

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

RSA No.5781 of 2003 (O&M)

Date of Decision: 07.10.2017

Mangat Ram

... Appellant

Versus

Sudershan Kumar and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Salil Sagar, Sr. Advocate with
Mr. Sanakp Sagar and
Mr. Sunil Kumar, Advocates
for the appellant.

Mr. M.L. Saggar, Sr. Advocate with
Mr. Sunny Saggar, Advocate
for the respondent.

ANIL KSHETARPAL, J.

CM 12301-C of 2017.

Through this application, the plaintiff/respondent wants this Court to take notice of the subsequent facts like registration of sale deed, sanction of mutation and release of electric connection for the tubewell installed in the land.

As per the Civil Procedure Code, additional evidence can be permitted only under Order 41 Rule 27. For filing an application under Order 41 Rule 27 CPC, there are certain requirements, which are necessary to be fulfilled. A reading of the application does not show that such requirements have been fulfilled.

In these circumstances, I am left with no choice but to dismiss the application.

The application is dismissed.

Main Case.

While admitting the appeal, this Court had framed a substantial question of law, which is extracted as under: –

1. *“Whether the respondent-plaintiff has been able to satisfy one of the mandatory ingredients, viz., his willingness and readiness to get executed the agreement to sell on payment of the balance consideration?”*

In my considered opinion, an additional question of law also arises, which would be:

2. *Whether the Courts below have overlooked the interim orders passed while passing the final judgement ?*

Detailed facts have been noticed by the Courts below, however, to complete the narrative, certain facts are being noticed.

The defendant/appellant entered into an agreement to sell with the plaintiff on 21.01.1997 with respect to the land measuring 23 Kanal and 5 Marla for a total sale consideration of Rs.3,72,000/- out of which Rs.1,50,000/- was paid as earnest money. As per the agreement to sell, the target date for execution and registration of sale deed was fixed as 13.05.1997. It may be noticed that out of 23 Kanal 5 Marla, 11 Kanal and 9 Marla was mortgaged with a Cooperative Bank. It was provided in the agreement that the proposed vendor shall get the land redeemed. On 13.05.1997, the plaintiff and defendant both alleged that they visited the office of the Sub Registrar. The plaintiff could not produce any evidence in support thereof. However, the defendant went to the office of the Sub

Registrar along with the Assistant Manager of the Cooperative Bank so that the payment made by the plaintiff is used for redeeming the mortgage immediately. The aforesaid Assistant Manager has been examined by the defendant as DW2.

The plaintiff is alleged to have sent a notice to the defendant on 31.05.1997 calling upon the defendant to come and execute the sale deed on 10.06.1997 after redeeming the mortgage. The plaintiff filed a suit for specific performance of agreement to sell on 13.06.1997. The plaintiff asserted that he was ready and willing to perform his part of the contract. The defendant appeared in the Court on 25.07.1997. The defendant on the very first date of appearance in the Court made the following statement: –

“I remained present in the office of Sub Registrar Talwara for execution and registration of the sale deed on 13.05.1997 as per the terms and conditions of the agreement to sell dated 21.01.1997 but plaintiff did not come present, for getting the sale deed executed and registered on 13.05.1997 as he was not in a position to execute the sale deed for want of the balance sale consideration. However, the defendant is still ready to execute the sale deed in favour of the plaintiff if the plaintiff paid the balance sale consideration up to 01.08.1997 in this Hon'ble Court, otherwise, the defendant will not bound to execute the sale deed in favour of the plaintiff. The loan amount has been paid by me.”

It may be noticed that the defendant/appellant did redeem the mortgage from the bank on payment of entire loan amount on 23.07.1997.

After recording the statement, learned trial Court adjourned the case for the next date i.e. 26.07.1997. Thereafter, the case was adjourned to 29.07.1997 and then again adjourned further. On the request made by the defendant/appellant, learned trial Court passed an order on 14.08.1997. The relevant extract of the aforesaid order is as under: –

“5. The learned counsel for the plaintiff has stated at the Bar that the plaintiff is not ready to deposit the amount as per statement made by defendant No.1. The contention of defendant No.1 is that on 13.5.1997, he remained present in the office of Sub Registrar Talwara to execute the sale deed and it was the plff. who did not turn up as he has not arranged the balance sale consideration is a matter of evidence. Similarly, the contention of the plaintiff that defendant No.1 violated the terms and conditions of the agreement to sell dated 27.1.1997 is also a matter of evidence. In this case, written statement is yet to be filed by the defendant and thereafter, after framing of the issues, both the parties are to lead their evidence to prove their respective pleas. As such now for filing of the written statement and reply to the stay application on behalf of the defendant, case is adjourned to 26.8.1997.”

The defendant/appellant even filed a revision petition against the order dated 14.08.1997. Unfortunately, the revision petition was dismissed by this Court taking note of the fact that the trial Court has simply adjourned the case and no order has been passed.

The defendant/appellant once again filed an application, which is undated, before the Court calling upon the plaintiff to pay the sale consideration within a period of 10 days and get the sale deed executed. Notice of this application was issued to the plaintiff for 10.12.1997. The aforesaid application was again disposed of by the trial Court on 24.03.1998. The relevant part of the aforesaid order reads as under: –

“4. Earlier also similar application was filed by the defendant which was decided on 14.12.1997. The defendant filed revision in the Hon'ble High Court, against the said order which was dismissed. Certified copy of the order dated 10.11.1997 of Hon'ble Mr. Justice Iqbal Singh has been produced on the record in this respect. It has been alleged by the plaintiff in reply to the present application that is ready to pay the balance sale consideration if the suit of the plaintiff is decreed. So this application filed by the defendant for giving direction to the plaintiff to make the payment of balance sale consideration within 10 days of the receipt of notice is disposed of accordingly.”

Learned trial Court proceeded with the trial of the case and decreed the suit for specific performance after prolonged trial. First appeal preferred was also dismissed, that is how, the defendant/appellant is in second appeal.

Question No.1. *Whether the respondent-plaintiff has been able to satisfy one of the mandatory ingredients, viz., his willingness and readiness to get executed the agreement to sell*

on payment of the balance consideration?”

It is clear from the order dated 14.08.1997 that the plaintiff was not ready and willing to perform his part of the contract. It is not in dispute that the land was redeemed by the defendant on 23.07.1997. This fact is admitted by the plaintiff when he appeared in the witness box.

After 23.07.1997, there was no impediment in the way of the plaintiff to get the sale deed executed. The plaintiff was given sufficient opportunity to get the sale deed executed. The defendant as noticed above, made a statement in the trial Court on 25.07.1997. On 14.08.1997, the plaintiff refused to deposit the amount. The Court should have dismissed the suit there and then. Unfortunately, the learned trial Court did not take action on time.

Still further, it is clear that the defendant/appellant filed a fresh application before the Court calling upon the plaintiff to get the sale deed executed. The plaintiff did not still come forward to get the sale deed executed. The aforesaid application was again disposed of by the Court vide order dated 24.03.1998. From these facts alone, it is sufficient to conclude that the plaintiff was not always ready and willing to perform his part of the contract. At least from 23.07.1997, the defendant was not at fault. Still further, even the defendant was not at fault earlier also because on the date of the registration of the sale deed he did take the Assistant Manager of the bank with whom he had mortgaged the land so that the payment made by the plaintiff is deposited with the bank and the mortgage is redeemed forthwith.

Still further, if the plaintiff was really ready and willing to

perform his part of the contract, he should have offered to deposit the amount straight-away in the bank either on the date of registration of the sale deed or thereafter, but he did not take such step. The plaintiff was further entitled to get the sale deed executed by retaining the amount due under the mortgage for direct repayment in the bank. However, the plaintiff did not take even such step.

It is not in dispute that the plaintiff and defendant are resident of the same village. It is also not in dispute that the plaintiff and the defendant had been meeting daily. In these circumstances, it was totally wrong on the part of the Court to record a finding that the plaintiff was ready and willing to perform his part of the contract, particularly taking into consideration the conduct of the plaintiff in the Court.

For the reasons given above, Question No.1 is answered in favour of the defendant/appellant.

Question No.2. *Whether the Courts below have overlooked the interim orders passed while passing the final judgement ?*

From the orders reproduced above, it is clear that the Courts while deciding the case finally, totally overlooked the interim orders passed on various dates of hearing. The Courts were at least required to notice as to what was the statement of the plaintiff on 14.08.1997. As per the requirements of the Specific Relief Act, the plaintiff is to prove that he was always ready and willing to perform his part of the contract. Once the counsel for the plaintiff made a statement that the plaintiff is not ready to deposit the amount and that also after the mortgage had been redeemed by the defendant, the suit filed by the plaintiff for specific performance could

not be decreed.

Still further, the Courts have overlooked the fact that the defendant/appellant filed a fresh application. Notice of the application was given to the plaintiff for 10.12.1997. Even at that stage, the plaintiff did not grab the opportunity to get the sale deed executed. In view of the aforesaid discussion, Question No.2 is also answered in favour of the defendant/appellant.

For the reasons recorded above, the judgements and decrees passed by the Courts below are set aside. The suit filed by the plaintiff is dismissed with costs of Rs.50,000/-. The plaintiff had taken over the possession of the land at the time of agreement to sell. The plaintiff shall restore back the possession of the land to the defendant/appellant immediately without any further delay.

(ANIL KSHETARPAL)
JUDGE

07.10.2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No