

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 3849 of 2014 (O/M)
Date of decision : 8.9.2015

Rakesh Dhull

..... Appellant

Versus

Vijay Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Aman Pal, Advocate, for the appellant.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH, J. (ORAL)

Impugned in the present regular second appeal is the judgment and decree dated 19.12.2013, passed by the learned Additional District Judge, Kaithal, affirming the judgment and decree dated 3.7.2011, passed by the learned Civil Judge (Junior Division), Kaithal, vide which the suit of the plaintiff/appellant for specific performance, was dismissed on the ground that the plaintiff/appellant is not ready and willing to perform his part of contract.

The brief controversy involved in the present case is that an agreement dated 28.11.2005 was executed between the parties

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regarding sale of the disputed property. The date of execution and registration of sale deed was fixed for 5.3.2006, which happened to be a holiday. Therefore, the plaintiff/appellant asked the defendant/respondent to come present on 6.3.2006 to execute the sale deed. However, according to the plaintiff/appellant, he came at the office of Sub Registrar, Kaithal, alongwith the balance sale price and other expenses, but the defendant/respondent did not turn up to execute the sale deed. Hence, he filed the suit on 24.5.2006 after his legal notice failed to clinch any reply.

Before the lower Court, defendant/respondent admitted the agreement and took the plea that the plaintiff/appellant did not perform his part of contract. In the written statement, he offer to execute the sale deed on receipt of balance sale consideration. The lower Court has made the following observations regarding the events happenings thereafter :-

“18. Further, on 26.7.2006 the defendant in his written statement and through his counsel showed his willingness to execute the sale deed on receipt of balance sale consideration, the plaintiff should have immediately deposit the amount. On the other hand, the plaintiff sought adjournment. The case was fixed for 2.8.2006. On 2.8.2006, again the plaintiff moved an application for issuing direction to the Sub-Registrar. The case was fixed for 13.9.2006 and on the said date, the defendant filed an application that earnest money be

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forfeited as the plaintiff is not ready and willing to tender the balance sale consideration. On the next date of hearing i.e. 10.10.2006 instead of arguing the application dated 2.8.2006, and instead of depositing the balance amount and getting the sale deed executed, the plaintiff withdrew the said application to deposit the balance sale consideration, as reflected in the order dated 10.10.2006. If the plaintiff was ready and willing to deposit the said amount, he would never withdraw his application in this regard. The above said conduct of the plaintiff shows that it was the plaintiff who lingered on the execution of the sale deed on payment of balance sale consideration.”

It was on the basis of these events that the lower Court concluded that the plaintiff/appellant is not ready and willing to perform his part of contract. The said findings were affirmed in appeal.

The learned counsel for the plaintiff/appellant has argued that during evidence, defendant/respondent had denied the agreement and, therefore, the question of ready and willingness does not arise. However, the events as noticed above by the lower Court at the stage of pleadings go to show that the plaintiff/appellant was not ready and willing to perform his part of contract. He did not deposit the money in the Court and was not ready for getting the sale deed executed. It being so, no fault can be found with the findings of facts recorded by both the Courts below. No question of

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law much less the substantial question of law arises in the present appeal. Hence, the present appeal is dismissed.

(KULDIP SINGH)
JUDGE

8.9.2015
sjks