

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

RSA No.1243 of 2016 (O&M)
Date of decision : 31.08.2017

Adish Jain

...Appellant

Versus

Sheela Arora

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Piyush Kant Jain, Advocate for the appellant.

Mr. Aayush Gupta, Advocate for the respondent.

ANIL KSHETARPAL, J.

Plaintiff is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts dismissing the suit for specific performance of the agreement to sell dated 14.03.2003.

Both the Courts have found that the plaintiff was not ready and willing to perform his part of the contract.

Learned counsel for the appellant has submitted that the agreement to sell was in the nature of reciprocal promises and since defendant failed to fulfill her part of the contract, therefore, the finding of the Courts is erroneous. He has further submitted that the Courts below have overlooked the fact that time was not essence of the contract.

I have considered the submissions made by the learned counsel for both the parties and with their able assistance gone through the record of the case.

At this stage, it will be relevant to notice the certain undisputed facts. Agreement to sell with regard to the industrial plot was entered into on 14.03.2003. It was provided in the agreement that the balance payment would be payable to the defendant latest by 11.09.2003. It was noticed that in the event of any delay beyond the contractual period, the plaintiff would pay the balance payment alongwith interest. It was further provided that this extension of payment of balance amount will not exceed beyond 14.12.2003. It is admitted position that neither any payment was made nor offered to paid to the defendant on 11.09.2003, 14.09.2003 or 14.12.2003. Defendant appeared before the Sub-Registrar on 15.12.2003. Son of the plaintiff for the first time gets a notice issued to the defendant informing him that the plaintiff is in judicial custody, hence, registration of the sale deed is not possible. It was informed that he will get the sale deed of the property executed as and when he is released from the judicial custody. This notice is Ex.D3 on the file.

In response to the aforesaid notice, defendant informed the son of the plaintiff that stipulated time was integral part of the agreement. Plaintiff has failed to pay the balance payment. It was noted in the notice that the plaintiff is in judicial custody from a few days back, however, balance payment was not paid on the date fixed. It was further informed that although defendant is entitled to forfeit the earnest money, however another opportunity is given to the plaintiff to come and execute the sale

deed within a period of 10 days.

Plaintiff still did not take any action. Defendant thereafter even got a notice dated 01.03.2004 issued calling upon the plaintiff to come and execute the sale deed and perform his part of the contract. In the notice, defendant further informed the plaintiff that according to her knowledge, plaintiff has been enlarged on bail six weeks back but the plaintiff has not come forward to execute the sale deed.

Plaintiff filed a suit on 17.02.2004. Defendant filed an application once again offering the plaintiff to come and execute the sale deed. Plaintiff even did not accept the offer made in the application and proceeded with the suit.

After noticing these facts, the Courts have dismissed the suit filed by the plaintiff.

First argument of learned counsel for the appellant is that it was a case of reciprocal promise as defendant was required to take permission for transfer of the plot. Clause 8 of the Deed of Agreement is extracted as under:-

“8. That the first party is bound to complete the necessary formalities for the transfer of the plot in favour of the second party and if the second party request any more signatures of the first party in this regard after the execution of the agreement the first party is bound to sign for the transfer of the above said plot.”

On reading of the Clause, it is clear that the seller was required to complete the formalities. However, this would not improve the case of the plaintiff because the plaintiff neither in notice dated 15.12.2003

informed the defendant that she should complete the formalities and the plaintiff is willing to perform his part of the contract nor ever sent any communication to the defendant informing her that he is ready to perform his part of the contract, therefore, the defendant should complete the formalities.

Defendant is not at fault. Defendant had offered to sell the property in notice dated 29.12.2003 and thereafter on 01.03.2004 as also while filing the application at the outset of the suit before the trial Court. In these circumstances, there is no force in the submission of the learned counsel for the appellant.

Second argument of the learned counsel for the appellant is that time was not essence of the contract.

Time was certainly an essence of the contract because a reading of Clause 2 of the Deed of Agreement would show that the last date for payment of the balance sale consideration was fixed as 14.12.2003 with a specific note that the extension of payment of the balance amount will not exceed beyond 14.12.2003. Clause 2 of the Deed of Agreement is extracted as under:-

“2. The balance payment of Rs.3664000/- (Rupees thirty six lac sixty four thousand only) is payable to the first party by the second party latest by 11/09/2003. In the event of any delay beyond contractual period, interest @ 1% PM will be paid by the second party to the first party on the balance amount to be paid by 14/09/2003. However, this extension of the payment of balance amount will not exceed beyond 14/12/2003.”

In these circumstances, once the Clause in the agreement to sell

is specific, the arguments of the learned counsel that time was not essence of the contract cannot be accepted.

For the reasons recorded above, there is no force in the submissions of the learned counsel for the appellant. This Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

31.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No