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

RSA-3203-2010 (O&M)

Date of decision : 27.04.2016

Harpal Singh

... Appellant

Versus

M/s Manohar Lal and sons

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. J.R.Mittal, Senior Advocate with
Mr. Kashmir Singh, Advocate
for the respondent.

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?

AMIT RAWAL, J. (ORAL)

The appellant-defendant is aggrieved of the decretal of the suit seeking specific performance of the agreement to sell dated 18.12.2001 in respect of land measuring 21 kanals 11 marlas agreed to be sold for a total sale consideration of ₹ 4,04,062.50 and earnest money of ₹ 3,00,000/- was paid.

Mr. Ashok Bhardwaj, learned counsel appearing on behalf of the appellant-defendant submits that the pleadings qua non-compliance of the provisions of Order 6 Rule 3 of the Code of Civil Procedure (hereinafter called 'CPC') and Section 16(c) of the Specific Relief Act, 1963 (hereinafter called 'the 1963 Act') were conspicuously absent when the suit was instituted. Yet the

trial Court decreed the suit. Though, the agreement to sell in the written statement was specifically denied. The respondent-plaintiff failed to prove readiness and willingness, much less, the source of money paid as earnest money. On the contrary, the relationship between the parties was of a commission agent and a farmer. The suit for rendition of accounts was filed which was ultimately allowed by the lower Appellate Court. The suit for rendition of accounts was filed on 24.04.2002, whereas the present suit seeking specific performance of the agreement to sell is dated 08.08.2002. The licence of the Scribe Biru Mal Garg (PW-3) was cancelled, this fact has not been noticed by the lower Appellate Court. He further submits that during the pendency of the regular second appeal, appellant-defendant has entered into an agreement to sell dated 12.01.2011 with the respondent-plaintiff for purchase of the same very land and for that the suit for specific performance of the agreement to sell has been filed, which is stated to be pending. The appellant-defendant is compelled to buy his own land in view of the fraud and misrepresentation being played at the instance of respondent-plaintiff, thus, urges this Court to formulate the substantial questions of law as drawn in the memorandum of appeal.

Mr. J.R. Mittal, learned Senior Counsel assisted by Mr. Kashmir Singh, learned counsel appearing on behalf of the respondent-plaintiff submits that the plea of readiness and willingness, in view of the denial of the agreement, cannot be taken, reference has been made to the judgment rendered by this Court in **“Lal Chand V/s Tek Chand” 2013(5) RCR (Civil) 104.**

He further submits that there is no connectivity or link with regard to the decretal of the suit for rendition of accounts and as well as the

execution of the agreement to sell. Both are independent contract. The stipulated date for registration and execution of the sale deed was 05.06.2002. The plaintiff marked the presence, whereas the respondent did not come present and the suit was filed on 08.08.2002. There is no specific denial with regard to the averments made in paragraph 4 and 5 of the plaint and urges this Court for affirming the findings rendered by both the Courts below.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit in the submissions of Mr. Ashok Bhardwaj, for, the respondent-plaintiff has proved the execution of the agreement to sell through the testimony of PW-2 Moola Singh, attesting witness and PW-3 Scribe Biru Mal Garg. Nothing surfaced why the licence which was cancelled for the relevant period and the outcome of the same. As regards the readiness and willingness, there is categorical pleadings in paragraph 4 and 5 which reads thus:-

“4. That the plaintiff was always ready and willing and is still ready and willing to perform his part of the contract and is ready to pay the balance sale price to the defendant and to get the sale deed registered and executed as per terms of the agreement dated 18.12.2001.

5. That the plaintiff remained present before the office of Joint Sub-Registrar, Dirba along with balance amount during office of hours from 9.00 am to 05.00 pm on 05.06.2002 in order to perform his part of the contract, but the defendant did not turn up in order to perform his part of the contract. The plaintiff is still ready and willing to perform his part of contract. The plaintiff got an affidavit attested to this effect on 05.06.2002 from the executive magistrate, Dirba, which is attached herewith”.

Whereas, the corresponding paragraph of the written statement

specifically denied its execution. Moreover, in view of the ratio decidendi culled out in the judgment referred above, a person who denies the execution cannot take the plea of readiness and willingness. Mere inadequate sale consideration cannot be a ground for denial the discretion. Moreover, subsequent event had already been taken place which this Court cannot remain oblivious as fresh privity of contract entered between the parties by virtue of the agreement to sell dated 12.01.2011. The suit, in this regard, is pending. Rightly so, the Courts below have exercised the discretion under Section 20 of the 1963 Act.

Keeping in view the aforementioned facts and circumstances of the case, I do not differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

With the aforesaid observations, the appeal stands dismissed.

27.04.2016
yogesh

(AMIT RAWAL)
JUDGE