

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

RSA No.3480 of 2011 (O&M)

Date of decision:05.05.2016

Dinesh Kumar and others

... Appellants

Vs.

Vinod Kumar Sharma and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Mukesh Mittal, Advocate
for the appellants.

Mr. Arvind Mittal, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

C.M.No.9770-CII of 2011

For the reasons stated in the application, duly supported by an affidavit, delay of 10 days in re-filing the appeal is condoned.

C.M. stands disposed of.

RSA No.3480 of 2011 (O&M)

Appellant-defendants are aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby, suit seeking specific performance of the agreement to sell dated 29.04.1995 in respect of the shop agreed to be sold for total sale consideration of ₹1,50,000/-, has been decreed in toto by setting aside the judgment

and decree of the trial Court, dismissing the suit.

Mr. Mukesh Mittal, learned counsel appearing on behalf of the appellant-defendants submits that target date for the aforementioned agreement against receipt of earnest money of ₹ 20,000/- was 15.07.1995. However, the same was alleged to have been extended to 08.08.1995 on receipt of another payment of ₹30,000/- which was again allegedly extended upto 12.09.1995 but no explanation has come forth on behalf of the respondent-plaintiffs in not filing the suit within reasonable period. Even the suit has been filed a day before expiry of limitation and therefore, the readiness and willingness, as per the provisions of Section 16(c) of the Specific Relief Act, 1963 was conspicuously wanting. The trial Court on the basis of the oral and documentary evidence dismissed the suit but the Lower Appellate Court erroneously reversed such findings. He further submits that originally shop was owned by Nathu Singh and after his death, it was transferred in the name of his legal heirs, namely, Maya Devi, Mohinder Kumar and Surinder Kumar. Surinder Kumar had also died and he was survived by his wife Asha Rani and son Ashish, whereas, the agreement to sell was signed by only Asha Rani and not by Ashish. Though the appellants admitted the execution of the agreement to sell but the endorsement of extension of time and as well as, payment of ₹30,000/- had emphatically been denied. All these facts would reveal that plaintiffs had never been ready and willing to perform their part of the contract and therefore, the discretionary relief under Section 20 of the Specific Relief Act,

ought not to have been granted. He, thus, urges this Court to formulate the substantial questions of law as culled out in the memorandum of appeal.

Mr. Arvind Mittal, learned counsel appearing on behalf of the respondent-plaintiffs submits that there is a categorical pleading in paragraph nos.6 to 8 qua continuous readiness and willingness which has not been emphatically denied, rather there is a vague and evasive denial. In view of the aforementioned fact, the appellant-defendants cannot take plea of provisions of Section 16(c) of the Specific Relief Act. All these facts have been noticed by both the Courts below. Moreover, agreement to sell stands admitted and endorsements having been proved through the testimony of attesting witnesses and thus urges this Court for affirming the findings rendered by the Lower Appellate Court.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees, as well as, record of the Courts below and of the view that appeal is liable to be dismissed as it sans merit. The respondent-plaintiffs have categorically pleaded with regard to continuous readiness and willingness in paragraph nos.6 to 8 of the plaint. For the sake of brevity, the same are extracted herein below:

“6. That the plaintiff again requested for execution and registration of sale deed, as the plaintiff was ready and willing and is still ready and willing to get the sale deed executed, but the defendants are putting off the matter on

one pretext or the other.

7. *That the plaintiff was ready with funds as well as with remaining sale consideration, but the defendants are putting off the matter one or the other way and have not executed the sale deed in favour of the plaintiff, till today.*

8. *That the plaintiff again requested the defendants to receive the amount for purchase of stamps and remaining sale consideration and to execute the sale deed of the shop in question in favour of the plaintiff, but with no effect.”*

The corresponding paragraphs of the written statement read thus:-

“That the para No. 5 of the plaint needs no reply.

That the para No. 6 of the plaint is wrong and hence denied.

That the para No. 7 of the plaint is wrong and hence denied. That the remaining consideration amount was not ready with the plaintiff.

That the para No. 8 of the plaint is wrong and hence denied. It is further wrong that the plaintiff again requested the defendants to receive the amount for purchase of stamps and remaining sale consideration or that executed the sale deed of the shop of the plaintiff. This is after thought and manipulated story on

the behalf of plaintiff.”

On perusal of aforementioned, it reveals that reply of the appellant-defendants is not only vague but evasive. The readiness and willingness has not been denied. Mere filing of the suit a day before expiry of limitation, in such circumstances would not entail into non exercise of Section 20 of the Specific Relief Act, 1963. Once the execution of the agreement has been admitted and endorsements had been proved through testimony of attesting witnesses. The plea that non signing by one of the LRs of Surinder Kumar would not disentitle the plaintiffs as the estate of deceased-Surinder Kumar was represented. It is not a case where other LRs are minor. In my view, the Lower Appellate Court being the last Court of fact and law after examining the oral and documentary evidence rightly reversed the findings of the trial Court. The respondent-plaintiffs are tenant in the shop in question, thus, possession is of them.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by Lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 05, 2016
savita