

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.5008 of 2014 (O&M)

Date of Decision: November 17th, 2015

Gurdarshan Sethi & another

...Appellants

Versus

Paramjit Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers 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?

Present: Mr.Sandeep Khunger, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

The appellant-plaintiffs are in Regular Second Appeal against the concurrent findings, whereby the suit for specific performance of the agreement to sell dated 16.2.1999 in respect of two shops against the earnest money of Rs.1,00,000/- has been dismissed and the appeal filed, has also met with the same fate.

Mr.Sandeep Khunger, learned counsel appearing on behalf of the appellant-plaintiffs submits that the target dates for execution of sale deeds of both the shops were different. For one shop, it was 30.7.1999 and for second shop, it was

20.11.1999. The attesting witnesses to the agreement to sell have been examined and they have proved the execution of the agreement to sell. Even legal notice dated 18.8.1999, calling upon the respondent-defendants to perform their part of the agreement was sent, but they did not come forward and accordingly the suit was filed on 6.7.2002. Both the Courts below have committed illegality and perversity in declining the relief on the ground that the appellant-plaintiffs have not been found to be ready and willing to perform their part of the agreement and, thus, prays that the substantial questions of law arise for determination by this Court.

I have heard the learned counsel for the appellant-plaintiffs and appraised the paper book.

The defendants, vide legal notice dated 3.8.1999, cancelled the agreement to sell and forfeited the earnest money, however, before the suit could be filed, defendant No.1, vide sale deed dated 9.5.2001, transferred the property agreed to be sold to defendant Nos.2 to 4. Even after serving the notice dated 18.8.1999, the plaintiffs did not take any steps to file the suit. Once the agreement to sell was cancelled vide notice dated 3.8.1999, it is only on 6.7.2002 the suit was filed. In my view, the readiness and willingness is conspicuously absent. The Hon'ble Supreme Court in **Sita Ram & Ors. Versus Radhey Shyam, 2007(4) R.C.R. (Civil) 533** has clearly laid down the law that the readiness and willingness has to be from the date of the execution of the agreement to sell, during its currency, till the filing of the suit and during the pendency of the suit. The aforementioned ingredients have not been complied with. I do not intend to differ with the findings rendered by both the Courts

below. No substantial question of law arises for determination by this Court.

Accordingly, the appeal is dismissed.

November 17th, 2015
ramesh

(AMIT RAWAL)
JUDGE