

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

**Regular Second Appeal No.3500 of 2014 (O&M)
Date of Decision: December 15, 2015.**

Smt. Vidhya Devi

.....APPELLANT(s).

VERSUS

Mahinder Kumar

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Pankaj Middha, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is second appeal by Vidhya Devi against the judgment and decree dated 31.08.2012 passed by Civil Judge (Senior Division), Panipat, whereby the relief seeking specific performance of the agreement to sell dated 11.01.2006 was declined and the alternative relief of recovery of ₹2 lacs with interest @ 6% per annum, was allowed. The judgment passed by Civil Judge (Senior Division), Panipat was upheld by the District Judge, Panipat.

2. Case of the plaintiff, in brief, is that defendant vide agreement dated 11.02.2006 agreed to sell his house fully described with letters ABCD in the site plan comprised in khasra No.36/5/2(6-4) for a sum of ₹7 lac and received ₹1 lac as earnest money. The date for execution and registration of the sale deed on payment of balance sale consideration was fixed as

10.05.2006. Plaintiff averred that she paid additional amount of ₹50,000/- each on 12.01.2006 and 20.01.2006 to the defendant towards earnest money vide receipts. She has always been ready and willing to perform her part of the contract and remained present in the office of Sub Registrar on 10.05.2006 along with balance sale consideration and other expenses, where defendant failed to appear. A notice was also issued to the defendant calling upon him to execute the sale deed but of no avail.

3. Defendant, in his written statement, admitted the agreement but pleaded that this agreement was entered with husband of plaintiff regarding the house situated in Adarsh Nagar, Jayrasi Road, Samalkha. He also admitted the receipt of ₹1 lac as earnest money on 11.01.2006 and ₹50,000/- each on 12.01.2006 and 20.01.2006 from husband of plaintiff. Under a compromise dated 10\9.06.2006, the date for execution of the sale deed was extended up to 18.12.2006 and the price of the suit property was enhanced by ₹35,000/-. Husband of the plaintiff failed to perform his part of the contract. On 18.12.2006, defendant went to the office of Sub Registrar, where plaintiff or her husband failed to appear. All other averments of the plaintiff were contested, controverted and denied.

4. The instant suit was filed by the appellant-plaintiff on 05.05.2009 i.e. about three years after 10.05.2006, the date fixed for execution and registration of sale deed. Learned Civil Judge (Senior Division) on appraisal of the evidence observed that the agreement dated 11.01.2006 is admitted. The payment of earnest money is also admitted. However, the relief of specific performance of the agreement was declined

on the following grounds:-

- (i) A notice dated 03.06.2006 was served on plaintiff by the defendant calling upon her to get the sale deed executed which she did not reply. The plaintiff admitted the receipt of notice dated 03.06.2006 (Ex.D10).
- (ii) The defendant had gone to the office of Sub Registrar on 10.05.2006, where the plaintiff did not turn up.
- (iii) Regarding the readiness and willingness of the plaintiff, it was observed as follows:-

“The panchayat settlement mark-A when put to plaintiff in her cross examination she admitted it and she also admitted to have received the notice dated 3.6.2006 which is proved by defendant as Ex.D10. If plaintiff has received the notice wherein she was asked to come present for execution and registration of sale deed on 18.12.2006 she could appear in the office of Sub Registrar for registration of sale deed. But there is no evidence that plaintiff visited the office of Sub Registrar on 18.12.2006 the date fixed for execution and registration of sale deed as per panchayat settlement which is admitted by plaintiff. Notice Ex.D10 dated 3.6.2006 mentions that defendant went to the office of Sub Registrar on 10.5.2006 but plaintiff did not appear and as per this notice plaintiff was asked to get the sale deed registered within seven days from receipt of the notice. But plaintiff has failed to show that she approached to defendant for execution and registration of sale deed despite her admission that this notice was received by her and despite her pleadings that she remained ready and willing to perform her part of the contract.”

before the Panchayat and further that the remaining sale consideration after payment of ₹2 lacs to the defendant was ₹5,35,000/- which was to be paid on 18.12.2006.

(v) In the notice dated 08.10.2007 sent by plaintiff to defendant (Ex.P6), the sale consideration was mentioned as ₹7,30,000/- and earnest money paid as ₹1,20,000/-, which was contrary to the pleadings of the parties.

(vi) The plaintiff despite admission of the settlement before the Panchayat had failed to prove that she had appeared before Sub Registrar on 18.12.2006.

(vii) No explanation was rendered by the plaintiff for remaining silent after the alleged stipulated date for execution and registration of the sale deed i.e. 10.05.2006, receipt of notice dated 03.06.2006 till the filing of the suit on 05.06.2009.

5. Learned counsel for the appellant has argued that the Courts below have taken into account compromise dated 19.06.2006 which was not duly proved. It was placed on file only as mark-A. There is delay in filing the suit but the delay took place as defendant had been lingering the matter on one pretext or the other. The relief of specific performance of agreement cannot be declined when the suit had been filed within limitation.

6. On perusal of the judgments of the Courts below, I find that the settlement dated 19.06.2006 though not exhibited, was admitted by the plaintiff. She had also admitted that the prices of the suit property was enhanced under that settlement by ₹35,000/-. If it was not so, she would

have replied the notice dated 03.06.2006 sent to her by the defendant. She

remained silent for a period of about three years after the alleged stipulated date of 10.05.2006. Though the time is not essence of the contract but is a very material fact to be looked into to assess the readiness and willingness of the parties. Hon'ble Apex Court relying on the observation of ***K.S. Vidyanandam Vs. Vairavan 1997(3) SCC 1***, has observed in case of ***Saradamani Kandappan Vs. S. Rajalakshmi and others 2011(4) RCR (Civil) 130(SC)*** as follows:-

“Therefore there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the current position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices. We do not propose to undertake that exercise in this case, nor referring the matter to larger bench as we have held on facts in this case that time is the essence of the contract, even with reference to the principles in *Chand Rani* and other cases. Be that as it may.

28. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in ***K.S. Vidyanadam (supra)*** :

- (i) Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.
- (ii) Courts will apply greater scrutiny and strictness when considering whether the purchaser

was 'ready and willing' to perform his part of the contract.

- (iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. Courts will also 'frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser.”

7. In view of my discussion above, I find no reason to differ with the reasons given by trial Court (as discussed in para 4 above) while declining relief of specific performance of agreement dated 11.02.2006. Time though was not essence of contract, still in view of facts and circumstances discussed above, it was the plaintiff-appellant, who committed default in complying with terms of agreement to sell. I find no legal or factual infirmity in the judgments of the Courts below, calling for any interference.

8. No substantial question of law requiring determination arises in this appeal, which has no merits.

9. Dismissed.

December 15, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE