

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

RSA No.1598 of 2016 (O&M)

Date of Decision.26.07.2016

Vinod Kumar

.....Appellant

Vs.

Vineet Gupta @ Dimpy and another

.....Respondents

Present: Mr. Dishant D. Tuteja, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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?

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AMIT RAWAL J. (ORAL)

C.M. No.9228-C of 2016

For the reasons stated in the application, order passed by this Court on 14.07.2016 is recalled and the second appeal is restored to its original number.

Application is allowed.

C.M. No.4419-C of 2016

For the reasons stated in the application, delay of 249 days in refiling the appeal is condoned.

Application is allowed.

RSA No.1598 of 2016

The appellant-plaintiff is aggrieved of the judgments and decrees passed by the Courts below whereby discretionary relief under the Specific Relief Act, 1963 has been declined and the plaintiff has been held

entitled to seek refund of the earnest money along with interest @6% per annum.

Mr. Dishant D. Tuteja, learned counsel for the appellant-plaintiff submits that agreement to sell dated 10.07.2008 envisaged obtaining of NOC from the concerned Municipal Committee by the defendant. The total sale consideration of property, agreed to be sold, was ₹6,81,780/- and earnest money of ₹1,35,000/- was paid. Previously, the target date was 10.10.2008 which was extended by 5.11.2008 but the respondents-defendants allegedly sent the legal notice dated 31.10.2008 for extending the date upto 10.11.2008, though they also indicated the intention of cancellation of the document. The defendants not having performed their part of contract, the plaintiff instituted the suit on 27.03.2010. Both the Courts below have declined the discretionary relief but awarded refund of the earnest money along with interest @6% per annum. The lower Appellate court had an occasion to ponder upon the applicability of the ratio decidendi culled out by the Supreme Court in **I.S. Sikandar through LRs Vs. K. Subramani and others 2014(1) RCR (Civil) 236** on the premise that the defendant has failed to obtain the NOC but yet declined the discretionary relief though the plaintiff has always been ready and willing to perform his part of the contract, thus, urges this Court to formulate the substantial questions of law drawn in the memorandum of appeal.

I have heard the learned counsel for the appellant and appraised the paper book. The fact remains that there was no overt act on the part of the plaintiff for approaching the defendant after the expiry of the target date i.e. 05.11.2008 or 10.11.2008, much less, no legal notice was sent prior to the filing of the suit in the year 2010. As noticed above, the readiness and

willingness for a period of 1 ½ years has not been explained. It is settled law that readiness and willingness has to be from the date of execution of the agreement, during its subsistence, till the filing of the suit and till the passing of the decree. The aforesaid view has been reiterated in the judgment rendered by the Supreme Court in *Sita Ram and others Vs. Radhey Shyam 2007(4) RCR (Civil) 533.*

I am of the view that both the Courts below have rightly declined the discretionary relief in view of the fact that the plaintiff has failed to prove the readiness and willingness. The findings rendered by the Courts below are based on correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration in the second appeal. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

July 26, 2016
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No