

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No.1902 of 2016 (O&M)

Date of decision: 5.10.2016

Talab Masih (deceased) through LR

... Appellant

versus

Raj Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Sanjay Jain, Advocate,
for the appellant
Mr.R.K.Arya, Advocate,
for the respondent
...

AMOL RATTAN SINGH, J. (Oral)

CM No.5062-C of 2016

By this application, a delay of 14 days in filing the appeal is sought to be condoned.

After hearing counsel for the parties, for the reasons stated in paragraphs 2 and 3 of the application, which is accompanied by the affidavit of the applicant-appellant, the application is allowed and the delay of 14 days in filing the appeal is condoned.

RSA No.1902 of 2016 (O&M)

1. This appeal having arisen out of a suit seeking specific performance of an agreement to sell, learned counsel for the appellant has made three fold submissions, i.e. (i) that the respondent-plaintiff could not show her readiness and willingness to execute the sale deed pursuant to the agreement to sell dated 2.6.2011, as no source of money was actually proved by her, by which she would have paid the remaining consideration amount

of Rs.6,00,000/-, other than her statement to the effect that she had arranged money from her brothers. Neither was her brother examined as a witness nor was any documentary proof with regard to availability of remaining consideration amount produced; (ii) that, as a matter of fact, the respondent-plaintiffs' averment that she remained present in the office of the Sub Registrar was also wholly incorrect as the stamp paper for marking her presence before the Sub Registrar was so purchased between 5.30 pm to 6.30 pm, which she admitted in her cross-examination, and (iii) that Gulzar Singh (PW3) did not testify to the effect that he had witnessed the affidavit of the plaintiff with regard to her presence before the Sub Registrar, though he is shown to be one of the witnesses in such affidavit (Ex.P3).

2. On the other hand, learned counsel for the respondent submits that firstly, as regards presence before the Sub Registrar, the presence of the respondent-plaintiff is shown at sr.no. 144 whereas that of the appellant-defendant is shown at sr. no. 145. Hence, he submits that if the respondent-plaintiff got her presence marked between 5.30 pm to 6.30 pm, the same applies to the appellant-defendant also; secondly, as regards readiness and willingness, the respondent-plaintiff, immediately after 31.10.2011, (that being the first working day after 30.11.2011 which was the last date fixed for executing the sale deed), had issued a legal notice to the appellant-defendant on 2.11.2011 and that though the appellant-defendant filed a reply thereto, he still stated that the respondent-plaintiff was not ready and willing to execute the sale deed. However, immediately thereafter, on 23.11.2011, the civil suit was instituted, i.e. within 22 days of the date for execution of the sale deed, and as such, the readiness and willingness of the respondent-

plaintiff to perform her part of the contract is very obvious; and lastly, he submits that as recorded in the judgment of the learned Civil Judge, the appellant-defendant himself agreed in his cross-examination eventually, that he was ready and willing to execute his part of contract. Therefore, it is submitted that no further readiness and willingness on the part of the respondent-plaintiff needed be proved, with the admission of the appellant-defendant with regard to his eventually readiness and willingness to execute his part of contract, the other contentions made by him simply being arguments for the sake of a created defence.

3. Having heard learned counsel for the parties, though in the absence of any proof of availability of money shown by the respondent-plaintiff, this Court would otherwise be inclined to agree with the contention of learned counsel for the appellant as regards the plaintiff not being able to show that she had the money available with her to pay the remaining consideration, but in view of the aforesaid fact, that firstly, the legal notice to the appellant-defendant was issued within 2 days after the appearance of the parties before the Sub Registrar and the suit was filed within 22 days thereafter, the readiness and willingness of the respondent-plaintiff to execute her part of contract, cannot be doubted.

As regards marking of her presence before the Sub Registrar after office hours, again, though learned counsel for the appellant-defendant may have had an arguable point, but since the presence of the appellant-defendant being marked immediately after the presence of the respondent-plaintiff is not denied, it is obvious that the parties were in some kind of conflict with each other on that date and that is why they had marked their

respective presence after office hours, which surprisingly the Sub Registrar agreed to.

4. Be that as it may, the learned Civil Judge specifically noticed that the appellant-defendant thereafter expressed his readiness and willingness at the stage of his cross-examination, to execute his part of the contract, thus virtually giving up all his earlier pleas, thereby showing that earlier, actually it was he who was not ready and willing to execute his part of the contract, with the respondent-defendant always being ready and willing to perform her part.

Though learned counsel for the appellant submits that the appellant has since passed away and it is his grandson who is in possession of the house in question and that it is the only residential house with him, however, no such plea of hardship having been taken before the learned Courts below, I see no reason to exercise the discretion conferred under Section 20 of the Specific Relief Act, 1963.

5. In view of the above, I find no ground to interfere with the judgments and decrees of the learned Courts below, decreeing the suit of the respondent-plaintiff. Consequently, the appeal is dismissed, but with no order as to costs.

5.10.2016
pk

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No