

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2658 of 2011 (O&M)

Date of Decision: May 02, 2016

Devi Dayal & another

...Appellants

Versus

Randhir Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.Anil Kshetarpal, Senior Advocate with
Mr.Rohit Nagpal, Advocate,
for appellant No.1.

Mr.Kulvir Narwal, Advocate,
for appellant No.2.

Mr.Arun Jain, Senior Advocate with
Mr.Kushagra Mahajan, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

Appellant-defendants are in Regular Second Appeal against the concurrent findings of fact, whereby the suit seeking specific performance of the agreement to sell dated 20.8.2001 in respect of land measuring 1 kanal 12 marlas entered into between the parties for a total sale consideration of ₹40.00 lacs against the payment of ₹6.00 lacs as earnest money, has been decreed.

Mr.Anil Kshetarpal, learned Senior Counsel assisted by Mr.Rohit Nagpal, Advocate, appearing on behalf of appellant No.1 has raised manifold submissions, which are summarised herein below:-

- a) The respondent-plaintiffs had not been ready and willing to perform their part of the agreement, in essence the suit was filed on 24.5.2005, whereas the target date for execution and registration of the sale deed was 10.6.2002. Prior to the aforementioned date, a notice dated 6.6.2002 (Ex.P5) was served upon the respondent-plaintiffs, whereby they were called upon to pay the balance amount of ₹34.00 lacs, failing which, the earnest money of ₹6.00 lacs shall be deemed to have been forfeited and the agreement to sell cancelled;
- b) The area, sought to be purchased, was declared as controlled one vide notification dated 5.1.2002. Though the said notification was rescinded on 27.5.2003, no explanation has come forth for a period of two years in filing the suit thereafter;
- c) After the expiry of target date on 10.6.2002, the respondent-plaintiffs sent a reply to the legal notice dated 6.6.2002 (Ex.P5) vide Ex.P6 dated 11.6.2002 and had raised the objection that the sale deed could not be executed unless and until the appellant-defendants obtained 'No Objection Certificate' (for short "NOC") from the department of Town and Country Planning;
- d) The respondent-plaintiffs showed their intention, after 27.5.2003 for the first time on 7.6.2004 vide Ex.P10 calling upon the appellant-defendants to execute and register the sale deed by appearing before the Sub Registrar on 6.7.2004. The aforementioned notice was replied vide reply dated 25.6.2004,

where it was mentioned that the appellant-defendants had already forfeited the earnest money and the agreement to sell had already been cancelled vide notice dated 6.6.2002 (Ex.P5) and the suit has been filed one year thereafter, i.e., on 24.5.2004, thus, the readiness and willingness is conspicuously absent;

- e) All the plaintiffs have not stepped into the witness box, except for one plaintiff, namely, Randhir Singh, who, in cross-examination spilled the beans as he was only equipped with ₹12.00 lacs and not the entire balance sale consideration of ₹34.00 lacs, whereas the other two plaintiffs, namely, Manjeet Singh and Ram Partap did not step into the witness box. Even the readiness and willingness has not been proved at all;
- f) The agreement to sell did not envisage the condition of obtaining NOC at the instance of the appellant-defendants. The suit, *ex-facie*, was not maintainable as vide notice dated 6.6.2002, the agreement to sell was cancelled and there is no challenge to the same.

In support of his aforementioned submissions, relied upon the judgment rendered by Hon'ble Supreme Court in **I.S.Sikander (D) by L.Rs Versus K.Subramani & others, 2014(1) RCR (Civil) 236** and, thus, urges this Court to formulate the following substantial questions of law for determination by this Court:-

- i) Whether the respondent-plaintiffs had been ready and willing in performing their part of the agreement to sell dated 20.8.2001?
- ii) Whether there was a continuous readiness and

willingness on the part of the respondent-plaintiffs as the suit was filed on 24.5.2005, whereas the ban on the controlled area was rescinded on 27.5.2003.

Mr.Arun Jain, learned Senior Counsel assisted by Mr.Kushagra Mahajan, Advocate, appearing on behalf of the respondent-plaintiffs, in support of his arguments, has raised the following submissions:-

- a) The appellant-defendants did not show their intention to appear before the Sub Registrar on 6.7.2004, as they had been called upon vide notice dated 7.6.2004 (Ex.P10), thus, the act and conduct of the defendants is also to be seen for the purpose of exercising the discretion under Section 20 of the Specific Relief Act, 1963 (for short “1963 Act”);
- b) It is only the seller, who has to obtain the NOC and not the vendee. In support of his contention, referred to the statement of DW-5, who stated that the NOC, at the relevant point of time, was required to be obtained from the concerned department for execution and registration of the sale deed;
- c) The suit has been filed nine months thereafter, i.e., after 6.7.2004, therefore, the same cannot be said to be wanting readiness and willingness.;
- d) Since the agreement to sell has been admitted, therefore, the same was not required to be proved through the testimony of the attesting witnesses;
- e) The time was not the essence of the agreement to sell owing to the imposition of ban with regard to the registration of the sale deed as the area sought to be purchased was declared

as controlled one;

f) The respondent-plaintiffs have always been ready and willing to perform their part of the agreement. In support of his contention, he has drawn the attention of this Court to the contents of legal notice dated 6.6.2002 (Ex.P5) to contend that the appellant-defendants had the knowledge of the promulgation of the notification, but had been insisting the respondent-plaintiffs for payment of the balance sale consideration irrespective of the fact that the sale deed could not be registered;

g) He has also referred to the cross-examination of DW-4 Devi Dayal/appellant-defendant, wherein he candidly admitted that he did not want to execute the sale deed in respect of the property as the prices of the properties/land increased manifold;

h) The respondent-plaintiffs categorically stated in the reply dated 11.6.2002 (Ex.P6) that they had been ready and willing to perform their part of the agreement and it was rather the appellant-defendants, who had committed the breach of the agreement, because, as per the instructions of the notification of the Government, in case a party intended to sell the land under the coverage of controlled area, it was required to seek necessary NOC from the department of Town and Country Planning. In support of his contention, relied upon the judgment rendered by this Court in **Ram Dass Versus Ram Lubhaya**, 1998(2) R.C.R. (Civil) 642 to contend that the equity has to be balanced and defendants cannot be placed at

any inequitable situation if specific performance is decreed.

The Court is required to consider the conduct of the parties right from the time of execution of agreement till passing of the decree and in case it is found that they were guilty of breach of the agreement, they cannot be granted any protection of equity and on the similar lines the judgment of the Hon'ble Supreme Court in **Prakash Chandra Versus Angadlal and others, AIR 1979 (SC) 1241** and, thus, urges this Court for affirming the findings rendered by the Courts below as concurrent of findings cannot be interfered with unless and until there is a gross illegality and perversity.

In rebuttal, Mr.Kshetarpal has drawn the attention of this Court to Para 5 of the notice dated 7.6.2004 (Ex.P10), where it has been stated that the respondent-plaintiffs had been insisting upon to obtain NOC after the rescission of the notification, thus, the respondent-plaintiffs had never been ready and willing to perform their part of the agreement.

Mr.Kulvir Narwal, learned counsel appearing on behalf of appellant No.2 has adopted the arguments submitted on behalf of Mr.Kshetarpal, but supplemented the same by referring to the decision rendered by this Court in **Raj Kumar Versus Kamlesh & Ors., 2012(4) Civil Court Cases 831 (P&H)** to contend that the condition of obtaining NOC, limitation to file suit cannot be extended by the said condition. In other words, he submits that in the absence of NOC, respondent-plaintiffs could have come forward for execution and registration of the sale deed and a condition/rider could have been imposed that the sale deed would be subject to any other term and condition, which the party may intend to

arrive at, and thus, urges this Court for setting-aside of the judgments and decrees of 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 appeal and force in the submissions made on behalf of the appellants, for the reasons, that the appellant-defendants, before the date fixed for execution and registration of the sale deed, on 6.6.2002 vide Ex.P5 insisted the respondent-plaintiffs to pay the entire balance sale consideration despite there being a notification declaring the area as controlled one. For the sake of brevity, Clauses 7 and 8 of the notice are extracted herein below:-

“7. That in case the sale deed of the above said land is not registered due to any instructions of the Govt.regarding registration, then my clients shall always be ready for registration of the sale deed of the above said land as and when those instructions regarding the registration of the govt.are removed and my client is ready to execute any document and deliver possession of land as stated above provided that you make the balance payment of ₹ thirty four lacs on or uptill 10.6.02.

8. That through this notice, you are hereby requested to make the payment of the balance amount of thirty four lacs on or uptill 10.6.02 as stated above in the notice failing which the earnest money of ₹ six lacs shall stands forfeited to my clients and thereafter 10.6.02, my clients shall be at liberty to deal with or alienate the above said land in any manner and my client shall not be responsible or any thing towards you in any manner.”

The assertion in the notice reveals that the appellant-defendants were concerned only about the balance sale consideration despite there being an impediment for registration of the sale deed. There was no

occasion for the respondent-plaintiffs to come forward for execution and registration, much less pay the balance sale consideration as it was totally uncertain whether the notification imposing the ban was for infinite time or otherwise. The apprehension erased only after the rescission of the notification in the month of May, 2003 and thereafter the respondent-plaintiffs served the notice calling upon the appellant-defendants to appear before the office of the Sub Registrar on 6.7.2004. It is categoric and pleaded case that the respondent-plaintiffs had been approaching the appellant-defendants for execution of the sale deed, but ultimately having failed to do so, compelled to send the notice dated 7.6.2004, aforementioned.

I would be failing in my duty in not referring to the reply dated 25.6.2004 (Ex.D7) to the notice, wherein the appellant-defendants reiterated the stand taken in the notice dated 6.6.2002. It is a matter of record that on 10.6.2002, the respondent-plaintiffs had appeared before the Sub Registrar and marked present, but the appellant-defendants did not turn up, therefore, it does not lie in the mouth of the appellant-defendants to contend that the respondent-plaintiffs had not always been ready and willing to perform their part of the agreement. In the instant case, in my view, the conduct of the appellant-defendants had been to take the entire balance sale consideration before execution and registration of the sale deed, which is evident from the perusal of Clauses 7 and 8 (supra). All these aspects have been noticed by both the Courts below by noticing that the respondent-plaintiffs had been ready and willing to perform their part of the agreement and rightly so, exercised the discretion under Section 20 of the Act.

There is no force in the contention of Mr.Narwal as the suit was

filed just before the expiry of the limitation period because there had been exchange of correspondences right before the date fixed for execution and registration of the sale deed and subsequent to the rescission of the notification declaring the area as controlled one. Both the Courts below, after examining the evidence threadbare, exercised the discretion by granting relief of specific performance. Inadequacy in the sale consideration would not disentitle the Court to grant discretionary relief under Section 20 of the Act. Reference is invited to the judgment rendered in **Azhar Sultana Versus B.Rajamani & Ors., 2009 (2) RCR (Civil) 123.**

I do not intend to differ with the findings rendered by both the Courts below. The questions of law, noticed above, are answered in favour of the respondent-plaintiffs and against the appellant-defendants. The judgments and decrees rendered by the Courts below are hereby affirmed.

The appeal stands dismissed.

May 2nd, 2016
ramesh

(AMIT RAWAL)
JUDGE