

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

RSA-3674 of 2013 (O&M)

Date of decision: 24.05.2016

Paramjit Singh

...Appellant

Versus

Samey Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Gorakh Nath, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

CM-9905-C-2013

This is an application for condonation of delay of 207 days in refiling the appeal. It is averred that the appeal was filed on 15.11.2012 within limitation but the same was returned with objections on 04.12.2012. Thereafter, delay was caused as the case file was mixed up with other decided cases.

Keeping in view the averments made in the application and the accompanying affidavit, and the fact that the objections were minor in nature, there appears to be sufficient

cause for allowing the same. The delay of 207 days in refiling the present appeal is hereby condoned subject to all just exceptions.

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The appellant/plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 06.01.2003. The trial Court vide judgment and decree dated 13.10.2010, dismissed the suit.

2. Aggrieved against the findings of trial Court, the appellant filed an appeal which was dismissed by the learned first Appellate Court, vide judgment and decree dated 07.08.2012.

3. The 1st Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant appeal at the behest of the appellant.

4. It is contended by the learned counsel for the appellant that respondent/defendant No.1, being owner of 5 kanals 13 marlas of land entered into an agreement to sell dated 06.01.2003, agreed to sell the land in dispute to the appellant @ Rs.3,80,000/- per acre whereas, Rs. 1,00,000/- was paid as earnest money at the time of execution of agreement to sell. The

agreed date fixed for execution of sale deed, was 15.05.2003. On 15.05.2003, the appellant remained present in the office of Sub Registrar, Chahrauli with the balance sale consideration and other necessary expenses for execution and registration of the sale deed but respondent No.1 did not turn up to perform his part of contract. The appellant repeatedly requested respondent No.1 many times to execute the sale deed but he failed to do so. Thereafter, the appellant came to know that respondent No.1 had already executed a sale deed in favour of respondent No.2, which is null and void. The learned counsel contends that the plaintiff/appellant has always been ready and willing to perform his part of the contract, however, the respondent No.1 has intentionally backed out from his liability. Once, respondent No.1 had received Rs.1,00,000/- as earnest money, he could not have executed the sale deed in favour of respondent No.2. Even, the appellant has also convened panchayat in this regard which was attended by both the respondents. The agreement to sell had been duly proved on record by the appellant, however, both the Courts below have failed to grant the relief of specific performance of the agreement to sell to the appellant.

5. Heard, the learned counsel for the appellant and

perused the record.

6. The case of the plaintiff/appellant is that respondent No.1 entered into an agreement to sell dated 06.01.2003, qua the suit land measuring 5 kanals and 13 marlas, situated at village Urjani, H.B. No.203, Tehsil Chhachhrauli, District Yamuna Nagar @ Rs. 3,80,000/- per acre, for a total consideration of Rs.2,68,375/-. An earnest amount of Rs.1,00,000/- was paid at the time of execution of agreement to sell. But respondent No.1 failed to execute the sale deed in favour of the plaintiff/appellant on the agreed date i.e. 15.05.2003. The appellant remained present in the office of Sub Registrar to perform his part of contract and got his presence marked by getting the affidavit attested from the Executive Magistrate/Sub Registrar but respondent No.1 did not turn up. Admittedly, neither respondent No.1 had come to execute the sale deed on the targeted date i.e. 15.05.2003 nor he has stepped into the witness box to rebut the claim of the appellant but he has filed written statement by admitting the fact of execution of agreement to sell on 06.01.2003 and stated that the appellant was not ready with balance sale consideration upto the agreed date, however, he denied all other averments made in the plaint. The defendant

No.1-the proposed vendor though accepted the execution of agreement Ex.P-1 did not step into the witness box to corroborate his admission. So, the admission by defendant No.1 is of no avail. The main plea taken by the appellant is that he was ready and willing to perform his part of contract, however, after 15.05.2003, no effort has been made to approach respondent No.1 to execute the sale deed. Even, the suit was filed on 23.02.2005, after about two years from the targeted date. The appellant has alleged that a panchayat was also convened to sort out the matter but no panchayat member was examined. The mere presence on one date before the Executive Magistrate is not sufficient to prove the readiness and willingness of the appellant. In the plaint, the plaintiff must allege and prove that he was ready and willing to perform his part of contract from the date of agreement i.e. 06.01.2003 till the date of institution of the suit. Under Section 16 (c) of the Specific Relief Act, 1963, it is incumbent on the party, who wants to enforce the specific performance of a contract, to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract. Section 16(c) of the Act mandates “readiness and willingness” on the part of the plaintiff and it is a

condition precedent for obtaining relief of grant of specific performance. In a suit for specific performance, the plaintiff must allege and prove a continuous “readiness and willingness” to perform the contract on his part from the date of contract. The onus was on the plaintiff. Reliance can be placed upon **J.P. Builders** Vs. **Ramadas Rao**, JT 2010(12 SC 588. In the instant case, the plaintiff has miserably failed to discharge the onus. The Ist appellate Court comes to the conclusion that defendant No.2-subsequent vendee is bona fide purchaser. In the face of the evidence and material on record, this Court concurs with the observations of the both the Courts below. There is no illegality or perversity in the judgments and decrees passed by the Courts below. No substantial question of law arises for consideration. Hence, no interference is called for.

Dismissed.

24.05.2016

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(JITENDRA CHAUHAN)
JUDGE