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

**RSA-1659-2012 (O&M)
Date of decision : 15.01.2016**

Gaman Lal

...Appellant

Versus

M.S. Walia

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Keshav Partap Singh, Advocate
for the appellant.

Mr. Naveen S. Bhardwaj, 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 in regular second appeal against the judgment and decree rendered by the lower Appellate Court whereby the discretionary relief under Section 20 of the Specific Relief Act has been granted and called upon to perform his part of agreement on the receipt balance sale consideration.

Mr. Keshav Pratap Singh, learned counsel appearing on

behalf of appellant-defendant submits that agreement to sell dated 29.01.1999 was entered into in respect of the plot measuring 1 kanal which had agreed to be sold for total sale consideration of ₹ 9,75,000/- against the receipt of aforementioned price, the earnest money of ₹ 3,00,000/- and another amount of ₹ 50,000/- had been paid. The stipulated date for execution and registration of sale deed was 30.04.1999 or after the transfer of the plot in favour of the appellant-defendant. Since, his father had died and left behind the Will, an application seeking succession was filed in the year 2001, but the same was dismissed in default. Another effort was made in the year 2002, but the same also met with the same fate. The respondents-plaintiffs initiated the criminal proceedings by lodging an FIR against the appellant-defendant. While seeking bail, the appellant-defendant had deposited the earnest money with the police. Ultimately, the probate of the Will was granted by the concerned Court in the year 2003 and in part performance of the said conditions imposed in the probate, deposited a sum of ₹ 10,00,000/- in the shape of FD in favour of the younger brother and thus, the suit in the year 2004 was beyond the target date and the respondents-plaintiffs could not take the benefit of the provisions of Article 54, much less, the readiness and willingness was wanting. He further submits that preceding to the filing of the suit, no legal notice was also sent. Thus, the substantial questions of law arises for determination of this Court.

Mr. Naveen S. Bhardwaj, learned counsel appearing on

behalf of the respondents, submits that the time was not the essence of agreement to sell as the appellant-defendant did not take any steps after obtaining the probate from the Court and nor moved an appropriate application to HUDA for the transfer of the plot. The appellant-defendant had been dilly dallying the matter which gave rise to cause of action in instituting the suit in the year 2004. The lower Appellate Court being the last court of fact and law on appreciation of oral and documentary evidence found that the agreement to sell has been proved and the readiness and willingness was also there, granted discretionary relief, thus, prays for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book.

After obtaining the probate in the year 2003 which acknowledged the genuineness of the Will executed by the father in favour of the appellant-defendant, applicant-defendant was required to move an appropriate application to HUDA for the transfer of the plot, so that part performance of the agreement to sell, could be acted upon. Having not done so, created a reasonable apprehension in the mind of the appellant-defendant to seek the vindication of his grievance in order to avoid the involvement of third party. The date of registration and execution of the sale deed would be determined only when the plot aforementioned is transferred in the name of the appellant-defendant. Since, the appellant-defendant did not take up the steps, all these factors would and had been dilly dallying the

matter to avoid part of his performance. The readiness and willingness aforementioned in the case cannot be said to be wanting for the reasons assigned as no steps were taken to transfer the plot in the name of the appellant-defendant from HUDA.

Keeping in view the aforesaid observations, I do not intend to differ with the findings rendered by the lower Appellate Court, granting the discretionary relief under Section 20 of the Act as agreement to sell has been admitted. No substantial questions of law arises to be determined by this Court.

Accordingly, the appeal is dismissed.

15.01.2016
yogesh

(AMIT RAWAL)
JUDGE