

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

**RSA No.5149 of 2015 (O&M)
Decided on: 01.02.2016**

Nita Sood

....Appellant

Versus

Harjot Dhanoa and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present: Mr. Avnish Mittal, Advocate
for the appellant.

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?*

REKHA MITTAL J. (Oral)

The present appeal has been directed against the judgment and decree dated 30.05.2015 passed by the Additional District Judge, Chandigarh, dismissing the appeal filed by the appellant against the judgment and decree dated 16.09.2013 passed by the trial Court whereby the suit filed by the respondents for possession by way of specific performance of agreement to sell has been allowed.

The respondents/plaintiffs filed a suit for possession by way of specific performance of an agreement to sell dated

12.07.2014 on the premise that Smt. Nita Sood (defendant No.1) agreed to sell the suit property to respondent No.1 for a sale consideration of Rs.4,75,000/- along with actual amount to be paid to proforma respondent i.e. Estate Office, Haryana Urban Development Authority (HUDA), Panchkula, Haryana. An amount of Rs.1,00,000/- was paid as earnest money to the appellant and a receipt thereof was issued by the appellant on the back of first page of the agreement to sell. The date for execution/transfer of the suit property was fixed as 21.09.2004 or within 10 days of the grant of permission for transfer by HUDA whichever was later. The respondents always remained ready and willing to perform their part of the agreement but the appellant committed breach thereof.

Counsel for the appellant has assailed the concurrent findings recorded by the Courts below by making two fold submissions. The first contention raised by counsel is that the appellant was required to obtain the requisite permission for transfer of the suit property in favour of the respondent/plaintiff No.1 only and not in favour of any other person. Plaintiff No.1 at no point of time asked the appellant to obtain permission for transfer of the suit property in favour of plaintiff No.2. It is further submitted that as a blank application proforma for permission by HUDA signed by the appellant was already with plaintiff No.1, name of plaintiff No.2 was filled therein without knowledge of the appellant and permission was obtained but the same was rightly

cancelled later.

Another submission made by counsel is that as plaintiff No.1 in whose favour the agreement to sell was executed did not have the requisite funds to pay the balance amount to the appellant and the amount to HUDA as has been admitted by her in cross-examination, the Courts below committed a cross error rather illegality by holding that respondent No.1 always remained ready and willing to perform her part of the agreement. Further dilating, counsel has submitted that readiness and willingness to perform an agreement are two different concepts and the mere fact that a draft for part payment out of Rs.4,75,000/- was prepared on 21.09.2004 or money was available in a bank account as per statement of account Ex.P-2/13, at best, can show readiness but is not sufficient to prove willingness on the part of respondent No.1 to perform her part of the agreement. In support of his contentions, he has relied upon judgment of the Delhi High Court “***Smt. Raj Rani Bhasin and others vs S. Kartar Singh Mehta***”, AIR 1975 (Delhi) 137. Further reliance has been placed on judgment of the Privy Council “***Ardeshir H. Mama vs Flora Sassoon***”, AIR 1928 Privy Council 208 and judgment of the Hon'ble Supreme Court of India “***H.P. Pyarejan vs Dasappa (dead) by LRs and others***”, 2006(1) RCR (Civil) 646.

I have heard counsel for the appellant, perused the

records particularly the judgments passed by the Courts below.

Before advertng to the submissions made by counsel for the appellant, it is appropriate to recapitulate the judgment of Hon'ble the Supreme Court “**Govindaraju vs Mariamman**”, (2005) 2 SCC 500, wherein it has been laid down as to 'what is a substantial question of law'. A relevant extract from Para 16 of the judgment reads thus”-

*“As per settled law, the scope of exercise of the jurisdiction by the High Court in Second Appeal under Section 100 is limited to the substantial questions of law framed at the time of admission of the appeal or additional substantial questions of law framed at a later date after recording reasons for the same. It was observed in **Santosh Hazari's case (supra)** that a point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be a 'substantial' question of law must be debatable, not previously settled by law of the land or a binding precedent and answer to the same will have a material bearing as to the rights of the parties before the Court. As to what would be the question of law "involving in the case", it was observed that to be a question of law 'involving in the case' there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by the court of facts and it must be necessary to decide that question of law for a just and proper decision between the parties.”*

Concededly, the appellant executed the agreement in question in favour of plaintiff No.1 as per the terms and conditions incorporated therein and received an amount of Rs.1,00,000/- towards earnest money on the date of agreement i.e. 12.07.2004. The date for transfer of the suit property was fixed as 21.09.2004. The appellant was required to obtain permission from Estate Office, HUDA, Panchkula, for transfer of the suit property. Counsel for the appellant has not disputed that as per agreement, respondent No.1 was authorized to get the suit property transferred in her name or in the name of her nominee. Once the parties have agreed that the suit property could be got transferred by the proposed vendee either in her name or in the name of her nominee, it is difficult to accept contention of the appellant that respondent No.1 could not ask for transfer of the suit property in favour of respondent No.2, in view of some arrangement between them.

It is an admitted position of the case that on the basis of application submitted in the Estate Office of HUDA, Panchkula, the necessary permission was allowed in the name of plaintiff No.2 vide letter dated 17.08.2004 but the appellant raised a serious grievance against decision of HUDA by accusing the respondents having used her blank signatures on a proforma for transfer and eventually came out successful to get the permission cancelled by HUDA. Indisputably, the application for transfer was submitted together with transfer fee of Rs.14,100/- paid by respondent No.1.

It has also been proved on record that the appellant failed to submit the relevant documents subject to which the permission vide letter dated 17.08.2004 was granted whereby the appellant was permitted to transfer the suit property in favour of plaintiff No.2 within a period of 60 days. As the appellant herself raised the dispute in regard to permission granted by HUDA, refused to submit the relevant documents and rather approached the HUDA for cancellation of permission, can the appellant be allowed to take advantage of her own wrong to negate plea of the respondent that she always remained ready and willing to perform her part of the agreement. The answer, in my opinion, appears to be in the negative.

Respondent No.1 submitted the application for permission along with requisite fee that was eventually allowed by HUDA vide letter dated 20.08.2004. A draft in respect of part payment out of an amount of Rs.4,75,000/- to be paid to the appellant was prepared on 21.09.2004 Ex.PW-2/12. The respondents have proved the affidavits of plaintiff No.1 dated 21.09.2004 Ex.PW-2/7 and affidavit of plaintiff No.2 of even date Ex.PW-2/8 in token of their presence in the office of Estate Officer, HUDA, on the stipulated date for getting the transfer effected in the name of plaintiff No.2. The statement of account Ex.PW-2/13 clearly shows that necessary funds were available for making remaining payment. The suit seeking specific performance of the

agreement was filed on 21.10.2005 approximately one year after the stipulated date. Prior thereto, notice was issued calling upon the vendor to facilitate transfer of the plot but the same was received back undelivered. As has been noticed hereinbefore, the appellant herself created a situation so that the property is not transferred in the name of nominee of respondent No.1 by the stipulated date. The matter would have been different had the appellant not raised any issue in regard to permission granted by HUDA in favour of plaintiff No.2 and further complied with all the formalities to facilitate transfer of suit property by HUDA and thereafter, the plaintiff(s) would have failed to get the transfer effected on 21.09.2004 in that case, contentions raised by learned counsel would have been worth consideration even though the same have been answered against the appellant by both the Courts. I am well conscious that it is incumbent upon the plaintiff to prove his case to the satisfaction of the court and cannot seek any aid from weakness of defence. Equally settled is that civil disputes are to be decided on the preponderance of probabilities. In the given scenario, it is difficult to accept plea of the appellant that the plaintiff is to be blamed for the transaction having not attained finality by the target date.

In view of the above, I do not find any error much less illegality in the findings recorded by the Courts below when otherwise no question of law much less a substantial one arises for

adjudication.

To be fair to the appellant, there is no quarrel with the position in law laid down in the referred authorities but the appellant cannot derive any advantage to her contentions by relying upon the judgments, in view of peculiar facts and circumstances discussed hereinbefore.

For the foregoing reasons, finding no merit, the appeal is dismissed *in limine*. No order as to costs.

(REKHA MITTAL)
JUDGE

01.02.2016

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