

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

**RSA-4590-2012 (O&M)
Date of decision : 19.09.2016**

Harjinder Singh

... Appellant

Versus

Harbhajan Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Navdeep Chhabra, Advocate
for the appellant.

None for the respondent.

AMIT RAWAL, J. (ORAL)

CM-12815-C-2012

For the reasons stated in the application which is duly supported by an affidavit, the delay of 161 days in filing the appeal is condoned.

CM stands disposed of.

RSA-4590-2012 (O&M)

The appellant-plaintiff is aggrieved of declining of discretionary relief under Section 20 of the Specific Relief Act, 1963 (hereinafter called 'the 1963 Act') in a suit seeking specific performance of the agreement to sell dated 05.05.2003 and as well as the possession of the suit property, in essence, the suit partly decreed by the trial Court, has been dismissed by lower Appellate Court.

Mr. Navdeep Chhabra, learned counsel appearing on behalf of

the appellant-plaintiff submits that the agreement to sell dated 05.05.2003 was entered in respect of plot No.86, measuring 53 square yards, situated at Khooh Bombay Wala, Gali Bagh Wali, Amritsar for a total sale consideration of ₹ 4,45,000/- against the receipt of earnest money of ₹ 45,000/-. The stipulated date for the registration and execution of the sale deed was 04.09.2003. On the said date, the appellant-plaintiff appeared before the office of Sub-Registrar by marking his presence vide affidavit (Ex.P-3) and called upon the respondent-defendant to appear and execute the sale deed vide sent legal notice dated 09.09.2003, but he failed to appear. The stand of the defendant taken that the agreement was result of forgery and misrepresentation, but the Courts below found that the agreement had been proved, but yet did not grant the discretionary relief on the ground that except self-serving affidavit of the appellant-plaintiff, there is no independent evidence qua presence and urges that itself it is sufficient to prove the readiness and willingness as the suit was filed on 10.12.2003. All these factors have escaped the notice of the Courts below resulting into perversity, thus, urges this Court for formulation of the substantial questions of law as drawn in the memorandum of appeal.

There is no representation on behalf of the respondent-defendant despite service. The appeal is pending for adjudication since 2012 and accordingly, I proceed to decide the appeal on merits.

I have heard the learned counsel for the appellant-plaintiff and appraised the paper book and of the view that the observation/reasoning given by the trial Court and lower Appellate Court is totally fallacious and perverse. The readiness and willingness has to be proved throughout from the date of the agreement to sell, till filing of the suit and during the

pendency of the suit upto passing of the decree. The dates as noticed above i.e. date of agreement, stipulated date, legal notice, filing of the suit reveal that the appellant-plaintiff had always been ready and willing. The factum of execution of the agreement to sell had been proved which has not been assailed by the respondent-defendant. In view of the such circumstances, whether the Courts below was required to grant the discretionary relief under Section 20 of the 1963 Act or not the answer is 'Yes' as no other evidence contrary to what has been rebutted qua readiness and willingness. Once, the respondent-defendant had denied the execution of the agreement to sell, they cannot take the plea of readiness and willingness, but Court is not prevented in examining this fact. In my view, the ingredients of Section 16(c) of the 1963 Act have been complied with as the signatures/thumb impressions on the agreement to sell are admitted, much less, payment of the earnest money. There was hardly any material for the Courts below to decline the discretionary relief.

No doubt, this Court on earlier occasions had been framing substantial questions of law while deciding the appeal, 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 Vs. Chandrika and others” AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97 (1) CPC, whether the 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. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **“Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others” 2001 (4) SCC 262**, applicability of Section 97 (1) of CPC was not

correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back and therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

For the foregoing reasons, judgment and decree of both the Courts below are hereby modified. The suit of the appellant-plaintiff seeking possession by way of specific performance of the agreement to sell dated 05.05.2003 is decreed. The appellant-plaintiff is directed to deposit the balance amount of sale consideration i.e. ₹ 4,00,000/- within a period of two months from the date of the receipt of the certified copy of the order and the respondent-defendant is directed to execute sale deed, failing which, the appellant-plaintiff shall be entitled to seek the execution of the sale deed in accordance with law.

With the aforesaid observations, the appeal stands allowed.

19.09.2016
yogesh

(AMIT RAWAL)
JUDGE

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