IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Regular Second Appeal No.4372 of 2014 (O&M)
Date of decision: 2.7.2015

M/s Shiv Hosiery Factory and others

... Appellants

Versus

Raj Kumar Bansal

... Respondents

CORAM: HON'BLE Mr JUSTICE RAJIV NARAIN RAINA

Present: MrJ.S.Puri, Advocate,
for the appellant.

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1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

The defendant is the defaulting seller of suit shop located near Cheema Chowk, Ludhiana. The plaintiff was a prospective buyer under a contract of sale dated 28th May, 1998. When the defendants backed out of the agreement, the plaintiff brought a suit for possession by way of specific performance praying for grant of decree in his favour compelling defendant to execute a sale deed in his favour by court process.

2. The two courts below have agreed with the plaintiff that he has a case for specific performance and the suit has been decreed with costs against which the vendors are in second appeal. A direction has been issued to the defendant to execute and get registered the sale deed of the demised premises registered with balance amount of sale consideration standing at ₹

1,17,000/-.

3. Against the concurrent findings of fact, learned counsel MrJ.S.Puri appearing for the appellants has argued that the suit was barred by limitation. On this submission, we have to notice a few dates. To reiterate, the sale agreement was signed on 28th May, 1998. Part of the sale consideration was paid by banker cheque drawn on a nationalized bank at Ludhiana. Parties agreed that the balance sale consideration will be paid at the time of execution and registration of the sale deed which was to be executed within one month from the date of receipt of bank clearance certificate, the property being encumbered, and the TS-I certificate [No dues of House Tax Liability] from Municipal Corporation, Ludhiana. Part of the property was pledged with the bank as security for loan etc., and on clearances of which the sale was pegged down, were not performed and debt discharged by vendor/borrower. Time passed. Vendor remained in backing out position. On 9th February, 2002, the plaintiff with no hope of performance left, served a legal notice on the defendant to come forward and execute the sale deed. The seller remained in default of performing his part of the contract.

4. In response to the suit, the defendant appeared by pleading in defence that the agreement was a forged and fabricated document. Defendants denied receipt of earnest money and the cheques issued by the plaintiff in favour of the defendants was not part of the earnest money. The plaintiff claimed that he was ready and willing to perform his part of the agreement. Learned trial Court read the examination-in-chief of Vinod Aggarwal DW1 where he specifically admitted the signatures of the

defendant on the alleged agreement of sale. This was in sharp departure of what the witness deposed in resiling from the agreement itself washing off their hands from the document. However, the present was not the only sale agreement between the parties. The parties had earlier executed another sale deed of a portion of the same premises where the sale deed stood duly exhibited as DX comprising land measuring 35 square yards out of total 106 square yards. The defendants had also sold their roof rights of the suit property to third party-one Harjit Singh Khurana. Defendants admitted that they were defaulters of the bank and were facing auction proceedings of the property in question when they started making sales to avoid losing the suit property to the Bank. It was to pay off that loan that defendants agreed to sell the property to the plaintiff. Witness admitted that the cheques were paid by the plaintiff and were deposited in defendants' bank account.

5. Mr Puri does not dispute that the suit property was freed from encumbrances and from the yoke of the loaning bank. The suit was decreed by the learned ACJ, Senior Division, Ludhiana on 1st December, 2011.

6. The appeal carried to the learned ADJ, Ludhiana failed. The appeal court noticed the inconsistent stand taken by the defendants denying on the one hand in the pleadings the execution of the agreement but admitting the same at the stage of evidence by shifting their stand by asserting that the plaintiff had obtained signatures on the disputed agreement by misrepresentation. In such eventuality, the appeal court thought the onus was heavily on the partners of the defendant-firm to prove their contention. The Court below was correct in this reasoning and found from the evidence that they have miserably failed to dislodge the

genuineness of the sale agreement. When receipt and deposit of cheques representing part of the sale consideration were proved, disclaiming the sale agreement was a false plea.

7. On the question of readiness and willingness of the plaintiff to abide by the terms and conditions of the contract, the appeal court reasoned and rather correctly that such a plea can be raised only when the prospective seller admits sale agreement. But where the seller vehemently denied the document itself as never having been executed by stating that it was a sham transaction, the document having been procured by the plaintiff in connivance with the attesting witnesses, in that situation, it would not lie in the mouth of the defendant to raise any objection regarding readiness and willingness to comply with the terms of agreement of sale on the part of the plaintiff. For this, the appeal court correctly drew support of the law on the legal proposition stated in case **Jora Singh** v. **Lakhwinder Kumar and others;** 2011 (2) CCC 113.

8. On the question of limitation, the appeal court dealt with the issue in para. 13 of the judgment. Since the execution and registration of the sale deed were made dependent on the property being freed from encumbrances and proof of it being produced by the defendants, then duty was cast on the latter to get bank clearance certificate and to complete the formalities in Form TS-1 from the Municipal Corporation concerned. The defendants failed to take measures to satisfy the conditions agreed upon in the agreement of sale. When this was the position and the defendants were in default, then they could not blame the plaintiff for coming to court to seek a decree of specific performance. The appeal was dismissed on 24th

January, 2014.

9. I asked Mr Puri whether point of limitation was taken in the written statement filed by the defendants, he answered in the negative. I also asked him if the defendants had disputed their signatures on the sale agreement, and if they had, did they plead this and supported the assertion by producing expert evidence, the counsel drew a blank.

10. Mr Puri then argues that there has been no refusal of performance of contract on the part by the defendants. For this submission, he relies on a decision of the Supreme Court in **Gunwantbhai Mulchand Shah & Others** v. **Anton Elis Farel and others;** 2006 (3) SCC 634 and observations in para. 7 thereof which are reproduced : -

> "We may straightaway say that the manner in which the question of limitation has been dealt with by the courts below is highly unsatisfactory. It was rightly noticed that the suit was governed by Article 54 of the Limitation Act, 1963. Then, the enquiry should have been, first, whether any time was fixed for performance in the agreement for sale, and if it was so fixed, to hold that a suit filed beyond three years of the date was barred by limitation unless any case of extension was pleaded and established. But in a case where no time for performance was fixed, the court had to find the date on which the plaintiff had notice that the performance was refused and on finding that date, to see whether the suit was filed within three years thereof. We have explained the position in the recent decision in R.K. Parvatharaj Gupta Vs. K.C. Jayadeva Reddy [2006 (2) SCALE 156]. In the case on hand, there is no dispute that no date for performance is fixed in the agreement and if so, the suit could be held to be barred by limitation only on a finding that the plaintiffs had notice that the defendants were refusing performance of the agreement. In a case of that nature normally, the question of limitation could be decided

> only after taking evidence and recording a finding as to the date on which the plaintiff had such notice. We are not unmindful of the fact that a statement appears to have been filed on behalf of the plaintiffs that they do not want to lead any evidence. The defendants, of course, took the stand that they also did not want to lead any evidence. As we see it, the trial court should have insisted on the parties leading evidence, on this question or the court ought to have postponed the consideration of the issue of limitation along with the other issues arising in the suit, after a trial."

11. When limitation is a mixed question of fact and law, then it was not put in issue even though it is more or less the duty of the court cast by section 3 of the Limitation Act, 1963 but parties are to beware of the consequences when the issue requires evidence and the pleadings in the face of the plaint are not enough to arrive at the conclusion that suit is ex facie barred by limitation. The issues framed in the suit are: -

> 1. Whether plaintiff is entitled to possession by way of specific performance of agreement dated 28.5.1998 on payment of balance sale consideration? OPP
> 2. Whether plaintiff is entitled to permanent injunction as prayed for? OPP
> 3. Whether agreement propounded by plaintiff is false and fabricated? OPD
> 4. Relief.

12. If an objection of limitation has not been taken and an issue not struck nor claimed and time for performance of the agreement of sale was not specified, then in the very judgment that Mr Puri relies on, cuts both ways. The Supreme Court having considered the provisions of Article 54 of the Limitation Act, 1963, Section 46 of the Contract Act and Sections 38, 15, 16 of the Specific Relief Act, 1963 have held that in a case where time

for performance was not specified and the suit was filed after 19 years of agreement, then the suit was not to be dismissed but will be governed by the second limb of article 54 of the Limitation Act. Limitation runs for 3 years from when right to sue accrues. When the defendants did not inform the plaintiff of tiding over the encumbrances on the property and clearances obtained from the Bank and the Municipal Corporation, limitation continued to run till the date of filing of the suit.

13. In the circumstances, I am unable to persuade myself to the view propounded by Mr Puri that the judgment and decrees of both the courts below require interference in second appeal even though there are concurrent findings of fact recorded by both the courts below against his clients. I have no inclination to do so after the courts a quo have properly appreciated the evidence adduced on the file by the parties. The defendants did not set up conscionable defence in the written statement calling in the first instance in the pleadings the sale agreement as a forged and fabricated document and then falling into the trap of a self destructive defence questioning the genuineness of the sale agreement by departing in a volte-face in the cross-examination that they did in fact sign the sale agreement. I should imagine that verified pleadings must give way to depositions on oath made in the stand. Then in such a case of falsehood where defendants have not come out clean, no interference is warranted in exercise of discretionary jurisdiction in a suit for specific performance of a contract agreement.

14. Resultantly, and for the foregoing reasons, I find no merit in this appeal or any triable substantial question of law arising which is worthy of consideration in second appeal for an admission of the matter for regular

hearing.

15. Accordingly, the appeal is ordered to stand dismissed at the threshold.

(RAJIV NARAIN RAINA)
JUDGE

July 2, 2015
Paritosh Kumar