

102.

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

Regular Second Appeal No.55 of 2014 (O&M)

Date of decision:19.10.2015

Om Singh

... Appellant

versus

Umed Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Amit Kumar Goyal, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

CM No.129-C of 2014

For the reasons stated in the application, delay of 14 days in filing the appeal is condoned.

Application stands disposed of.

Regular Second Appeal No.55 of 2014 (O&M)

1. The appeal is at the instance of the defendant who has suffered a decree for specific performance. The suit was for enforcement of an agreement, dated 29.09.2004 that recited the sale consideration of ₹ 11,05,000/- and an advance of ₹3 lakhs was said to have been paid by the plaintiff. The time for performance as

stipulated in the agreement was 02.03.2005 and the plaintiff expressed through a notice issued prior to that time that a suit had been filed by his brother Suraj Bhan against himself and the defendant and obtained a relief of injunction from alienation of the property. The plaintiff would state that it was under such a circumstance of the court's order of injunction that he was unable to perform his part of the contract. The relief of injunction granted by the civil court was vacated on 08.05.2006 and the plaintiff issued notice again on 15.05.2006 calling upon him to receive the balance and execute the sale deed. The defendant replied denying that there was any agreement and denying further that he had received any amount. The suit came to be instituted on 01.06.2006 for specific performance on the ground that the defendant had declined to act as per the agreement and, therefore, the suit was required to be instituted.

2. The court examined at first the issue of the genuineness of the document since it was denied. PW1 spoke about the fact of his presence at the execution and PW2 was yet another witness also spoke about the defendant's execution. The scribe had not been examined and it was urged on behalf of the defendant that the non-examination of the scribe was material. The court reasoned that two witnesses in the agreement had adequately spoken about the genuineness of the document and there was nothing to suspect his

genuineness. The court also took note of the fact that the stamp paper for the agreement itself had been purchased in the name of the defendant and produced by him and the fact of the document standing in the name of the defendant himself was a further pointer to the genuineness of the document. As regards the plea by the defendant that the plaintiff had not given a replication to a contention raised in the written statement that the agreement was not genuine, the court referred to the judgment of the Supreme Court in **K. Laxmanan Versus Thekkayil Padmini and others-2009(1) SCC 354** that absence of replication ought not to be understood as admission of what was contained in the written statement. As regards the readiness and willingness, the court observed that the means of the plaintiff itself was not in doubt and if the plaintiff had expressed his readiness and willingness and brought to show that he was capable of raising the finances, there was no need to suspect to readiness and willingness and granted the decree. This decision was confirmed in appeal.

3. The learned counsel reiterates the position about the non-filing of replication which affirmed the genuineness of the document. I reject that argument as frivolous. The contention further is that the suit filed by Suraj Bhan was at the instance of the plaintiff himself. I asked the the counsel to inform me about the nature of evidence that was elicited at the trial that could show any

form of collusion about the plaintiff and his brother and how the plaintiff himself was seen to be instrumental in filing a suit for injunction against the defendant from selling the property. The counsel argues that it must be a matter of inference and it is difficult to prove. I cannot accept that the suit instituted by the plaintiff's brother must be taken as collusive if there was nothing brought out at the trial that the plaintiff's brother had played any responsible role in getting the suit instituted against himself and the defendant. The trial Court's observations that stamp paper has been purchased in the name of the defendant also showed that having purchased the stamp paper for engrossing on the sale agreement, he was coming up with a false plea that there was no agreement at all. The counsel argues that the stamp vendor was not examined. If the stamp paper had been purchased in the name of the defendant, then it was for the defendant to explain as to how the document could have been issued by the stamp vendor in his name. I cannot find any adverse inference against the plaintiff that the stamp vendor was not examined. Readiness and willingness is always a mixed question of fact and law. The requirement of proof of readiness from the date of execution of the agreement that stipulates a date for performance till the date of decree would require to be established in the manner that is normally capable of. The first legal requirement is that there shall be a plea in that regard as required under Section 16 (c). The

explanation to Clause (c) states that in a contract that involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court. There had been no such mandate by any court's order and if the plaintiff was prepared to come to court to say that he had the necessary of resources, the matter must rest there, unless it was a case of indigency of the plaintiff that was brought out at the time of trial. On the other hand, it was a case where the defendant was trying to completely deny the execution of the document and the court had found that there had been a proof of the document as regards the genuineness.

4. The appeal involves no substantial question of law for examination and it is dismissed as not requiring any interference.

(K.KANNAN)
JUDGE

19.10.2015
sanjeev