

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.M. No. 8106-C of 2014 &
RSA No. 3507 of 2014

Date of decision: February 15, 2016

Rajender Kumar Aggarwal

...APPELLANT

Versus

Smt. Pammi Sehgal

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

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

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Nuh dated 27.08.2013, whereby the suit for possession by way of specific performance of contract and the consequential relief of permanent injunction preferred by the appellant-plaintiff has been decreed to the extent of return of the earnest money, appeal against which, as preferred by the appellant-plaintiff, stands dismissed by the Additional District Judge, Nuh on 25.01.2014.

2. It is the contention of the learned counsel for the appellant that the execution of the agreement to sell dated 21.02.2005 Ex. PW1/A and the receipt of ₹ 1,20,000/- has been admitted by the respondent-defendant as also the date fixed for execution of the sale deed dated 15.05.2005.

Counsel contends that inadvertently, in the plaint it was mentioned that 15.05.2005 was a Saturday, in fact, it was Sunday. The appellant has gone to the office of the Sub-Registrar on 15.05.2005 but found it closed. He had again gone on the next day i.e. 16.05.2005 and got marked his presence with the Sub-Registrar and also got an affidavit showing his presence in the office of the Sub-Registrar on 16.05.2015, which clearly indicates his readiness and willingness to perform his part of contract. He, thus, contends that the finding recorded by the Courts below that the appellant-plaintiff had not approached the Sub-Registrar for execution of the sale deed, cannot be accepted. His further contention is that three notices dated 02.02.2006, 08.03.2006 and 19.12.2006, which are alleged to have been issued by the respondent-defendant upon the appellant, have not been received by the appellant rather the appellant has also sent a legal notice dated 17.02.2007 Ex. PW5/C and the acknowledgement thereof is Ex. PW5/D, which establishes that the appellant-plaintiff was ready and willing to perform his part of contract and these three notices indicate that the time was not of essence of the contract and the period for execution of the sale deed was extendable as per the stand of the respondent herself. He, thus, contends that mere return of the principle amount, as ordered by the Courts below, should not have been so granted, instead the suit for specific performance should have been decreed in toto. Prayer has, thus, been made for setting aside the impugned judgments and decreeing the suit, as prayed for.

3. I have considered the submissions made by the learned counsel for the appellant but find myself in difficulty to accept what has been asserted by the counsel herein.

4. It is not in dispute that till date, as the plaint stands,

15.05.2005 as a Saturday, no evidence has been brought on record by the plaintiff which would prove that in fact 15.05.2005 was a Sunday and not a Saturday or that it was a typographical error which has crept in the plaint. Going by the pleadings, the next day, which is asserted to be the one on which the appellant-plaintiff had gone to the office of the Sub-Registrar to get himself marked as present along with the remaining amount of consideration, the stamp fee and money for other expenses, would be 16.05.2005, which obviously was a Sunday and, therefore, the stand of the appellant-plaintiff stands belied that he had gone to the office of the Sub-Registrar. Although the counsel for the appellant has asserted that 16.05.2005 was a Monday but that cannot be accepted in the light of there being no evidence on record supporting his contention.

5. The contention of the learned counsel for the appellant that three notices as given by the respondent dated 02.02.2006, 08.03.2006 and 19.12.2006 have not been received by the appellant, cannot be accepted as the same have been duly proved on record as Exs. DW1/B to DW1/D, which show the extended time which the appellant-plaintiff could have availed of in executing the sale deed. The assertion of the counsel for the appellant that the appellant has also given a notice on 17.02.2007 Ex. PW5/C also cannot be accepted as the notice given by the appellant is much after the respondent-defendant had served him with three notices. The due date for execution of the sale deed was 15.05.2005 and the non-issuance of any notice by the appellant-plaintiff to the respondent-defendant prior to 17.02.2007 also indicates that the appellant-plaintiff was either not ready to perform his part of contract or was not in a position to execute the sale deed, may be because of insufficiency of funds available with him. The findings,

as recorded by the Courts below, thus, cannot be faulted with.

6. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

7. In view of the above, finding no merit in the appeal, the same stands dismissed.

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In the light of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

February 15, 2016
pj

(AUGUSTINE GEORGE MASIH)
JUDGE