

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

RSA No.6259 of 2014 (O&M)
Date of Decision.17.12.2015

Barjinder Singh

.....Appellant

Vs.

Major Singh and others

.....Respondents

Present: Mr. Ashish Aggarwal, Advocate
for the Appellant.

Mr. Vinay Kumar, Advocate
for the caveator-respondent.

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?

-. -

K. KANNAN J. (ORAL)

1. One of the defendants who contested a case along with other co-sharers for specific performance of agreement of sale admittedly executed by defendants No.1 and 2 in favour of the plaintiffs on 2.6.2005 lost in his defence that the plaintiffs were not ready and willing to perform their part of contract and they did not have the necessary funds. The agreement was in respect of 135 kanals 19 marlas and the consideration fixed was ₹8.20 lacs per acre. Admittedly, the defendants themselves for other co-sharers received ₹20 lacs and had an agreement and the 1st defendant received ₹80,000/- subsequently. The agreement was to be completed by execution of a sale deed on or before 10.04.2006. When the balance of sale consideration of ₹1,39,00,000/- was required to be paid, both the plaintiffs and the

defendants made their respective assertions that they were at Registrar's office willing to abide by the terms and execute the sale deed but there was conflict in version imputing the absence of the other. The plaintiffs had issued the notice on 11.05.2006 reiterating their contention that they were present and called upon the defendants to execute the sale deed. The defendant received the notice but did not reply. A suit came to be instituted a year later when the defendants contended that the plaintiffs were not ready and willing. At the trial, it was elicited through the evidence of PW5 that he had taken only ₹6 lacs and odd with him to the Registrar's office and he had not taken the entire amount payable as balance to the Registrar's office to get the sale deed executed. That is according to the defendants proved that the plaintiffs were not ready and willing.

2. The plaintiffs brought the evidence of PW3 a cashier from a bank who spoke from the bank accounts that the plaintiffs had sufficient funds in their respective accounts that aggregated to more than ₹1,39,00,000/- and this was taken by the two Courts below as sufficient to prove the availability of adequate financial resources to go through the transaction.

3. The learned counsel appearing on behalf of the defendant-appellant would contend that the cashier was not a summoned witness and his evidence ought not to have been accepted. I reject this argument, for there is no compulsion that a person who is brought as witness must be only summoned through Court. The law has changed by Act 104 of 1976 that allows for the plaintiff to bring his own witness even without a reference to summon through Court. If the witness was

again stating from the bank records themselves that vouched for availability of adequate financial resources, the matter must be taken as having been established that they had the adequate financial resources. I will not make much under such a circumstance that one of the plaintiffs had not carried more than ₹6 lacs to the Registrar's office. The balance payable was such a large amount that a person would not have taken the whole cash till parties had assembled at the Registrar's office and it became essential to draw money or secure appropriate legal instrument that could satisfy the defendant's claim. If the plaintiffs had also issued a notice prior to the institution of the suit calling upon the defendant, that was perhaps best occasion for the defendant to deny that the plaintiff did not have enough funds or that the defendant had been actually present at the Registrar's office but the plaintiffs were not present but the defendant did not reply at all. If the defendant had no contention to make by means of reply but was making an assertion that he was actually ready at that time and only the plaintiffs were not ready and willing to perform the part of the contract, the Court was justifiably drawing an adverse inference for not issuing a reply but the defendant was coming up with the false defence only for the purpose of the case.

4. The decree passed under the above circumstances has been on adequate and appropriate evidence and I would find no reason to interfere with the same. The second appeal is dismissed.

(K. KANNAN)
JUDGE

December 17, 2015
Pankaj*