IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1786 of 2014 (O&M)
Date of Decision: 04.12.2017

Nisha Sharma ... Appellant

Versus

Krishna Sukhija and another ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Narinder Prabhakar, Advocate,
for the appellant.

Smt. Krishna Sukhija, respondent No.1 in person.

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RAJIV NARAIN RAINA, J.

1. This appeal arises out of a suit for possession by way of specific performance of a sale agreement which succeeded before the trial Court. Though the trial Court decreed suit but failed to discuss, according to the first appellate court the evidence in any detail in the judgment. The learned Additional District Judge, Gurgaon noticed the shortcomings and examined the evidence on record threadbare coming to the conclusion that the suit was rightly decreed. On the date of execution of the agreement of sale the property stood resumed by HUDA. Defendant did not bring this fact to the notice of the plaintiff. The property has been restored to original allottee in revision to the Financial Commissioner, Haryana, Chandigarh preferred by the defendant-vendor by order of release dated November 24, 2006.

2. When on the date of agreement the vendor was not owner of the property and had acquired title subsequently, or perfected it, then in view of the provisions of Section 13 (1) (a) of the Specific Relief Act, 1963, on acquisition of title in the property subsequently, it is open to the vendee to enforce the contract of specific performance. The agreement was signed on May 10, 2004 for sale of House No.576, Sector-14, Urban Estate Gurgaon for total sale consideration of ₹30.5 lakhs. A sum of ₹3 lakh was paid as earnest money by two separate cheques to the defendant of ₹1 lakh and ₹2 lakh respectively. The receipt of the amount was admitted in writing by defendant. The sale deed was to be executed on or before July 20, 2004.

3. Defendant was to obtain transfer permission from HUDA. An application for permission was filed and defendant in June 2004 demanded from plaintiff a further sum of ₹1 lakh which was paid in cash and separate receipt dated June 09, 2004 was executed. A letter dated June 18, 2004 was received from HUDA informing that permission to transfer could not be granted since the property stood resumed by order dated May 14, 2002. The plaintiff confronted defendant with this fact unknown to her. Defendant replied that she too was not aware of the resumption order and promised to take effective steps to get the same set aside. The sale deed could not be executed in view of the resumption order.

4. The defendant requested for extension of time for execution of agreement by drawing up writing dated July 20, 2004. However, the matter kept on lingering. Plaintiff received letter dated June 04, 2005 from defendant conveying that Administrator, HUDA had rejected the appeal. Defendant offered to refund the advance to the plaintiff. Later, plaintiff

would come to know that a revision petition had been preferred by the defendant. She replied to the letter dated June 04, 2005 by her letter dated July 11, 2005 calling upon the defendant to abide by the terms and conditions of the agreement to sell. It was pleaded that certain meetings took place between the parties to resolve the dispute but those made no headway. The defendant reneged from the contract which made plaintiff file civil suit for possession by way of specific performance and permanent injunction on July 29, 2006.

5. Upon notice, defendant-vendor filed reply. She denied the agreement of sale altogether and instead pleaded that she had borrowed ₹3 lakh from the plaintiff as security for re-payment of loan. Defendant pleaded in para.4 of the written statement that when no agreement was executed by her in favour of the plaintiff, it followed that the question of readiness and willingness of the plaintiff and payment of balance amount of sale consideration does not arise.

6. Extensive evidence running into hundreds of pages as propounded on the Lower Court record, led by the plaintiff to prove each of her points in issue the burden of which rested on her to demolish the theory of loan. The entire correspondence and conduct of the parties are bound toward only to one direction, i.e., that defendant agreed to sell resumed property to the plaintiff and made an application to HUDA to transfer property in the name of plaintiff and then in the face of the resumption order had promised plaintiff she would make effort to get the resumption set aside.

7. The parties were unknown to each other when they came to strike a deal then where would be the question of loan. The defence of loan

was not believed by the Courts below to non-suit the plaintiff, proposed buyer of suit property. It was only at the stage of the present regular second appeal that the appellant-defendant raised the question of availability of funds with the contesting respondent as proof of her readiness and willingness to buy the property. The plaintiff was a retired Government servant who had sufficient funds at her command to buy the suit property, the evidence of which readiness can be collected from the LCR. The pages, exhibit number, amount and other details can be summarized as follows:-

Page No.	Exhibit No.	A/c No.	Period	Amount(Rs.)
383	PW4/4	12903 P.N.B in the name of plaintiff	Upto 20.07.2004	12,37,290
409	PW47	11254 P.N.B in the name of plaintiff son (Rakesh Sukhija)	Upto 20.07.2004	1,68,209
399	PW4/13	11430 P.N.B. in the name of plaintiff+ Manju Bala (her sister)	Upto 20.07.2004	1,79,138
405-407	PW6/2	896 Syndicate Bank in the name of Plaintiff	Upto 20.07.2004	1,00,908
615-616	PW7/2	2409 Indian Bank in the name of plaintiff and her husband	Upto 20.07.2004	25,444
379	PW2/A	Loan sanctioned by PNB on 01.07.2004		7,00,000

Page No.	Exhibit No.	A/c No.	Period	Amount(Rs.)
375	P3	Cash given to Nisha Sharma on 09.06.2004		1,00,000
373	P2	Advance money given to Nisha Sharma on 10.05.2004 vide two cheques No. 025137 and No. 247292 dated 25.05.2004 Post dated)		1,00,000 2,00,000 3,00,000

8. The learned Additional District Judge was right in his approach to observe that plaintiff was not required to carry the balance sale consideration in her pockets. Nothing has been shown that she did not have the requisite means to arrange the balance sale consideration. The only impediment in the way of the transaction was the resumption order which disability stands removed by the competent authority in the State Government.

9. The plaintiff has amply produced on record her bank accounts/statements to show that she was in possession of adequate funds to perform her part of the contract of sale. She produced sufficient evidence that she took loan from banks to pay part of the balance consideration.

10. On the other hand, it was defendant who was not ready and willing to perform her part of the contract. She had backed out without sufficient cause. The learned District Judge has recorded a finding of fact after going through the entire evidence and considering the conduct of the respondent-plaintiff that she was always ready and willing to perform her part of the contract. This Court has hardly any doubt on the correctness of the finding to upset it. The Judge aptly summed up the legal position that

once defendant denies execution of agreement she loses *locus standi* to raise the plea of readiness and willingness. That chapter is shut for all intents and purposes. In any case, I am satisfied with the voluminous record produced in the trial by the plaintiff she has proved without doubt she had plenty of money to pay the balance consideration to the seller even at the time of the target date. The defendant set up a false defence of loan without an iota of evidence to support it and her case must perish on this account.

11. The statutory requirement of readiness and willingness to perform one's part of the contract as envisaged by the provision of Section 16 (c) of the Specific Relief Act is not to be interpreted narrowly and in a hyper technical or pedantic manner. What is of utmost importance is the substance of the matter and that substance can be gathered from the pleadings and the surrounding circumstances coupled with the intention of the parties. The made-up story of loan and stout denial of execution of the agreement of sale was apparently a last ditch effort by the defendant to wriggle out of the agreement to sell.

12. No witness was produced to substantiate or produce the loan transaction. The suit has been properly decreed by the Courts below and the agreement to sell dated May 10, 2004 is upheld as a valid and genuine document upon which the rights of the parties properly turn for enforcing performance of their part of the contract. The transfer application to HUDA was signed by the defendant and that is the most vital fact against her.

13. The appellant can make no use of the assertion that the bank account statements were exhibited six times over by the plaintiff. This has been suitably explained by Smt. Krishna Sukhija that these are only parts of

a whole picture. She explained from the exhibits/bank statements in various banks including Indian Bank and Punjab National Bank, in her own account and accounts/s with her husband and her sister. She retired from Government service in the Education Department, Haryana on January 31, 2004.

14. I may record that Smt. Krishna Sukhija appeared in person and explained the factual position from the LCR blow by blow to demolish the loan theory and to establish that she had sufficient funds of around ₹40 lakh when all the banks/financial statements exhibited on record are read and understood in synthesis.

15. No legal issue arises in this case for consideration in second appeal and the entire position is governed by pure findings of fact based on affirmative evidence produced by the plaintiff entitling her to a decree. There is no error in the elaborate judgment in appeal which is upheld.

16. For the foregoing reasons, I find no merit in this appeal.

17. The appeal is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

04.12.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*