

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

R.S.A. No. 6207 of 2015 (O&M)

Date of Decision: 12.01.2016

Akash

.....Appellant

Versus

Dharam Pal

.....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Nitesh Gupta, Advocate, for the appellant.

Mr. Naveen Kumar, Advocate, for the Caveator-respondent.

SHEKHER DHAWAN, J

Present Regular Second Appeal against concurrent findings of both the Courts below whereby suit for specific performance of agreement of sale was dismissed by the Court of first instance and appeal was dismissed by Court of first appeal.

2. For the sake of convenience, the parties are being referred to as per their status before the Court of first instance. Relevant facts for the purpose of decision of present Regular Second Appeal that plaintiff had filed suit for specific performance of agreement of sale dated 11.01.2005 with respect to the suit land. Sum of ₹20 lacs was paid as earnest money and

balance amount was to be paid at the time of execution of sale deed. The target date was fixed to be 15.03.2005. Time was of the essence as per terms and conditions of the agreement. As per plaintiff, defendant did not turn up for execution of sale deed and thereafter the present suit before the Court of first instance.

3. Defendant admitted the execution of agreement and at the same time took the plea that in fact plaintiff was not ready to get the sale deed executed. On the target date i.e. 15.03.2005, he along with his father appeared before the Sub-Registrar, Tauru but plaintiff did not turn up. The said agreement dated 11.01.2005 was cancelled. Defendant got a public notice issued in newspaper "Dainik Jagran" on 25.03.2005 in this regard and prayed that suit be dismissed.

4. On these facts, learned trial Judge settled the issues and after leading evidence by both the parties and after appreciation of evidence, the Court of first instance dismissed the suit for permanent injunction mainly on the ground that on the date of execution of sale deed plaintiff was not willing and ready to perform his part of the agreement. Plaintiff preferred appeal and the same was dismissed by the Court of first appeal.

5. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that both the Courts below have recorded concurrent findings of fact that time was of the essence in the agreement dated 11.01.2005. On the date fixed for execution of sale deed, defendant had come present for execution of sale deed but plaintiff was not having sufficient time to get the sale deed executed. He has failed to prove that he was having any money in his account to pay balance consideration and to bear the other expenses. Plaintiff had examined PW-3

to show the readiness and willingness but the said witness had admitted in the cross-examination that M/s Dipin Chemicals is a registered company, having three directors and resolution was not passed by the Directors to give any money to the plaintiff to get the sale deed executed and what to speak about any money being actually available with the plaintiff. Apart from that, the plaintiff has not been able to lay his hand on any such document that plaintiff was willing to prove his part of the agreement on the date fixed.

6. The concurrent findings recorded by the Courts below on the basis of facts and evidence do not call for any interference. There is absolutely no substantial question of law involved in this case. Such a law was laid down by Hon'ble the Supreme Court in case **Santosh Hazari Vs. Purushottam Tiwai (Dead) by LRs., 2001(2) JT 407.**

7. In view of the above, the present Regular Second Appeal is without any merit and same stands dismissed.

January 12, 2016
naresh.k.

(SHEKHER DHAWAN)
JUDGE