar Singh Sangha, 2011(1) R.C.R (Civil) 189.

I am of the view that the findings recorded by the learned Additional District Judge and the reasoning given in support of the judgment are in accordance with law. The plaintiff is only required to prove that he had a capacity to pay the said money. He is not required to give account of each and every rupee he has collected. For the purpose of ready and willingness, several factors are to be taken into account. In the affidavit sworn before the Sub Registrar, the plaintiff had stated that he had come present with the balance sale consideration, but the exact amount was not mentioned in the affidavit. Secondly, when on 31.03.2008, the sale deed was not executed, the plaintiff had filed the civil suit within one month,

which also shows his readiness and willingness to perform his part of the contract. In the written statement, the defendants though denied that the plaintiff did not have balance sale consideration of Rs.22 lacs, however, he never took the plea that if the plaintiff is ready and tender the balance sale consideration, he is ready and willing to perform his part of the contract. If this had been stand of the defendants and then the plaintiff fail to tender the balance sale consideration, the lower court was justified to hold that the plaintiff had no capacity to pay the said money. The fact that the suit was filed immediately after the date fixed for the execution of the sale deed, shows the readiness and willingness of the plaintiff. Even in the authority of Man Kaur (Supra), the Hon'ble Supreme Court never held that plaintiff should account for each and every rupee, which is balance sale consideration. It was held by the Apex Court that if the plaintiff did not have the balance sale consideration or the capacity to arrange and pay such money, when the contract had to be performed, the plaintiff will not be entitled to specific performance, even if he proves breach by defendant, as he was not 'ready and willing' to perform his obligations.

In the present case, when the appellate Court decreed the suit and directed the plaintiff to pay balance sale consideration, as per the copy of the challan produced today, the plaintiff had balance sale consideration of Rs.22 lacs and same was deposited in the treasury on 20.11.2015. Photo-stat copy of challan receipt is taken on record.

The facts and circumstances, discussed above shown that the plaintiff was ready and willing to perform his part of the contract and consequently, there is not illegality in the judgment and decree passed by

the first appellate Court. The appeal is found devoid of any merit and is dismissed, accordingly.

December 19, 2015
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(KULDIP SINGH)
JUDGE