

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

RSA No.5366 of 2016 (O&M)

Date of decision: 01.09.2017

Sunita Devi

..... Appellant

Versus

Murti Devi

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Amit Kumar Goyal, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM-13950-C-2016

Application is allowed and exemption as prayed for is granted.

CM-13951-C-2016

There is a delay of 134 days in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the same is allowed and the delay of 134 days in filing the appeal is condoned.

RSA No.5366 of 2016

Defendant-appellant is in regular second appeal arising out of a suit for possession by way of specific performance of agreement to sell dated 05.11.2007.

Plaintiff had filed a suit for possession by way of specific performance of agreement to sell with a consequential relief of permanent injunction with respect to agreement to sell dated 05.11.2007. Plaintiff had

pleaded that out of total sale consideration of ₹ 4,55,000/-, ₹ 1,05,000/- was paid as earnest money. It was further pleaded that thereafter another sum of ₹ 1,00,000/- was paid on 06.12.2007. As per agreement to sell, the target date for registration and execution of sale deed was fixed as 07.01.2008. It was further pleaded that the target date was extended by almost one month to 31.01.2008 on the request of the defendant. However, defendant is now refusing to honour her commitment.

Defendant admitted that she entered into an agreement to sell with the plaintiff on receipt of earnest money i.e. ₹ 1,05,000/-. However, defendant denied her signatures on the agreement to sell produced in the Court. She further denied having received additional amount of ₹ 1,00,000/-. She also denied that the time for execution of sale deed was extended.

Learned trial Court found as a matter of fact that agreement to sell between the parties is proved. Learned trial Court further found that the payment of earnest money of ₹ 1,05,000/- as also subsequent payment of ₹ 1,00,000/- has been proved on the file. Learned trial Court however held that the plaintiff was not ready and willing to perform her part of contract as she failed to prove that she visited the office of the Sub-Registrar on 31.01.2008. In view of the aforesaid finding, the learned trial Court dismissed the suit filed by the plaintiff.

Plaintiff filed the first appeal. Learned First Appellate Court after re-appreciating the evidence available on the file decreed the suit filed by the plaintiff. Learned First Appellate Court has noticed that the plaintiff has asserted that she visited the office of the Sub-Registrar. Although, it is only a oral statement, because no document was produced, but still it has to

be given some credence. Learned First Appellate Court has further held that the readiness and willingness of the plaintiff is proved on the file because the plaintiff on 15.03.2008 i.e. after a period of 40 days from the date fixed for the registration of the sale deed served a notice on the defendant calling upon her to come and execute the sale deed. The learned First Appellate Court also noticed that the plaintiff promptly filed a suit for possession by way of specific performance i.e. on 20.04.2008. With these findings, learned First Appellate Court accepted the appeal.

Learned counsel for the appellant has submitted that since plaintiff has failed to prove her presence in the office of the Sub-Registrar on the target date i.e. 31.01.2008, therefore, the earnest money stands forfeited and the agreement to sell cannot be ordered to be specifically performed. He has further submitted that there is a specific clause in the agreement to sell that if the plaintiff does not come forward to execute the sale deed on 31.01.2008, the earnest money would be forfeited and the agreement to sell would stand cancelled.

I have considered the submission. It is the case of the defendant that she visited the office of the Sub-Registrar on 31.01.2008, but she could not produced any documentary evidence to prove her presence in the office of Sub-Registrar on 31.01.2008. Similar is the statement of the plaintiff. If the statement of the plaintiff is to be believed, then she came present in the office on the target date. However, in this case, there are subsequent events which prove the readiness and willingness of the plaintiff. Plaintiff serves a notice dated 15.03.2008 on the defendant i.e., within a period of 40 days from the target date calling upon her to come and execute the sale deed. If the plaintiff was not ready and willing, she would

not have got notice served. It is admitted position on the record that the defendant did not response thereto stating that in fact plaintiff is not ready and willing to execute the sale deed or she had visited the office of the Sub-Registrar on the target date. Still further, the plaintiff filed a suit on 20.04.2008 i.e. after a period of two months and 20 days from the date fixed for execution and registration of the sale deed. It is further to be noticed that the defendant denied receipt of ₹ 1,00,000/- which has been found to be false. Defendant did received ₹ 1,00,000/- which is an additional payment. Defendant had already received almost half of the total sale consideration.

For the reasons recorded above, I do not find any good ground to interfere with the concurrent finding of fact arrived at by the First Appellate Court.

Appeal is dismissed.

01.09.2017

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No