

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 5920 of 2015(O&M)
Date of decision : February 15, 2016

Amrit Lal Vij

..... Appellant

Versus

Jalandhar Improvement Trust, Jalandhar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sanjeev Sharma, Senior Advocate with
Mr. Shekhar Verma, 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?

Amit Rawal, J (oral).
CM No.14732-C of 2015

This is an application under Section 5 of the Limitation Act seeking condonation of delay in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 01 days in filing the appeal is condoned.

The application stands disposed of.

CM No.14733-C of 2015

This is an application under Section 151 CPC seeking condonation of delay in refiling the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 14 days in refiling the appeal

is condoned.

The application stands disposed of.

RSA No. 5920 of 2015(O&M)

The appellant-plaintiff is aggrieved against the dismissal of the suit seeking specific performance of the agreement to sell dated 9.10.1989 whereby the defendants had allegedly agreed to sell a plot No. 655 measuring 1 Kanal 1 Marla 153 sq.ft. for a total sale consideration of ₹2,39,130/- against the earnest money of ₹2,03,635/- through attorney Manmohan Singh.

Mr. Sanjeev Sharma, learned Senior counsel assisted by Mr. Shekhar Verma, Advocate appearing on behalf of the appellant submits that both the courts below have erroneously non-suited the appellant-plaintiff on the ground that the suit was not within the period of limitation as it was filed on 24.5.2001, though the stipulated date for registration and execution of the sale deed was 25.10.1989. The reasons for not filing the suit within the period of limitation was that the Improvement Trust vide letter in the year 1992 requested the Government to intimate to whom the allotment of the plot has to be made, as Jasbir Singh Chadha was represented by two General Power of attorneys, one Manmohan Singh and another Ram Raj. Ram Raj allegedly executed an agreement to sell dated 25.7.2000 with defendant No.3 and ultimately the suit for specific performance by defendant No.3 was decreed and the same was also challenged, thus hurdle of limitation, ought not to have come in the way of appellant-plaintiff, for the reasons that title of the plot was

under cloud, thus, prays that aforementioned facts, irresistibly lead to conclusion that the appellant-plaintiff was prevented by law to seek specific performance of the agreement to sell.

I have heard learned Senior counsel for the appellant and appraised the paper book and am of the view that there is no merit in the contention for the reason, that even if there was some dispute, though, only one letter of 1992 has been brought on record in support of the aforementioned facts, but the fact remains that in case the suit had been filed within limitation and in case plaintiff was able to seek decree, it would have been conditional one. Readiness and willingness as per the provisions of Section 16 (1) (c) of the Specific Relief Act, 1963 was/is conspicuously absent. It is a settled law that the person seeking specific performance of the agreement to sell has to show readiness and willingness from the date of execution of the agreement to sell, during the pendency of the suit, till passing of the decree. The said act of the appellant-plaintiff do not prove continuous readiness from the date of the contract till the time of filing suit. In this regard reference is invited to the judgment of Hon'ble Supreme Court in **Sita Ram Vs. Radhey Shyam 2007 (4) RCR (Civil) 533** the Hon'ble Supreme Court held that the basic principle behind Section 16 (c) read with Explanation (ii) is that any person who seeks benefit of specific performance of contract must manifest that his conduct has been blemishless through out entitling the specific relief and the Court is to grant relief on the basis of conduct of the person seeking such relief and in case the plaintiff through pleadings as well as his

conduct proves the aforementioned basic ingredients the plaintiff would be entitled to get relief and could not be denied the relief. Having failed to comply with the statutory provisions of law, I am of the view that both the courts below have rightly non-suited the appellant-plaintiff on the ground of limitation.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

February 15 , 2016
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