

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

R.S.A. No.4212 of 2016 (O&M)

Date of Decision:27.07.2017

Vimal Kumar and another

...Appellants

Versus

Padam Jain

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jaiswal, Advocate
for the appellants.

Mr. V.K. Sandhir, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

CM 10847-C of 2016

This is an application for condonation of delay of 68 days' in filing the present appeal. The application is supported by an affidavit.

For the reasons stated in the application, delay of 68 days' in filing the present appeal is condoned.

R.S.A. No.4212 of 2016

Plaintiffs are in Regular Second Appeal against the judgments passed by the Courts below in a suit for specific performance of agreement to sell. The learned trial Court as well as the first Appellate Court have ordered refund of the earnest money along with interest @ 9% per annum.

Plaintiffs/appellants have challenged the order by which the

Courts have refused to grant specific performance and have only ordered refund of the earnest money. Certain facts are required to be noticed before submissions made by the learned counsel for the appellants are dealt with.

Agreement to sell dated 05.04.2006 is with respect to two shops. As per agreement to sell, target date was 01.08.2006. It is the case of the appellants that on 01.08.2006, he was present in the office of Sub-Registrar, however, defendant did not come present.

It is the admitted position on record that defendant served a notice on the plaintiffs on 22.08.2006 stating that since the plaintiffs have failed to perform their part of contract, therefore, the earnest money stands forfeited.

Plaintiffs replied to the aforesaid notice, denied the allegations and offered to get the sale deed executed on any date to be chosen by the defendant. Defendant once again sent a reply dated 20.09.2006, calling upon the plaintiffs to send a draft of the money required to purchase the stamp paper for execution of the sale deed. Although, it was also stated that earnest money had already been forfeited, but one more opportunity is being granted to get the sale deed executed in terms of agreement to sell.

Thereafter, there is a complete silence of plaintiffs. Plaintiffs filed a suit for specific performance on 28.04.2009. The suit was filed after more than 2 years and 8 months approximately.

The Courts have concurrently found that plaintiffs have failed to prove their readiness and willingness. Courts have also noticed that suit for specific performance of agreement to sell was filed after a substantial

period.

Learned counsel for the appellants has submitted that limitation for filing the suit for specific performance is 03 years from the target date. Since the suit was filed within 03 years, therefore, the suit filed by the plaintiffs could not be dismissed. Learned counsel for the appellants has further submitted that defendant had made a very unreasonable demand to the plaintiffs through communication dated 20.09.2006, calling upon the plaintiffs to send demand draft of money for purchase of stamp papers for execution of sale deed.

I have considered the submission of the learned counsel for the appellants and have gone through the judgment passed by the Courts below.

No doubt the limitation for filing the suit for specific performance is 03 years from the date of cause of action, but grant of relief of specific performance is a discretionary relief. Section 16 of the Specific Relief Act, 1963 provides that the plaintiff has to aver and prove that he was always ready and willing to perform the essential terms of the contract. In this case, there is concurrent finding of fact that plaintiffs failed to prove that they were always ready and willing to perform their part of the contract, which is not shown to be erroneous.

Next submission of the learned counsel for the appellants is that since in the communication dated 20.09.2006 sent on behalf of the defendant, an unreasonable demand was made, therefore, specific performance should have been granted in favour of the appellants. Defendant had only requested the plaintiffs to send money through demand

draft for purchase of stamp papers for execution of sale deed. The plaintiffs should have taken some steps to either comply with the demands made for sending the money or should have purchased the stamp papers in the name of defendant to show their bona fide. However, the appellants have failed to take any of these steps.

Taking into consideration the judgment passed by the Courts below, I do not find any reason to interfere in exercise of powers in the Regular Second Appeal.

In view of the above, the present appeal is ordered to be dismissed.

(ANIL KSHETARPAL)
JUDGE

27.07.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No