

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

RSA No.2298 of 2016 (O&M)

Date of decision : 03.08.2016

Smt. Preet Rani Arora

.....Appellant

Versus

Jagdish Arora

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Sharad Aggarwal, Advocate for appellant.

DARSHAN SINGH, J.

CM-6016-C-2016

There is delay of 136 days in filing the present appeal. The appellant has filed an application under Section 5 of the Limitation Act, 1963 read with Section 151 of the Code of Civil Procedure, 1908 for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 136 days in filing the present appeal is hereby condoned.

CM-7120-C-2016

This is an application for making good the deficiency in the court fees.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the appellant is allowed to make good the deficiency in court fees. Court fees amounting to ₹ 850/- is taken on record.

RSA-2298-2016

The present appeal has been preferred by the appellant-defendant against the judgment and decree dated 20.10.2015 passed by the learned Additional District Judge, Faridabad thereby the appeal filed against the judgment and decree dated 04.07.2014 passed by the learned Civil Judge (Junior Division), Faridabad, has been dismissed.

2. For the sake of convenience, the status of the parties shall be referred as in the suit.

3. The respondent-plaintiff had filed the suit for specific performance of the agreement to sell dated 24.11.2005 executed by the appellant-defendant in respect of shop No.21, Housing Board Colony Sector 23, Faridabad.

4. As per the averments in the plaint, the defendant being owner in possession of the shop in question agreed to sell it to the plaintiff. She executed the agreement to sell dated 24.11.2005 for a sum of ₹ 5,95,000/- and received ₹ 60,000/- as earnest money. The balance sale price was payable after 15 days of registration of the conveyance deed by the Housing Board in favour of the defendant on execution and registration of the sale deed in favour of the plaintiff. The defendant did not inform the plaintiff about the execution of the conveyance deed by the Housing Board in her favour. On coming to know about this fact, the

plaintiff called upon the defendant vide notice dated 25.02.2006 to execute the sale deed but of no avail. It is further pleaded that plaintiff has always been ready and willing to perform his part of contract. He has sufficient funds to pay the balance sale price but despite repeated requests, the defendant failed to execute and got registered the sale deed. Hence the suit.

5. Appellant-defendant filed the written statement to contest the suit. However, she admitted the execution of agreement to sell and receipt of earnest money. It was further pleaded that the charges for conveyance deed was to be borne by the plaintiff but the defendant had to purchase the stamp papers regarding execution of the conveyance deed. The plaintiff could not get the sale deed executed within 15 days as agreed between the parties. It was further pleaded that G.S. Property Dealer had grabbed the suit property. It was further pleaded that the plaintiff was never ready and willing to perform his part of contract. The defendant had returned ₹ 38,000/- out of the earnest money and she has spent ₹ 22,000/- on purchase of the stamp papers at the time of execution of the conveyance deed. As such, the entire earnest money stands returned to the plaintiff. With these pleas, the appellant-defendant pleaded for dismissal of the suit.

6. On the pleadings of the parties, the trial Court framed the following issues:

1. Whether the defendant had agreed to sell the suit property to the plaintiff for a sale consideration of ₹ 5,95,000/- vide an agreement to sell dated 24.11.2005? OPP

2. Whether the defendant had received the earnest money of ₹ 60,000/- in lieu of the part performance of the aforesaid agreement vide receipt dated 24.11.2005 and had undertaken to execute the sale deed in pursuance of the agreement to sell as per the schedule which was to be intimated by the defendant to the plaintiff? OPP
3. Whether the plaintiff has been ready and willing to perform his part of contract? OPP
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the plaintiff has no *locus standi* or cause of action to file this suit? OPD
6. Whether the plaintiff has not come to the Court with clean hands if so its effect? OPD
7. Relief.

7. On appreciating the evidence on record adduced by the parties and contentions raised by learned counsel for the parties, the learned trial Court decreed the suit filed by respondent-plaintiff for possession by way of specific performance of agreement to sell dated 24.11.2005. The appellant-defendant was directed to execute and get registered the sale deed in favour of the plaintiff within one month on payment of the balance sale consideration. Aggrieved with the said judgment and decree, the appellant-defendant preferred the appeal. The same has also been dismissed by the learned Additional District Judge, Faridabad vide impugned judgment and decree dated 20.10.2015. Hence, this regular second appeal by the appellant-defendant.

8. I have heard Mr. Sharad Aggarwal, Advocate, learned counsel for appellant and gone through the paper-book carefully.

9. Initiating the arguments, learned counsel for the appellant contended that in order to succeed in the suit, it was incumbent upon the plaintiff to establish that he was ready and willing to perform his part of contract. A specific issue *i.e.* issue No.3 was framed in this regard. But the learned trial Court has not given any finding with respect to the readiness and willingness of the plaintiff to perform his part of contract.

10. He further contended that the cause of action has accrued to the plaintiff when he came to know about execution of the conveyance deed in favour of the defendant. He had even issued the legal notice dated 25.02.2006 for execution of the sale deed. But even then he has filed the suit in November 2008 *i.e.* after more than 2 years and 8 months, which shows that the plaintiff was not ready and willing to perform his part of contract. So, he was not entitled for the relief of the specific performance.

11. I have duly considered the aforesaid contentions.

12. I do not find any substance in the contentions raised by the learned counsel for the appellant. The appellant-defendant in the written statement itself has admitted the execution of the agreement dated 24.11.2005 and also that she received ₹ 60,000/- as earnest money. In the cross-examination also, she admitted her signatures on the receipt-cum-agreement Ex.P1. She also admitted that ₹ 60,000/- were paid to her on the day when receipt Ex.P1 was executed. She also admitted that the blank columns in receipt Ex.P1 has been filled up by her. In this manner, the execution of the receipt-cum-agreement and the receipt of the earnest money is not disputed by the appellant-defendant.

13. Learned counsel for the appellant had tried to assail the impugned judgments and decrees simply on the ground that the plaintiff was not ready and willing to perform his part of contract. As per the agreement to sell/receipt, the balance sale consideration was to be paid within 15 days from the date of execution of the conveyance deed in favour of the defendant and expenses were to be borne by the plaintiff. The plaintiff has adduced the evidence that the said conveyance deed was executed by the Housing Board, Haryana in favour of the defendant on 02.01.2006. It was the duty of the defendant to inform the plaintiff about the execution of the conveyance deed. Only then the plaintiff could have paid the balance sale consideration and, thereafter, the sale deed could have been executed in his favour. The appellant-defendant has admitted in the cross-examination that she never served any notice upon the plaintiff to intimate him about the execution of the conveyance deed in her favour, rather the plaintiff has sent the legal notice dated 25.02.2006 to the defendant through registered post on her correct address, which is presumed to have been received by her. But in spite of that the defendant has not come forward to execute the sale deed. The learned First Appellate Court on perusal of the notice Ex.P2 observed that the plaintiff informed the defendant that sale deed is to be executed after 15 days of the execution of the conveyance deed in her favour and she has not informed about the status of the execution of the conveyance deed. So, it was the defendant who had not complied with the terms and conditions of the agreement and did not send any intimation to the plaintiff with respect

to the execution of the conveyance deed in her favour by the Housing Board Haryana.

14. Mere this fact that the suit has been filed by the plaintiff after about 2 years and 8 months of issuance of the legal notice is itself no ground to conclude that the plaintiff had not ready and willing to perform his part of contract and he was not entitled for the relief of specific performance. There is always a tendency to avoid the litigation. It may be possible that the plaintiff might be awaiting that the good sense would prevail upon the defendant and she will come forward to execute the sale deed. But ultimately, he has to file the suit in order to enforce the agreement as the limitation period was coming near. There is no plea in the written statement nor any such evidence has been adduced by the defendant that the time was essence of the contract. Normally in regard to the contracts relating to the sale of the immovable properties, time is not considered to be essence of the contract unless such an intention can be gathered either by the express terms of the contract or impliedly from the intention of the parties. In the instant case, there is no material to conclude that there was any intention of the parties to make the time an essence of contract. Even no specific date has been mentioned in the agreement for execution and registration of the sale deed. It was simply mentioned that the sale deed shall be got executed after 15 days of issuance of conveyance deed. In these circumstances, mere delay in filing the suit cannot be a ground to conclude that the plaintiff was not ready and willing to perform his part of contract. Rather from the fact that the

plaintiff had got issued the legal notice calling upon the defendant to execute the sale deed shows that the plaintiff was ready and willing to perform his part of contract, whereas the defendant had neglected to perform her part of contract. Thus, the plaintiff was certainly entitled for the decree for specific performance as granted by the courts below.

15. Thus, keeping in view my aforesaid discussion, I do not find any infirmity in the concurrent findings recorded by the learned courts below. No question of law much less the substantial question of law arises in the present appeal. Thus, the present appeal is hereby dismissed in limine.

03.08.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No