

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.527 of 2012(O&M)
Date of Order: 18.08.2017

Punjab Breeders Limited, Rajpura

...Appellant

Versus

Parbhu Dutt and others

...Respondents

CORAM: HON'BLE MR. JSUTICE ANIL KSHETARPAL

Present: Mr. Aalok Jagga, Advocate,
for the appellant.

Ms. Reeta Kohli, Sr. Advocate, with
Mr. Rahul Sharma, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

Plaintiff-company has filed this regular second appeal against judgment and decree passed by the first appellate Court, dated 21.09.2011.

Plaintiff-company had filed a suit for specific performance of the agreement to sell with the assertion that the defendants had entered into an agreement to sell dated 23.07.1991, with respect to land measuring 42 kanals for a sale consideration of Rs. 6,56,250/-. Plaintiff asserts that Rs.60,000/- was paid as earnest money. As per the agreement, the last date for execution of the sale deed was fixed as 31.12.1991. Plaintiff filed the suit on 04.01.1995 i.e., after a period of more than three years. However, the suit was found to be within limitation as the Courts were closed due to winter vacation.

Defendants appeared and contested the suit. Defendants in their written statement admitted the execution of the agreement to sell and receipt of earnest money. However, defendants pleaded that the plaintiff-company

was not ready and willing to execute the sale deed as the plaintiff-company was able to get an alternative land i.e., Plots No.A-2 and A-3 at Focal Point, Rajpura from Punjab Urban Development Authority. Defendants pleaded that the plaintiff after allotment started construction on the plots allotted by the authority and abandoned the idea of purchasing the suit property from the defendants. Defendants further asserted that on the target date, defendants got their presence marked. However, plaintiff did not turn up in the office of sub registrar for execution and registration of the sale deed. Defendants further asserted that the defendants served a notice on the plaintiff-company calling upon the plaintiff-company to come and execute the sale deed on or before 22.01.1992. However, the plaintiff did not come forward to execute the sale deed, although the defendants again remained present in the office of Sub Registrar on 22.01.1992.

Learned trial Court after allowing the parties to lead their evidence, decreed the suit filed by the plaintiff.

Defendants filed first appeal. Learned first appellate Court after appreciating the evidence available on the file, dismissed the suit for specific performance of the agreement to sell. Learned first appellate Court while reversing the judgment of the trial Court, has recorded a finding that the plaintiff-company is not proved to be ready and willing to perform its part of the contract. It has further been found that the suit filed by the plaintiff-company was on the last day of limitation and, therefore, suffering from delay and laches. Ist appellate Court further found that the plaintiff woke up after a long slumber to file the suit for specific performance of the agreement to sell. The learned first appellate Court found that the defendants were ready and willing to perform their part of the contract and

they visited the office of Sub-Registrar on 31.12.1991 and, thereafter, on 22.01.1992. However, the plaintiff did not take any step to complete the contract.

Plaintiff has filed this regular second appeal.

I have heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below as well photo copies of the record produced by the parties.

Learned counsel for the appellant has submitted that (1) the finding of the Court with respect to readiness and willingness is erroneous. (2) He further submitted that although the suit is belated but the suit was filed within the period prescribed in the Limitation Act, 1963, therefore, the suit could not be dismissed on this ground. (3) He has further submitted that time was not the essence of the contract. (4) He has submitted that the official of the plaintiff-company had also visited the Tehsil premises on 31.12.1991 and the official had sworn an affidavit, Ex.P3 on the record.

I have considered the submissions of learned counsel for the appellant. However, I do not find any substance in the same.

It is not in dispute that agreement to sell itself provides that the last date for completion of the bargain is on or before 31.12.1991. On 31.12.1991, defendants visited the office of the Sub-Registrar. Thereafter, the defendants served a notice, dated 06.01.1992 on the plaintiff calling upon it to come and execute the sale deed on or before 22.01.1992. Defendants once again visited the office of Sub-Registrar on 22.01.1992 but officials of the plaintiff-company did not come forward to execute the sale deed. Thereafter, from 31.12.1991, there is absolute silence on the part of

the plaintiff. It is not even assertion of the Plaintiff-company, any step was taken by the officials of the plaintiff company like calling upon the defendants to execute the sale deed or for completion of the formalities. The notice sent by the defendants on 06.01.1992, was not even replied by the plaintiff-company.

Learned first appellate Court after appreciating the evidence available on the file has found that the plaintiff-company was maintaining two accounts in the Punjab National Bank, one in Rajpura Branch and the other in Chandigarh Branch. The statement of accounts, Ex.D1 and Ex.DW3/A shows that the plaintiff was not having sufficient funds to complete the bargain.

Learned counsel for the appellant has submitted that the plaintiff-company is a joint venture company and sufficient money was available with the Punjab Agro Industries Corporation Limited, which is a government sector company. It was contended by learned counsel for the appellant that funds available with the Punjab Agro Industries Corporation Limited could be used for purchase of the property.

I have considered the submission of learned counsel for the appellant.

No resolution has been produced on the file to prove that the Punjab Agro Industries Corporation Limited had agreed to lend money for purchase of the property in question. Merely because plaintiff company is in collaboration with a government sector company, the funds available with the Government company, which is an independent entity, cannot be used for the purpose of recording a finding that plaintiff was having sufficient funds in absence of any decision of the Punjab Agro Industries

Corporation.

The argument of learned counsel for the appellant is further factually incorrect as an official from the Punjab Agro Industries Corporation has been examined by the plaintiffs as PW6. He has stated as under:-

“It is correct that Pb. Agro Industries Corporation is different entity and M/s Pb. Breeders Ltd. Rajpura is different entity. The amounts the statement of which I have brought and are pending in banks as per these statements are the amounts belonging to only our corporations i.e. Pb. Agro Industries Corporation, Pb. Breeders Ltd., Rajpura has no concern with these amounts. These amounts are not in anyway related to Pb. Breeders Ltd., Rajpura except if some share holding money is there. I have no record to show whether there is any such money.”

In view of the statement made by the official of the Punjab Agro Industries Corporation, it is not possible to accept the argument of learned counsel for the appellant that the plaintiff-company was always ready and willing to perform its part of the contract.

In any case, in view of the conduct of the plaintiff and particularly in view of the fact that plaintiff were allotted plots by Punjab Urban Development Authority and plaintiff constructed factory thereon, sufficient evidence is not available to hold that the plaintiff was always ready and willing to perform its part of the contract.

Second argument of learned counsel for the appellant is that the

suit is within limitation. No doubt the suit is within limitation. However, the relief of specific performance of agreement to sell is discretionary in view of Section 20 of the Specific Relief Act, 1963. Court is to examine whether it is equitable to grant decree for specific performance of the agreement to sell in the facts and circumstances of the case or not. In the present case, there is complete silence on the part of the appellant-company for more than three years. After the target date i.e., 31.12.1991, plaintiff did not take any step to get the agreement enforced. Plaintiff does not even assert that any notice or communication was sent to the defendants calling upon them to come and execute the sale deed after completing the formalities.

Still further defendants served notice dated 06.0.1992 on the plaintiff but still the plaintiff did not take any step. Therefore, the suit filed by the plaintiff suffers from huge delay and latches.

The next argument of learned counsel for the appellant is that the time was not essence of the contract. The argument is incorrect. Clause No.7 of the agreement to sell is extracted as under:-

“7. The last date for completion of this bargain is fixed on or before 31st of December 1991 and the parties shall be present in the office of the Sub Registrar, Rajpura, for execution and registration of sale deed by fixing such date.”

It is clear from the reading of the aforesaid clause that the last date for completion of bargain was fixed as 31.12.1991. Therefore, it cannot be said that time was not essence of the contract.

Learned counsel for the appellant has further argued that the defendants were required to take income tax clearance which was a pre-

condition for execution of the sale deed. Learned counsel has further argued that defendants were to provide a passage connecting with Government passage.

No doubt, the agreement provides that the defendants would take all statutory clearances. However, in this case, the facts are apparent. The agreement to sell was entered into on 23.07.1991. A sum of Rs.60,000/- was paid as earnest money. Thereafter, there is no communication from the plaintiff calling upon the defendants to complete the formalities and come for execution of the sale deed. The last date for execution of the sale deed was 31.12.1991. Even on 31.12.1991, there was no communication from the plaintiff-company to the defendants that it is ready and willing to execute the sale deed, however, in absence of necessary clearances and passage having not been provided, it is not possible to complete the bargain. Plaintiff-appellant did not even write a letter during all this period calling upon the defendants to complete the formalities and execute the sale deed. Therefore, there is no force in the argument of learned counsel for the appellant that since the income tax clearance has not been taken by the defendants, which was a pre-condition, hence, the delay on the part of the plaintiff was justified.

Learned counsel for the appellant has further submitted that the plaintiff did visit the office of Sub-Registrar and get the affidavit attested on that day from an Oath Commissioner. The learned first appellate Court had found such affidavit to be insufficient to establish presence of the official of plaintiff company in the office of Sub Registrar because if official of the plaintiff had visited the office of Sub Registrar, he would have got the affidavit attested from Sub-Registrar only which is normal practice. Still

further, the plaintiff-appellant is taking contradictory stand, on the one hand plaintiff-appellant claims that since income tax clearance had not been taken by the defendants, therefore, the sale deed could not be executed and on the other hand has taken a stand that the plaintiff-company was ready and willing to execute the sale deed on 31.12.1991.

Further as noticed above, the suit was filed after a complete inaction on the part of the plaintiff for three years. But for winter vacations intervening, the suit filed by the plaintiff company would have been time barred.

For the reasons stated above, I do not find any reason to interfere with the findings of fact arrived at by the learned first appellate Court. The regular second appeal is dismissed.

August 18, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO