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

**RSA-3131-2016 (O&M)
Date of decision : 03.08.2016**

Jasmail Singh and others

... Appellants

Versus

Kewal Kumar @ Kewal Krishan

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Gurcharan Dass, Advocate
for the appellants.

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?

AMIT RAWAL, J. (ORAL)

The appellants-defendants are aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit seeking specific performance of the agreement to sell dated 22.05.2006 has been decreed.

Mr. Gurcharan Dass, learned counsel appearing on behalf of the appellants-defendants submits that the aforementioned agreement to sell in respect of land measuring 109 kanals was entered into and a sum of ₹ 35,00,000/- was paid as earnest money. The stipulated date for execution and registration of the sale deed was 20.06.2006. The trial Court after noticing the oral and documentary evidence formed an opinion that the respondent-plaintiff was not ready and willing, in fact, did not have

adequate consideration on the stipulated date. No doubt that both the parties had appeared before the Sub-Registrar for performing their part, but the lower Appellate Court erroneously and perversely set aside the well reasoned findings.

He further submits that in fact, the respondent-plaintiff did not have the sufficient funds as on 22.05.2006 the sale deed of the area measuring 28 kanals against the area measuring 137 kanals agreed to be sold was executed. Copy of the same has been sought to be placed on record as Annexure A-9 by moving an application under Order 41 Rule 27 CPC. The aforementioned evidence leaves no manner of doubt that the readiness and willingness was wanting. The lower Appellate Court ought not to have exercised the discretion as enshrined under Section 20 of the Specific Relief Act, 1963 (herein after called 'the 1963 Act'). The finding of lower Appellate Court is erroneous as the respondent-plaintiff has not proved on record any back account or the statement that they had sufficient funds or withdrawn the money before going to the office of the Sub-Registrar, Mullanpur on the stipulated date as the amount was more than ₹ 2,54,53,125/-. The affidavit of the respondent-plaintiff was attested and entered at Sr. No.3248, whereas that of the appellants-defendants at Sr. No.3244, thus, the respondent-plaintiff had reached late in the office of the Sub-Registrar, Mullanpur with the intention just to do the formality of marking the presence. The finding of the lower Appellate Court in paragraph No.18 of the impugned judgment are also liable to be set aside as no cogent reasons have been assigned in setting aside the well-reasoned judgment rendered by the trial Court which had dismissed the suit. The case

law relied upon by the lower Appellate Court is not applicable to the facts and circumstances of the case. The readiness and willingness has to be seen on the stipulated date for the execution and registration of the sale deed and not thereafter. The lower Appellate Court did not prove the evidence of Kewal Kumar PW-5, who in the cross-examination admitted that the at the time of the execution of the agreement to sell, he had satisfied about the ownership and possession of the appellants-defendants, but did not bring any document on the file that he was having balance consideration with him for the purpose of the execution and registration of the sale deed, thus, urges this Court for formulation of the substantial questions of law as culled out in the memorandum of appeal.

I have heard the learned counsel for the parties and appraised the paper book.

As per the explanation (1) of the Section 20 of the 1963 Act, discretion provided that mere inadequacy of consideration shall not be deemed to constitute an unfair advantage with the respondent-plaintiff over the appellants-defendants.

It is a conceded position on record that the suit aforementioned was filed on 21.08.2006 i.e. within two months from the date of execution and registration of the agreement to sell. Had the respondent-plaintiff not in possession of the money, they could have awaited for almost close three years in filing the suit. Even the suit was preceded by legal notice dated 11.07.2006. All these factors indicate the readiness and willingness. In view of the ratio decidendi culled out by the Hon'ble Supreme Court in

“Sita Ram and others V/s Radhey Shyam” 2007 (4) RCR (Civil) 533, the

readiness and willingness has to be seen from the date of the execution till the filing of the suit during the pendency and passing of the decree. The judgment relied upon by the lower Appellate Court, in my view, clearly applies to the facts and circumstances of the case and even, as per the ratio culled out in the judgment rendered in *“Azhar Sultan V/s B. Rajaman and others” 2009 (2) RCR (Civil) 123*, it is not necessary for the purchaser to prove that he/she had enough liquid cash. The conduct of the respondent-plaintiff as noticed above leads to the irresistible conclusion that he had been ready and willing. The appellants-defendants had not denied the execution of the agreement to sell, even, they had also shown the willingness on 20.06.2006 by marking their presence. The notice was sent almost a month thereafter. If at all they had any intention, they could have come forward for execution and registration of the sale deed, much less, even on receipt of the summons of the suit. Contesting the suit tooth and nail leads to an irresistible conclusion that they were not ready and willing to perform their part of the agreement to sell. The lower Appellate Court being the last Court of fact and law, is obliged to examine the oral and documentary evidence and in my view, has discharged the same by examining the oral and documentary evidence in exercising the discretion under Section 20 of the 1963 Act. The registration of the sale deed of a lesser area does not prove the want of cash or unwillingness on the part of the respondent-plaintiff for execution and registration of the sale deed. There may be some another factor which has not surfaced or has been brought on record. The Court cannot give his opinion on the basis of the presumption.

For the foregoing reasons, I do not intend to differ with the findings rendered by the lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

With the aforesaid observations, the appeal is dismissed.

03.08.2016
yogesh

(AMIT RAWAL)
JUDGE

✓
Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No