

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA-4999-2009 (O&M)  
Date of decision : 23.09.2016

Main Pal

... Appellant

Versus

Ashwani Kumar (deceased through LRs) and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Ashok Verma, Advocate  
for the appellant.

Mr. Rajeev Godara, Advocate  
for respondent No.1.

Mr. Sunny Kohli, Advocate for  
Mr. C.S. Pasricha, Advocate  
for respondent No.2.

\*\*\*\*

**AMIT RAWAL, J. (ORAL)**

**CM-10034-C-2015**

Prayer in this application filed under Order 22 Rules 4 read with Section 151 CPC is for impleading the legal representatives of respondent No.1, namely, Ashwani Kumar.

For the reasons stated in the application, the application is allowed and the legal representatives of respondent No.1, namely, Ashwani Kumar are permitted to be brought on record for the purpose of prosecuting the appeal.

CM stands disposed of.

**RSA-4999-2009 (O&M)**

The appellant-plaintiff is aggrieved of non-granting of discretionary relief under Section 20 of the Specific Relief Act in a suit seeking specific relief of the agreement to sell and possession of the suit property, whereby he has been held to be entitled to refund of the earnest money of ₹ 2,00,000/- along with interest @ 9% w.e.f. 21.07.2004 till the date of realization.

Mr. Ashok Verma, learned counsel appearing on behalf of the appellant-plaintiff submits that the agreement to sell dated 21.07.2004 in respect of the suit property measuring 24 kanals 16 marals was entered into between the the appellant-plaintiff and the respondent(s)-defendant(s) for a total sale consideration of ₹ 3,10,000/- against the payment of earnest money of ₹ 2,00,000/-. The stipulated date for execution and registration of the sale deed was 19.07.2005. The appellant-plaintiff marked his presence before the office of Sub-Registrar vide Ex.P-2 and thereafter, sent a legal notice through registered post on 21.07.2005. When, the respondent(s)-defendant(s) did not perform his part, the appellant-plaintiff instituted a suit on 19.09.2005. He has drawn the attention of this Court to the paragraph of 4 of the plaint and as well as its reply to contend that once the defendant(s) had admitted the visit of the appellant-plaintiff to the office of the Sub-Registrar, there was no need to prove the same. Even otherwise, the agreement to sell has been proved, but the Courts below have non-suited the appellant on account of wanting of readiness and willingness. The readiness and willingness has to be seen from the date of the agreement to sell, till filing of the suit, during the pendency of the suit and

passing of the decree. All these facts as noticed above did not leave any manner of doubt that the appellant-plaintiff has always been ready and willing, in essence, the provisions of Section 16 (c) of the 1963 Act have been complied with and thus, urges this Court for setting aside the findings under challenge to that extent.

Mr. Rajeev Godara, learned counsel appearing on behalf of the respondent No.1-defendant has drawn the attention of this Court to the findings arrived at by the trial Court and the lower Appellate Court to contend that the appellant-plaintiff, in the cross-examination feigned ignorance with regard to the scribe. The Courts below formed an opinion that the stamp of the Sub-Registrar on the affidavit was not valid. No doubt in the written statement, the execution of the agreement to sell had been denied, but the Court can always examine this aspect despite the denial, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the factum of readiness and willingness throughout is no longer *res integra* in view of the ratio decidendi culled out by the judgment of Hon'ble Supreme Court in **“Sita Ram V/s Radhey Shyam” 2007 (4) RCR (Civil) 553**. The facts noticed above leave no manner of doubt that the appellant-plaintiff had been diligent in pursuing the remedy in accordance with law. In my view, the ingredients of Section 16 (c) of the 1963 Act have been complied. The Courts below was suspicious about the comments of the Sub-Registrar as the appellant-plaintiff did not summon the witness in view of the averments made in paragraph 4 of the plaint. For the sake of brevity, the averments made in paragraph No.4 of the

plaint and written statement read thus:-

*“4. That on 19.07.2005, the plaintiff came present before the office of Sub-Registrar, Nathusari Chota, along with amount of remaining sale price, expenses for purchase of stamps, registration fee and scribe charges etc. But the defendant did not come present before the office of Sub-Registrar, Nathusari Choota on 19.07.2005, for execution and registration of the sale deed with regards to the above said land in favour of the plaintiff. Hence the plaintiff after writing for the defendant for the whole day got his presence marked by producing an affidavit before Sub-Registrar, Nathusari Chopta. In this way the plaintiff has been and is still ready to perform his part of contract. The defendant as such committed breach to the terms and conditions contained in the aforesaid agreement for sale and did not, at all, perform his own part of the contract for sale. The plaintiff ultimately got his own presence recorded by filing an affidavit showing therein his own readiness and willingness to perform his own part of the contract for sale. The aforesaid affidavit was got attested by the Executive Magistrate, Nathusari Chopta.*

**Reply to Para No.4**

*4. That para No.4 of the plaint is wrong and incorrect, hence denied. Since the defendant No.1 did not enter into the alleged agreement for sale with the plaintiff, so the question of his coming present in the office of Sub Registrar, Nathusari Chopta simply does not arise. The plaintiff has illegally and mala fidely got attested the affidavit just with a view to create evidence in his favour.”*

On juxtaposition of the aforementioned averments, it reveals that the respondent(s)-defendant(s) indirectly admitted the appearance of the appellant-plaintiff to the office of the Sub-Registrar. The factum of appearance before the Sub-Registrar was disclosed in the legal notice dated

21.07.2005 which was sent through registered post. There is no rebuttal to that. A registered document carries a presumption of truth. All these facts have not been taken into consideration, much less, noticed by both the Courts below. In my view, the discretionary relief under Section 20 of the 1963 Act is liable to be granted.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in **“Pankajakshi (dead) through LRs and others V/s. Chandrika and others AIR 2016 SC 1213”**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **“Kulwant Kaur and others V/s. Gurdial Singh Mann (dead) by LRs and others” 2001(4) SCC 262**, on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in **“Pankajakshi 's case** (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation*

*to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled." [at paras 27 - 29] ”*

27. *Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”*

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

For the foregoing reasons, findings of both the Courts below viz-a-viz non-grant of discretionary relief under Section 20 of the 1963 are hereby set aside. The suit is decreed in toto. The appellant-plaintiff is directed to deposit the balance sale consideration within a period of two months from the date of receipt of the certified copy of the order. On deposit of the same, the respondent(s)-defendant(s) is directed to execute and register the sale deed. In case, he does not come forward, the appellant-plaintiff shall be at liberty to seek the execution of the judgment and decree in accordance with law.

It is matter of record that somehow the respondent(s)-defendant(s) had obtained Cash Credit Loan Facility of ₹ 83,366/- and ₹ 92,411/- drawn as a Term Loan from the Bank. Out of the deposited amount of the balance sale consideration, the loan amount of the Bank will be adjusted.

The appeal stands allowed.

23.09.2016  
yogesh

( AMIT RAWAL )  
JUDGE

|                           |         |
|---------------------------|---------|
|                           | ✓       |
| Whether speaking/reasoned | Yes/ No |
|                           | ✓       |
| Whether Reportable        | Yes/ No |