

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.6229 of 2014 (O&M)
Date of Decision.05.11.2015

Netra Pal Singh son of Munshi Singh

.....Appellant

Versus

Ishwar Lal and another

.....Respondents

Present: Mr. Lokesh Sinhal, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. The appeal is by the plaintiff who filed a suit for specific performance of agreement executed on 15.10.2002 for sale of the property for ₹2,70,000/-. As per the terms of the document of sale as recited, the plaintiff had paid ₹25,000/- on the day when the document was prepared and the document recited that ₹87,000/- was to be paid on or before 14.11.2002 or before effecting the transfer deed, “whichever was earlier”. Yet another amount of ₹1,58,000/- had to be paid on the same day, but the latter payment made reference to payment before 14.11.2002 before effecting the transfer deed. It did not employ the expression “whichever was earlier” as contained in the earlier clause. The defendant had made claim that he had made ready a demand draft for ₹1,58,000/- on 18.11.2002 and he was taking steps to ensure that the allotment deed was taken in the name of the 1st defendant vendor to enable him to secure a transfer in turn in favour of

the plaintiff but the defendant had made it impossible by serving a notice to HUDA informing that he had cancelled agreement and therefore, it was not possible for him to make the payment further. He had issued the notice to the defendant representing him to secure the transfer in his name so that he could effectuate a valid transfer in his favour and when the defendant failed to act to the demand made in the notice, he had instituted the suit. The trial Court had decreed the suit but the Appellate Court reversed the decision finding that the plaintiff had not acted as per the terms of the document and he had not shown his readiness and willingness by paying the amount stipulated in the agreement. The Court ruled that the time was essence of the contract and when the plaintiff had not shown his readiness and willingness, he could not be favoured with decree for specific performance. Another ground which was taken by the trial Court was that the plaintiff sued through power of attorney and plaintiff himself had avoided the witness box, an adverse inference will have to be drawn against him.

2. The nature of transaction was such that there was nothing particular in the knowledge of the plaintiff which the power of attorney could not have known and therefore, the observation of the Appellate Court that the non-examination of the plaintiff himself was material, was perhaps not correct. I will not make much of the same, for the case would require to be tested on the most crucial issue of whether in the suit for specific performance where there is statutory requirement under Section 16(c), the vendor proved his readiness and willingness for performing his part of the contract. In this case, the document which was prepared in the nature of a receipt and language

as an agreement, spelt out two payments to be made on or before 14.11.2002. A payment of ₹87,000/- was required to be done on or before 14.11.2002 before effecting transfer deed, whichever was earlier. This expression “whichever was earlier” was equally important, for there was yet another clause No.3 in the receipt which stated that failure to make the payment as on schedule approved on the part of the purchaser, the amounts paid to the seller would stand forfeited and the purchaser will have no claim whatsoever. The payment of ₹87,000/- which was required to be paid on 14.11.2002 or before effecting the sale deed could not have been avoided by the plaintiff by the only fact that the transfer deed had not been obtained in favour of the plaintiff. The payment of ₹87,000/- contemplated two contingencies and the earlier contingency of the obligation of the payment before 14.11.2002 had already arrived and admittedly, the plaintiff had not made that payment. The counsel points out to me that he had made the draft ready for ₹1,58,000/- and other draft for Rs.87,000/- had not been made ready only because the defendant had not taken the transfer in his own name. So long as the cancellation notice to the HUDA was not effected by the defendant before 14.11.2002, there could be no argument to contend that the defendant had a cancellation notice to be issued to HUDA and therefore, he could not perform his part of the contract. As regards ₹1,58,000/-, the amount was to be paid on or before effecting the transfer deed and there was no clause like whichever occasion is earlier. As regards ₹87,000/-, there was a sure reference to an obligation to pay even if the transfer deed had not been effected before 14.11.2002 by employing expression 'whichever was

earlier.' The plaintiff had not shown his readiness and willingness which was required to be done in the manner required under the document. As a proposition, time is never of the essence of the contract where the document stipulated a particular payment and the plaintiff was only looking for excuses for not making the payment. It was a clear case of the plaintiff not showing his readiness and willingness. Though I will not accept as proposition that time is of the essence of the contract for immovable property, times are changed where judicial approaches have looked for a very strong proof as to why a plaintiff who had undertaking payment before a particular date need not make the payment. In this case, there are lame excuses from the plaintiff through counsel to state that the defendant had caused a cancellation notice to be issued to HUDA and therefore, the balance of the amount could not be paid. The lower Appellate Court was justified in reversing the decision of the trial Court and denying the decree for injunction.

3. I do not find any error in the approach adopted by the lower Appellate Court for interference and the second appeal is dismissed as involving no substantial question of law.

(K. KANNAN)
JUDGE

November 05, 2015
Pankaj*