IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A No.718 of 2016 (O&M)
Date of decision :19.08.2016

Ram Lal through his Lrs.

...... Appellants

Versus

Ashwani Bansal and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Pankaj Jain, Advocate
for the appellants.

Mr. M.S.Khaira, Sr. Advocate
with Mr. Raj Kumar Rana, Advocate
for respondent no.1.

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DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 11.01.2016 passed by the learned Additional District Judge, Ambala, whereby the appeal filed by appellants-defendants against the judgment and decree dated 30.05.2014 passed by the learned Civil Judge (Jr. Division), Ambala, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Plaintiff-respondent no. 1 has filed the suit for possession by way of specific performance of agreement to sell dated 01.03.2004.

4. As per averments in the plaint, Ram Lal-deceased-defendant executed the agreement to sell dated 01.03.2004 for the sale of his house

constructed on plot comprising of Khasra no. 15/12 measuring 152 sq. yards situated at Village Nagal, Tehsil and District Ambala for the total sale consideration of Rs. 3,95,000/-. On the date of agreement i.e. 01.03.2004, plaintiff-respondent no.1 paid Rs. 50,000/- to the defendants as earnest money. It was agreed that the sale deed will be executed and got registered on or before 10.07.2004 on receipt of the remaining sale price. Defendant has assured that he was absolute owner of the house in question and there was no charge, lien or encumbrances on the said property in any manner. Defendant failed to get the sale deed executed and registeerd. He made an endorsement on the back of the agreement on 11.06.2004 after receiving a further amount of Rs.1,25,000/- as part payment of the sale consideration and it was agreed that the sale deed will be got executed on or before 10.09.2004. Defendant again received a further sum of Rs. 30,000/- from the plaintiff on 09.08.2004 and made the endorsement on the back of the agreement to this effect as the time for execution and registration of the sale deed was extended up to end of September 2004. Plaintiff was always ready and willing to get the sale deed executed and registered in his favour and was also ready and willing to pay the balance sale consideration of Rs. 1,90,000/- to the defendant as well as the expenses for execution and registration of the sale deed. The plaintiff also appeared before Sub Registrar, Ambala Cantt on 29.09.2004 along with balance sale consideration of Rs. 1,90,000/- and the funds for bearing the stamp and registration charges. But, defendant failed to come present. Plaintiff also came to know that there was a lien on the above said property as the defendant has already mortgaged the said property with Punjab National Bank, Timber Market, Ambala Cantt and about Rs. 1,67,000/- were outstanding. These facts were intentionally concealed by the defendant and had cheated the plaintiff. The plaintiff tried number of times to contact the defendant to get the sale deed executed and registered and requested him to clear the dues of Punjab National Bank. But, of no avail. He also served the legal notice dated 15.10.2004 on the defendant calling upon him to get the sale deed executed and registered in his favour within fifteen days. In-spite of that, he failed to get the sale deed executed and registered and to clear the loan of Punjab National Bank. Hence the suit.

5. Defendant contested the suit by filing the written statement wherein he admitted the execution of the agreement to sell dated 01.03.2004 and receipt of the earnest money of Rs. 50,000/-. However, he pleaded that the plaintiff has indulged in forgery. He manipulated the endorsements on the agreement with respect to extension of time for execution and registration of the sale deed without knowledge and consent of the defendant. At the time of execution of agreement, defendant was made to sign at 2-3 places on the blank papers which were misused to fabricate the endorsements. It was further pleaded that defendant wanted to sell the house in order to immediately clear the loan of the bank. Yogesh Jain, the property dealer who was the close friend of the plaintiff introduced him to defendant and assured that the sale deed will certainly be executed on or before 10.07.2004 on payment of the balance sale consideration. In this way, the agreement dated 01.03.2004 was executed between the parties through Yogesh Jain, the property

dealer. It was further pleaded that the signatures of the defendant on two places on the reverse side of the agreement were obtained on 01.03.2004 itself. The defendant denied having received Rs.1,25,000/- on 11.06.2004 and Rs.30,000/- on 09.08.2004 and for extension of period for execution and registration of the sale deed. It is alleged that these are the result of fraud committed by the plaintiff in connivance with Yogesh Jain and other witnesses. It is further pleaded that plaintiff, Yogesh Jain and Mehar Mittal were in knowledge of the loan taken by the defendant from Punjab National Bank, Ambala Cantt. It is further pleaded that the plaintiff was not ready and willing to perform his part of contract. He has lodged the false and illegal complaint under Sections 406, 420 of Indian Penal Code against the defendant in order to blackmail and harass him. With these pleas, defendant pleaded for dismissal of the suit.

6. Plaintiff filed the replication to the written statement filed by defendant controverting all the pleas raised therein and re-affirmed that of plaint. From the pleadings of the parties, the following issues were framed by the learned trial Court on 13.04.2010:-

1. Whether the defendant executed agreement to sell dated 01.03.2004 in favour of plaintiff and thereby he received earned money of Rs. 50,000/- from the plaintiff?OPP
2. Whether the plaintiff has always to perform his part of contract? OPP
3. Whether the plaintiff is entitled to decree of specific performance for agreement to sell?OPP
4. Whether the plaintiff has no cause of action?OPD
5. Whether suit of the plaintiff is time barred?OPD
6. Relief.

7. On appreciating the evidence adduced by the parties and contentions raised by their counsels, the suit filed by the plaintiff-respondent no.1 was decreed by the learned trial Court for possession by

way of specific performance of the agreement to sell dated 01.03.2004 on payment of remaining sale price i.e. Rs. 1,90,000/- besides the expenses of execution and registration of the sale deed.

8. The appellants/legal representatives of deceased-defendant Ram Lal have preferred the appeal against the aforesaid judgment and decree passed by the learned trial Court. The said appeal has also been dismissed by the learned First Appellate Court vide impugned judgment and decree dated 11.01.2016. Hence this Regular Second Appeal.

9. I have heard Mr. Pankaj Jain, Advocate, learned counsel for appellants, Mr. M.S.Khaira, Sr. Advocate with Mr. Raj Kumar Rana, Advocate, learned counsel for respondent no.1 and have carefully gone through the record of the case.

10. Initiating the arguments, learned counsel for the appellants contended that execution of the agreement to sell dated 01.03.2004 and receiving of Rs. 50,000/- as earnest money is not disputed. He contended that the endorsements dated 11.06.2004 and 09.08.2004 have been fabricated and forged by the plaintiff as he was not having money to get the sale deed registered. He contended that the signatures of defendant-Ram Lal were obtained on the blank paper on the reverse side of the agreement on the same date i.e. 01.03.2004 when the agreement was prepared. This fact has been categorically admitted by PW-5 Yogesh Jain, the attesting witness of the agreement. Thus, he contended that the endorsements on the reverse side of the agreement are forged and fabricated and plaintiff was not entitled for any relief on the basis of these forged documents.

11. He further contended that in reply to the legal notice, defendant has categorically mentioned that he has forfeited the earnest money as the plaintiff has failed to get the sale deed registered on or before 10.07.2004 i.e. the date stipulated for execution and registration of the sale deed. The said reply to the notice has not been challenged by the plaintiff. So, he cannot claim the relief of specific performance.

12. He further contended that the plaintiff was not ready and willing to perform his part of contract that is why he has manipulated the endorsements for extension of time. He remained silent for more than two and half years even though, the endorsements regarding extension of time were denied in reply to the notice. Thus, the plaintiff is not entitled for the relief of specific performance.

13. He further contended that the house in dispute is the only residential property owned by the appellants. The relief of specific performance will cause great hardship to the appellants. Said relief will not be equitable. The property being urban property, the value of the property has also escalated. Thus, he contended that the learned Courts below have wrongly granted the relief of specific performance. To support his contentions he relied upon cases **Nanjappan Vs. Ramasamy and another 2015(3) PLR 218 andKanta Vs. Gajanand 2016(3) PLR 322**.

14. He further contended that the plaintiff has also got registered the criminal case under Sections 406, 420 of Indian Penal Code against the defendant alleging that he has played fraud upon him. So, even as per the stand of the plaintiff, the contract of sale was invalid, it was voidable

at the instance of the plaintiff. The plaintiff has exercised the option to prosecute the defendant. The defendant was even convicted by the Criminal Court. So, now due to applicability of the Doctrine of election, the plaintiff is not entitled for the relief of specific performance by enforcing the agreement dated 01.03.2004. To support his contentions, he relied upon cases **Panchanan Pal Vs. Nirode Kumar Biswas and another AIR 1962 Calcutta 12, Union of India Vs. Bharat Fire and General Insurance Ltd., New Delhi AIR 1961 Punjab 157** and **Swiss Timing Limited Vs. Organizing Committee, Commonwealth Games, 2010, Delhi AIR 2014 Supreme Court 3723**. Thus, he contended that the decrees passed by the learned Courts below are not tenable in the eyes of law.

15. On the other hand, Mr. M.S.Khaira, Sr. Advocate, learned senior counsel for the respondent no.1 contended that the execution of the agreement to sell dated 01.03.2004 and receipt of the earnest money was not disputed by the defendant. He further contended that as the property in dispute was mortgaged with the Punjab National Bank against loan, so the sale deed could not be executed within stipulated period. Defendant has received further money and he executed the endorsements for extension of date. The said endorsements are duly established from the statements of PW-4 Vishwash Gupta @ Sanjay Mittal and PW-5 Yogesh Jain. The plea raised by defendant that his signatures were obtained on the same date carries no substance as both these signatures are in different ink. Even, the date under his signatures is in the hand of the defendant.

16. He further contended that the plaintiff was already ready and willing to perform his part of contract. He attended the office of Sub Registrar, Ambala Cantt on 29.09.2004 along with the balance sale price and money to bear the stamp and registration charges. But, the defendant had not turned up. He further contended that there is no plea in the written statement or in the evidence that the suit property is the only residential house owned by the defendant. He further contended that when the plea of hardship is not raised in the written statement, such plea cannot be entertained. To support his contentions, he relied upon cases **Prakash Chandra Vs. Narayan 2012 (3) R.C.R.(Civil) 335, Ved Ram Vs. Har Kishan 2007(4) R.C.R. (Civil) 559** and **Krishan Kumar Verma Vs. Narender Prabhakar 2001(1) R.C.R. (Civil) 183**.

17. He further contended that mere escalation of the price cannot be held to be hardship and is no reason to deny the relief of specific performance. He relied upon case **Diwan Chand Vs. Kuldip Kumar Mehta 2008(2) R.C.R. (Civil) 284, Ram Piari and others Vs. Mehar Singh and others 2007(4) R.C.R. (Civil) 611** and **Jai Chand Vs. Beg Chand 2008(1) R.C.R. (Civil) 714.**

18. He further contended that mere delay in filing the suit is also no ground to decline the relief of specific performance. The delay has occurred as the suit property was mortgaged with the bank against loan. The time was not the essence of the contract. The suit has been filed well within three years from the date of agreement to sell. The plaintiff has alredy paid more than 50 % of the sale price and was entitled for the relief of specific performance. He relied upon case **Panchanan Dhara &**

Ors. Vs. Monmatha Nath Maity (Dead) Th. Lrs. & Anr. 2006(3) R.C.R. (Civil) 212.

19. I have duly considered the aforesaid contentions.

20. In the present case, the execution of the agreement to sell dated 01.03.2004 by deceased-defendant Ram Lal in favour of plaintiff-respondent no.1-Ashwani Bansal is not disputed. It is also not disputed that defendant-Ram Lal has received a sum of Rs. 50,000/- as earnest money against the total sale price of Rs. 3,95,000/-. The dispute in the present case is with respect to the endorsements dated 11.06.2004 and 09.08.2004 made on the reverse side of the agreement for extension of period for registration of the sale deed and the part payment of the sale consideration. Defendant has alleged that his signatures were obtained on the blank reverse side of the agreement on the same date i.e. 01.03.2004 when the agreement was prepared and later on those signatures were misused to manipulate and fabricate the aforesaid endorsements. Thus, the defendant has admitted his signatures under both the endorsements dated 11.06.2004 and 09.08.2004. The Hon'ble Apex Court in case **Grasim Industries Ltd. Vs. Agarwal Steel 2009(4) Civil Court Cases 598** has laid down that when a person signs a document, there is a presumption, unless there is proof of force or fraud, that he has read the document properly and understood it and only then he affixed his signatures thereon, otherwise no signatures on a document can ever be accepted. The theory projected by the defendant that his signatures were obtained under both the endorsements on 01.03.2004 is negated from the endorsements itself as well as the admissions made by defendant. The

defendant has admitted in the cross-examination that his signatures at point 'A' under the endorsement dated 11.06.2004 is in the black ink and his signatures at point 'B' under the endorsement dated 09.08.2004 is in blue ink. The signatures of the defendant under both these endorsements are on the opposite sides. His signatures under endorsement dated 11.06.2004 are on the left side and his signatures on the endorsement dated 09.08.2004 are on the right hand side. So, it is not believable that a person will sign on the blank paper in this shape on two different sides and in two different inks. Defendant-Ram Lal has admitted in the cross-examination dated 13.08.2012 that the date under endorsement dated 09.08.2004 is in his hand. But, alleged that the same was got written (obviously by plaintiff). But, later portion of his statement that the date was got written by plaintiff on the date agreement itself is not believable as nobody can apprehend five months in advance that he will be in need to manipulate the endorsements on that particular date. So, the mentioning of the date by defendant-Ram Lal in his own hand in the endorsement dated 09.08.2004 totally demolishes his plea that his signatures were obtained on the blank reverse side of the agreement on 01.03.2004 itself.

21. It is settled principle of law that the statement of a witness has to be read as a whole. No conclusion can be drawn by taking one sentence from the statement of the witness in isolation. Thus, the single sentence in the cross-examination of PW-5 Yogesh Jain that the signatures of defendant were obtained on the backside of the agreement on the same date when the agreement was prepared is no ground to render

the endorsements doubtful when this witness in his examination in chief and other part of his statement has deposed in detail about these endorsements. PW-4 Vishwas Gupta @ Sanjay Mittal is the scribe of the endorsement dated 11.06.2004 and has categorically deposed about the execution of the endorsement dated 11.06.2004 by defendant Ram Lal after receiving Rs. 1,25,000/- as the part sale consideration and about extension of time for execution of the sale deed up to 10.09.2004. The cutting of the dates in these endorsements under the signatures of Yogesh Jain and defendant Ram Lal respectively is also of no consequences as the date of these endorsements are also mentioned in the first line of these endorsements. Thus, the learned Courts below have rightly concluded that the endorsements dated 11.06.2004 and 09.08.2004 were duly executed by defendant-Ram Lal after accepting the part of the sale consideration and had extended the date for execution and registration of the sale deed.

22. The plaintiff is also proved to be ready and willing to perform his part of contract. The plaintiff has stepped into the witness box as PW-6. He has categorically deposed in his affidavit Ex.PW6/A that he was always ready and willing to perform his part of contract. He also deposed that he has appeared before Sub Registrar, Ambala Cantt on 29.09.2004 with balance sale consideration and money to bear the stamp vendor registration charges. But, defendant did not appear before the Sub Registrar to get the sale deed executed and registered. This oral testimony of the plaintiff is also corroborated from the application dated 29.09.2004 Ex.P-1 moved by him to the Naib Tehsildar, Ambala Cantt. The said

application and endorsement therein at point 'A' have been duly proved by PW-1-Ramesh Kumar, Registry Clerk.

23. Mere delay in filing the suit by the plaintiff is no ground to conclude that plaintiff was not ready and willing to perform his part of contract in view of the peculiar circumstances of the case. It is an admitted fact that the property in dispute was mortgaged with the Punjab National Bank against loan. Defendant-Ram Lal has not cleared the loan of the bank. The said loan was cleared in the year 2010 i.e. during the pendency of the suit. It is also not disputed that in the agreement dated 01.03.2004, the defendant has categorically mentioned that property in dispute was free from all encumbrances. But, later on it was found that the loan of Punjab National Bank was outstanding against the house in question. Even, criminal case was registered against defendant-Ram Lal for misrepresenting these facts and he was convicted by the Criminal Court. So, these facts could be the reason for delay in filing the suit. It is established from the evidence brought on record by the plaintiff that he had already paid Rs. 2,05,000/- against the total sale consideration of Rs. 3,95,000/-. In this way, he has already paid more than 50% of the sale consideration. It is not believable that after paying more than 50% of the sale consideration, plaintiff will not be ready and willing to perform his part of contract. The plaintiff has also got issued the legal notice dated 26.10.2004 calling upon defendant-Ram Lal to execute the sale deed. But, he did not turned up. Even otherwise the defendant was not in a position to get the sale deed executed as the disputed property was already mortgaged with the Punjab National Bank. Considering all the

facts mentioned above, plaintiff-respondent no.1 is proved to be always ready and willing to perform his part of contract and it was defendant-Ram Lal who had neglected to perform his part of contract.

24. In the written statement or in his affidavit, defendant-Ram Lal has not taken any plea that the contract of sale was cancelled by him and earnest money was forfeited. So, the plea raised by learned counsel for the appellant that as reply to the notice was not challenged, so the plaintiff was not entitled for relief of specific performance carries not substance. It is settled principle of law that the parties have to lay the foundation of the plea sought to be raised by way of pleadings. Plea beyond pleadings cannot be entertained.

25. Learned counsel for the appellants has vehemently contended that appellant Smt. Kalawati is the widow. The appellants have only this residential house, so the relief of specific performance will cause great hardship to them. Again there is no pleading and proof that the house in dispute is the only house owned by the defendant. The defence of hardship as provided under Section 20 (2) (b) of the Specific Relief Act, 1963 has to be raised in the written statement. In **Prakash Chandra's** case (Supra), the respondent has taken the plea that he would be rendered landless if the relief of specific performance is granted. But, no defence of hardship was taken by him nor any material to support this plea was brought on record. The Hon'ble ApexCourt has set aside the findings on this point recorded by the Appellate Court and appellant was held entitled to the relief of specific performance of the agreement to sell. In **Ram Piari's case (Supra)** it was the plea of the vendor that she was a

widow lady and was likely to suffer great hardship in case the agreement was specifically performed and she was ready to compensate the vendor. But, this Court has turned that plea on the ground that there was no such plea in the pleadings and evidence. Similar view has been taken by this Court in case **Smt. Veena Sharma and others Vs. Shri Kapoor Chand Jain 2010(5) R.C.R (Civil) 361**.

26. The escalation of the price is also not a ground to decline the relief of specific performance. Reference can be made to **Diwan Chand's case (Supra).**

27. The main thrust of the contentions raised by learned counsel for the appellants was that as the plaintiff has opted to prosecute the defendant for misrepresenting the facts regarding the mortgage of the property in dispute with Punjab National Bank and the said criminal case has resulted in conviction of the defendant. So, with the application of Doctrine of election, now he cannot seek enforcement of the said agreement dated 01.03.2004. Section 19 of the Indian Contract Act, 1872 (for short 'Contract Act') reads as under:-

> "19. Voidability of agreements without free consent.—When consent to an agreement is caused by coercion, **1**fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to contract, whose consent was caused by fraud or mispresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put on the position in which he would have been if the representations made had been true."

As per the aforesaid provision of law, when the consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. In the instant case, admittedly the consent of the plaintiff was based on misrepresentation of the fact with respect to the mortgage of the house in dispute with Punjab National Bank. So, this contract was voidable at the option of the plaintiff. But, the plaintiff has never exercised the option to invalidate or repudiate the contract. Rather, he has filed the suit to enforce the contract. This fact is not disputed that before filing of the present suit, defendant-respondent no.1 has got registered the criminal case against the defendant for cheating. But, the said registration of the criminal case will not take away the civil rights available to the plaintiff flowing from agreement to sell dated 01.03.2004.

28. It is settled principle of law that if a transaction give rise to the civil as well as criminal liability, the aggrieved person can avail both of them. To support this view reference can be made to cases **M/s Medohi Chemicals & Pharma Pvt. Ltd. Vs. Biological E. Ltd. 2000(2) R.C.R (Criminal) 122, M/s Indian Oil Corporation Vs. M/s NEPC India Ltd., & Ors. 2006(3) R.C.R (Criminal) 740 and Vesa Holdings P. Ltd. And Anr. Vs. State of Kerela and Ors.2015(2) R.C.R**. In the instant case, both the remedies were available to the plaintiff and he was legally entitled to exercise the both. If the Doctrine of election is applied and plaintiff is debarred to enforce the agreement, it will amount to give benefit to the defendant for his own wrong. This Court in case **RamKumar and others VS. Rattan Parkash and others 2006(3) R.C.R (Civil) 68** has laid down that a party guilty of fraud and forgery of document to defeat the right of actual vendeee has no equity in his favour to invoke jurisdiction of the Court. So, the appellants-defendants cannot

void the compliance of the agreement to sell dated 01.03.2004 by taking shelter of Doctrine of election.

29. Cases relied upon by learned counsel for the appellants-defendants on this aspect of the case are quite distinguishable on facts. In **Panchanan Pal's case (Supra),** the plaintiff has repudiated the contract. Whereas, in the instant case the plaintiff has not at all repudiated the contract, rather he has filed the suit to seek enforcement of the contract. It was further laid down in this judgment that the rule of election will not apply where two claims are not inconsistent and the circumstances do not show an intention to abandon one of them. As already mentioned if a transaction give rise to civil as well as criminal liability, those claims cannot be stated to be inconsistent. In the instant case, there is no circumstance to show that plaintiff had abandoned the remedy available to him to enforce the contract dated 01.03.2004.

30. In **Union of India's case (Supra)**, this Court has laid down that when a person concerned has choice of two rights, he is at liberty to adopt either of that, but not the both and if he adopts the one he cannot afterward assert the other. These findings relates to the options available to the party under the terms of the contract. If in the contract, there is choice of two rights, the party concerned will be at liberty to avail one of those and if he elect to avail the one, he cannot afterward avail the other. But, in this case, in the agreement to sell dated 01.03.2004, there was no such choice of rights and plaintiff has also not availed any other civil right except to enforce the agreement.

31. In **Swiss Timing Limited 's case (Supra)**, the criminal case

was registered against the Chairman of the respondent-Organizing Committee. The contract was entered into by the office bearer of the respondent-Organizing Committee. There were allegations of corruption and manipulation against those office bearers and the Central Bureau of Investigation has registered the case under various provisions of the Indian Penal Code as well as Prevention of Corruption Act. The petitioner-Swiss Timing Limited has filed the petition under Section 11 of the Arbitration and Conciliation Act, 1996, which was opposed by the Organizing Committee. The said petition filed by the Swiss Timing Ltd. was allowed in-spite of the objection raised by the respondent with respect to the manner in which the contract was made and the ongoing investigation by the Central Bureau of Investigation. The Hon'ble Apex Court in para no.29 of the judgment has observed that in an eventuality where ultimately an award is rendered by arbitral tribunal and the criminal proceedings result in conviction rendering the underlying contract void, necessary plea can be taken on the basis of conviction to resist the execution/enforcement of the award. These observations by the Hon'ble Apex Court will not help the appellants as in that case the office bearers of the Organizing Committee were alleged to have indulged in fraud, manipulation and corruption and the Organizing Committee could have raised the issue that the contract was void. But, here in this case defendant-Ram Lal himself has executed the agreement to sell dated 01.03.2004 being fully aware of the fact that the property in dispute was already mortgaged with Punjab National Bank. So, all these authorities referred by learned counsel for the appellants are of no assistance to advance the case of the appellants. Thus, keeping in view my aforesaid discussion, the learned Courts below have rightly held the plaintiff-respondent no.1-Ashwani Bansal entitled for a decree of possession by way of specific performance of agreement to sell dated 01.03.2004 on payment of balance sale consideration.

32. Consequently, I have no reason to differ with the concurrent findings recorded by the learned Courts below.

33. Therefore, the present appeal being devoid of merits, is hereby dismissed with costs.

August 19, 2016 **(DARSHAN SINGH)**
s.khan **JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No