

**C.M. NOS.14898-14899 C OF 2014 &
R.S.A. NO.6256 OF 2014**

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

DATE OF DECISION: OCTOBER 07, 2015

Satish Kumar

.....Appellant

VERSUS

Dimple Kumari and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASI

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present: Mr. Naresh Kaushal, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASI, J. (ORAL)

Prayer in C.M. No.14898 C of 2014 is for condonation of delay of 104 days in filing the appeal.

The reasons assigned for not filing the appeal in time is that he was arranging for the money to affix the Court fee. Apart from this, the communication gap between the counsel and the appellant has also been taken as a ground for delay in filing the appeal.

Both these grounds cannot be taken to be just and reasonable for accepting the said application, especially when the present suit pertains to the specific performance of an agreement to sell wherein he is stated to be ready and willing to pay an amount of ₹19,30,000/-, which is the remaining amount of consideration for execution of the sale deed. The application, therefore, deserves dismissal.

I have heard the counsel for the appellant on the merits of the

case as well, where a suit for specific performance of agreement to sell dated 11.05.2004 in respect of House No.5760-B, Sector 38 (West), Chandigarh, is sought to be enforced, according to which an earnest money of ₹2,00,000/- was paid to defendant-respondent No.2, Sanjeev Kumar, who is a general power of attorney holder of defendant-respondent No.1, Dimple Kumari, who is his sister. The total sale consideration was fixed as ₹21,30,000/- and the date for execution of the sale deed was fixed as 09.08.2004. The said suit stands dismissed by the Additional Civil Judge (Senior Division), Chandigarh on 19.02.2013, against which an appeal preferred by the appellant-plaintiff has been partly allowed by the District Judge, Chandigarh on 10.02.2014, entitling him to refund a sum of ₹2,00,000/- (earnest money) paid by him to the respondent-defendants alongwith 12% interest per annum from the date of execution of the agreement to sell dated 11.05.2004 till the date of actual payment.

It is the contention of learned counsel for the appellant that on the date when the sale deed was executed i.e. 09.08.2004, he had appeared before the Sub Registrar, U.T., Chandigarh for performing his part of the contract and since the respondent-defendants did not come present, he got himself marked present and executed an affidavit, which was duly attested. He contends that the execution of the affidavit dated 09.08.2004, which establishes his presence in the office of Sub Registrar on 09.08.2004, has been accepted by the Courts below but still his claim for specific performance of agreement has been denied only on the ground that readiness and willingness to perform his part of the contract has not been accepted by holding that the appellant-plaintiff has not been able to show and demonstrate that the availability of the remaining amount of sale

consideration at the time when the sale deed was to be executed, has not been established. He contends that these findings recorded by the courts below cannot be sustained in the light of the fact that it is not the mandate of the statute that the money has to be proved to be available with him on the date when the sale deed is to be executed. In support of this contention, he has placed reliance upon the judgement of Hon'ble Supreme Court in the case of Sukhbir Singh and others Vs. Brij Pal Singh and others, 1996 AIR (SC) 2510 where it has been held that proof or averments that he also had ready cash with him is not necessary when it has expressly been said that the borrower was ready and willing to perform his part of the contract and had necessary funds. Reliance has also been placed upon the judgement of this Court in Iqbal Singh and another Vs. Gurdev Kumar and another, 2004 (4) R.C.R. (Civil) 103. He, thus, contends that the findings on this count deserve to be set-aside.

Another submission, which has been asserted, is that the Courts below have not appreciated and taken into consideration the period between 09.08.2004 till the filing of the suit i.e. 08.05.2007. He contends that on 01.03.2005, the appellant-plaintiff received a notice, Ex.P3, from the respondent-defendants with regard to forfeiture of the earnest money because of unwillingness on the part of the appellant-plaintiff to execute the sale deed, to which response was immediately given by him on 11.03.2005, asserting that in fact the delay was on the part of the respondent-defendants as he was always ready and willing to perform his part of the contract and in this regard he has appeared/presented himself before the Sub Registrar, U.T., Chandigarh on 09.08.2004. His further contention is that on 07.11.2006, Ex.P-7, a notice through counsel was served upon the

respondent-defendants, calling upon them to execute the sale deed, to which no response was received and thereafter the present suit for specific performance was filed on 08.03.2007. He accordingly contends that the observations of the Court that there is delay of almost three years in filing the suit on the part of the appellant-plaintiff, thus, cannot be attributed to him as he had all through been making efforts to persuade the respondent-defendants to execute the sale deed in accordance with the agreement to sell dated 11.05.2004. He accordingly submits that the judgements and decree passed by the Courts below cannot sustain and deserve to be set-aside and the relief of specific performance of the agreement to sell be granted to the appellant-plaintiff.

On considering the submissions made by counsel for the appellant, I am of the considered view that the same cannot be accepted.

Learned lower Appellate Court has considered the factual aspect with regard to readiness and willingness of the appellant-plaintiff to perform his part of the contract on 09.08.2004. In Para 14 thereof, it has been observed as under:-

“14. Now, the question for determination arises whether plaintiff has succeeded in proving that he was ready and willing to perform his part of the agreement. It is well settled proposition of law that in a suit for specific performance of contract, the plaintiff is required to prove his readiness and willingness to perform his part of the contract. The learned trial Court has rightly observed that readiness and willingness on the part of the plaintiff to perform his part of the contract would also depend upon the question as to whether the

defendant did everything, which was required of him to be done, in terms of agreement for sale. The question if the onus was discharged by the plaintiff depends upon the facts and circumstances of each and every case. In the case in hand the plaintiff has claimed that the balance sale consideration was available with him but he had failed to prove by leading any cogent and convincing evidence on the record. The plaintiff has also not placed on record his passbook to show that such a huge amount was lying in his bank account or that he borrowed the said amount from some person so as to show that he was ready with the balance sale consideration. Also, there is nothing on the record to suggest that he made any effort to purchase the said stamp paper or he did show any inclination to purchase the same. It has also surfaced on the record that no notice whatsoever was issued on behalf of the plaintiff to the defendants to show that the defendants have committed breach of terms and conditions of the aforesaid agreement to sell.”

A perusal of the above clearly establishes that merely because the appellant-plaintiff had appeared before the Sub Registrar on the date fixed would not ipso-facto establishes his readiness and willingness to perform his part of the contract. Rather, something more is required to be substantiated because readiness and willingness is an attribution, which is to be established by the appellant-plaintiff, who is seeking specific performance of the agreement to sell. The onus being on the complainant, he has to establish the same, which, in the considered view of this Court,

has not been discharged by him and the Courts below has rightly appreciated the same and concluded accordingly.

The judgement of the Supreme Court on which reliance has been place by the counsel for the appellant i.e. Sukhbir Singh's case (supra) as also of this Court in Iqbal Singh's case (supra) do not dispute the principles laid down that the readiness and willingness has to be established. What has been said therein is that he is not required to show that he had ready cash with him for execution of the sale deed but nevertheless the sources for execution of the sale deed i.e. the sale consideration has to be proved not merely by oral assertions but wherever required through documentary evidence as well. Unfortunately, in the present case, neither any document has been shown nor is it the stand of the appellant-plaintiff that he had borrowed the amount from some other person and, therefore, in the absence of any evidence to the effect that he had the sources available for executing the sale deed, the findings, as returned by the Courts below cannot be faulted with.

As regards the aspect of delay on the part of the appellant-plaintiff in approaching the Court after almost three years from the date of agreement is concerned, the Courts have proceeded to consider that aspect as well and it has been said to be not justified for the reason that after the date on which the sale deed was to be executed and the respondent-defendants had not come present in the office of Sub Registrar, U.T., Chandigarh on 09.08.2004, a notice was received by the appellant-plaintiff on 01.03.2005 for forfeiture of the earnest money, to which he responded on 11.03.2005. Till this stage, the position is quiet clear but thereafter there is an inordinate delay of more than one year and eight months where again the

appellant-plaintiff had remained silent when he served a notice through counsel dated 07.11.2006, Ex.P7, calling upon the respondent-defendants to execute the sale deed. This explanation itself indicates that there has been laxity on the part of the appellant-plaintiff in getting the sale deed executed as the suit for specific performance had been filed on 08.05.2007. The judgements on which reliance has been placed by the learned Lower Appellate Court i.e. K.S.Vidyanadam Vs. Vairavan, 1997 (3) SCC 1 and Saradamani Kandappan Vs. S.Rajalakshmi and others, 2011 AIR SC (Civil) 1812 takes into consideration this aspect and these judgements are applicable to the case in hand and, therefore, have rightly been relied upon by the Court below. I, therefore, see no reason to take a different view. The findings as returned by the courts below are fully justified and based on the pleadings and evidence led by the parties.

The Courts below have returned findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same deserves dismissal.

In view of the above, this appeal is dismissed as barred by limitation as also on merits.

Since the main appeal stands dismissed, C.M. No.14899 C of 2014 for restraining the respondent-defendants from selling, alienating, gift etc. the property in question also stands dismissed.

**October 07, 2015
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**(AUGUSTINE GEORGE MASIH)
JUDGE**