

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

**Regular Second Appeal No.753 of 2015 (O&M)
Date of Decision: March 03, 2016.**

Satinder Kaur

.....APPELLANT(s).

VERSUS

Harjinder Singh

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sarju Puri, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is second appeal by Satinder Kaur, defendant against the judgment and decree passed by Additional Civil Judge (Senior Division), Phagwara, whereby the suit filed by respondent-plaintiff seeking specific performance of the agreement dated 09.05.2005 was decreed and the appellant-defendant was directed to execute the sale deed of the house in question, agreed to be sold vide agreement dated 09.05.2005, in favour of respondent-plaintiff and to complete the required formalities of Improvement Trust for transfer of the plot in the name of plaintiff.

2. The plaintiff's case, in brief, is that vide agreement dated 09.05.2005, the defendant agreed to sell the house constructed on 250 square yard plot bearing No.144 situated in scheme No.3 Shaheed Bhagat Singh Nagar, Hoshiarpur Road, Phagwara for consideration of ₹25 lacs and

received ₹3 lacs through cheque as earnest money. The date for execution and registration of the sale deed was fixed as 09.11.2005, on which date, it was extended to 09.05.2006 on receipt of further sum of ₹2 lacs by the defendant. Again on 08.05.2006, the date for execution and registration of the sale deed was extended upto 08.11.2006. Before 08.11.2006 i.e. on 15.06.2006 the defendant received a cheque of ₹2 lacs, on 24.07.2006 a cheque of ₹1 lac and on 28.08.2006 a cheque of ₹3 lacs. The plaintiff further paid ₹1 lac to the defendant. In this manner, he had paid ₹12 lacs to the defendant. Balance sale consideration was to be paid at the time of registration of the sale deed. The plaintiff has always been ready and willing to perform his part of the contract but the defendant refused to execute sale deed and get it registered on stipulated date.

3. On 08.11.2006, plaintiff went to the office of Sub Registrar with balance sale consideration and other expenses for execution and registration of the sale deed but the defendant did not turn up. Plaintiff got his presence marked vide affidavit dated 08.06.2011 and then served a notice on the defendant to execute the sale deed on 30.11.2006. Again on 30.11.2006, plaintiff went to the office of Sub Registrar and got his presence marked but the defendant did not turn up.

4. The defendant contested the claim of plaintiff with the plea that agreement to sell dated 09.05.2005 is not enforceable for the reasons as follows:-

(i) The defendant is not having exclusive right over the house in dispute which was allotted to her from the discretionary quota of Chief

Minister of Punjab.

(ii) She cannot alienate the plot as per rules under Punjab Town Improvement Act.

(iii) Improvement Trust, Phagwara has not issued clearance Certificate for the sale of suit property.

(iv) Plaintiff had not been ready and willing to perform his part of the contract and did not possess the balance sale consideration.

(v) Signatures of Gural Singh son of Karam Singh on the endorsement of the agreement was manipulated.

(vi) On 08.05.2006, defendant was present in the office of Sub Registrar but the plaintiff did not turn up and defendant got her presence marked.

(vii) The defendant does not have any other house to live.

5. On merits, she pleaded that she was ready and willing to perform her part of the contract but the plaintiff committed lapse in performance of his part of contract.

6. On appraisal of evidence on record, learned Additional Civil Judge (Senior Division), Phagwara concluded that it was plaintiff, who had been ready and willing to perform his part of the contract and also possessed required balance sale consideration.

7. Not satisfied, the defendant filed first appeal, which was also dismissed by learned Additional District Judge, Kapurthala.

8. I have heard learned counsel for the appellant and have perused the paper book and lower Court's judgment with his assistance.

Learned counsel for the appellant has argued that the date for

execution and registration of the sale deed was repeatedly advanced which shows that plaintiff was not having requisite sale consideration, otherwise, he would have got the sale deed executed on the date originally fixed in agreement i.e. 09.11.2005 and would not have sought extension time and again. The repeated extension shows that he was not ready and willing to perform his part of the contract. The title of appellant over the disputed house was also not perfect. This house was allotted to her from the discretionary quota of Chief Minister and as per rules framed under the Punjab Town Improvement Act, she is not entitled to sell the suit property. Plaintiff has taken the plea of hardship which has not been looked into by the Courts below. It is the only house available to the defendant and in the event of sale of this house, she will be left with no place to live as such it was a case of acute hardship for her and in the event of suit being decreed, the alternative relief of return of ₹12 lacs received by the defendant with interest could be allowed to the plaintiff. The conduct of the plaintiff was also unnatural and reflect that he was not ready and willing to perform his part of the contract. Firstly, he did not adhere to the schedule of getting the sale deed executed as per the agreement; secondly, even after the payment of ₹12 lacs, which amount to almost 50% of the total sale consideration, he did not take possession of the suit property.

9. Firstly, I take the argument of learned counsel for the appellant that the plaintiff was not ready and willing to perform his part of the contract. Almost all the payments to the defendant were made through cheques, as such, the defendant could not deny the same. The date for

09.05.2006 and to 08.11.2006. It is apparent that the time of execution and registration of the sale deed was extended with consent of the parties and it is not a mere extension of time but during this period, defendant-appellant was also paid a sum of ₹9 lacs and most of the payments were made through cheque. The fact that the parties have extended the time for execution and registration of the sale deed with mutual consent is evident from the affidavit of defendant (Ex.D2) which has been produced on record by her attorney. As per this affidavit, defendant herself had appeared before the Sub Registrar on 08.11.2006 for the purpose of executing the sale deed in favour of plaintiff and got her presence marked. In view of these facts, learned Additional Civil Judge (Senior Division), Phagwara has rightly observed that ***“Once the affidavit Ex.D2 is on record, then it does not lie in the mouth of defendant that the date of execution of the sale deed was not extended upto 08.11.2006”***

10. After 08.11.2006, things have moved very fast. Plaintiff immediately served a notice upon the defendant calling her to execute the sale deed on 30.11.2006 on which date, he remained present before the Sub Registrar and got his affidavit Ex.P7 attested. The defendant did not appear to execute the sale deed and the plaintiff without losing further time, filed the instant suit on 03.02.2007. The fact that the plaintiff had been making payment to defendant towards the sale price on different dates prior to the date settled for execution and registration of the sale deed and the defendant had been accepting those payment through cheques show that there was mutual understanding between the parties under which the defendant had been receiving the payment towards the sale consideration. The transaction

in this case pertains to a house and the chances are always there i.e. owner of the house before selling the same and parting with its possession seeks time to arrange alternative accommodation. Defendant has not appeared as witness to express or prove her hardship. In this case, hardship is not evident because firstly, the defendant had entered into an agreement, secondly, she had been receiving the payments on different dates from plaintiff after receiving the initial earnest money of ₹3 lacs. This shows that she was mentally prepared and have fully understood the facts of agreement executed by her. The fact that plaintiff had not taken possession of the disputed house despite payment of ₹12 lacs, does not make his conduct unnatural. The payment was made on different dates and the last payment of ₹5 lac was made within a period of 4-5 months before the date fixed for execution of the sale deed. When a person had to get the possession on the date of execution and registration of the sale deed, he could not be in a hurry to get the same at the time of making part-payment of the sale consideration.

11. The argument of learned counsel for the appellant about imperfect title of defendant was dealt with by learned Additional Civil Judge (Senior Division) in para 16 of the judgment, which reads as follows:-

“16. The second aspect i.e. plea taken by the defendant regarding her being not the full owner of the plot is being taken up now. The defendant has taken the plea that she is not full owner. No doubt that the defendant has been allotted the suit plot, yet there is no impediment in the transfer thereof. The defendant has examined DW-2 Amarjit Singh, Sales Clerk, Improvement Trust, Phagwara, who has clearly admitted in his cross-examination that there is no bar on the part of defendant to

transfer the said plot. Furthermore, the terms and conditions as per allotment letter do not, in any manner, show that there is any bar of transfer of the suit plot to anyone. Therefore, this plea taken by the defendant is of no avail to the defendant.”

12. Learned counsel for the appellant has referred to the observations of Hon'ble Apex Court in case of ***Golap Chand Agarwalla G.K. Aggarwala Vs. Gopal Chandra Pal 2002(1) J.T. 406***, wherein it was observed that non-payment of balance sale consideration on the stipulated date reflect on the readiness and willingness of the plaintiff to perform his part of the contract. The above citation, in no manner, is applicable to the facts and circumstances of the present case, as in this case, the plaintiff-respondent is making the payment of sale consideration even without any specific settlement or agreement which weigh in his favour to reflect his intention to get the sale deed executed and ultimately his readiness and willingness to perform his part of the contract.

13. Learned counsel for the appellant has further argues that the Court has to give reason as to why it is not exercising its discretion under Section 20 of Specific Relief Act, to grant alternate relief, though an alternate relief has been prayed for. In support of his submission, he has relied on observations of Single Bench of this Court in case ***Lakhbir Singh Vs. Mohan Singh and another 2007(1) PLR 488***. In the aforesaid case, the above observations were made in the backdrop of the facts and circumstances of that case. The appellant in that case was proved to be a bonafide purchaser without any notice prior to the date fixed for execution

and registration of the sale deed under the agreement.

14. Learned counsel for the appellant has relied on the observations in case *Sher Singh and others Vs. Rajinder Singh, 2000(3) PLR 232*, wherein it was observed that where the agreement to sell lost its efficacy due to misunderstanding, it would be inequitable to allow specific performance of the agreement. He has also relied upon the observations of Andhra Pradesh High Court in case of *M.N. Mohammed Mirza Vs. B. Subhan Saheb 1994(1) Civil Court Cases 430*, wherein it was observed that a party not coming to the Court with clean hands, is not entitled to the discretionary and equitable relief of specific performance. Observations in above citations are not applicable in the facts and circumstances of the case.

15. On perusal of the paper book and judgments of the Courts below, I find no legal or factual infirmity therein, calling for any interference.

16. No substantial question of law requiring determination arises in this appeal, which has no merits.

17. Dismissed.

March 03, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE