

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

RSA No.5676 of 2015 (O&M)
Date of Decision: March 16, 2017

Sudesh Rani

..Appellant(s)

Versus

Sukhwinder Singh

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. G.S. Nahel, Advocate
for the appellant.

ANITA CHAUDHRY, J.

CM-13862-C-2017

For the reasons set out in the application, same is allowed as prayed for and delay of 734 days in filing the present appeal is condoned.

RSA No.5676 of 2015

This is the defendant's second appeal aggrieved by the judgment passed by both the Courts below.

A suit for specific performance was filed by the plaintiff with respect to the agreement dated 24.06.2005. The sale deed was to be executed on 28.11.2005. The plaintiff claimed that he was ready and willing to perform his part of the agreement and had gone to the office of the Sub-Registrar got his presence marked but the defendant failed to

appear. The defendant took the plea that she went to the office of Sub-Registrar on 28.11.2005 along with her husband and the plaintiff was also present but he expressed his inability to arrange for the sale consideration and they were simple and did not know that the presence was to be marked and she was always ready and willing to perform her part of the agreement.

The trial Court in its judgment had noticed that the defendant did not file the written statement and instead the defendant made a statement that she was ready to execute the sale deed. The trial Court recorded a statement of both the parties and referred the matter to the Lok Adalat. The compromise could not be effected there. Adjournments were taken and draft sale deed was filed by the plaintiff to which the defendant took exception and ultimately the written statement was filed and issues were framed. The trial Court gave a categorical finding that the plaintiff was ready and willing to perform his part of the contract and though the defendant had made a statement that she was ready to execute the sale deed but she has been raising frivolous objections to the draft sale deed and later made a statement that she was not willing to execute the sale deed, in view of the changed circumstances and as long time had passed. The lower Court noted that the delay if any had been caused by the defendant. The suit was decreed and a decree for specific performance was passed.

Aggrieved by the judgment an appeal was preferred by the defendant that too came to be dismissed.

The appellate Court noted that the recital at serial no.3 of the agreement enjoined upon the defendant to hand over actual possession of some part of the land out of the joint land to the plaintiff and the defendant though had agreed to hand over the possession thereof but did not want to get that fact recorded in the draft sale deed and that was the reason for her hesitation to agree to the registration of the sale deed. It noted that the plaintiff was always ready and willing to perform his part of the agreement. The appellate Court rejected the argument that the performance of the agreement after seven years would give unfair advantage to the plaintiff.

The execution of the agreement was not in dispute. The sale deed was to be executed on 28.11.2005. The suit was filed in December, 2005. The defendant on appearance had made a statement that she wanted to execute the sale deed and could only give symbolic possession of the land. The dispute arose between the parties only regarding possession. Recital no.3 in the agreement enjoined upon the defendant to hand over actual physical possession of the area which was in her physical possession. It was the defendant who was backing out of this arrangement and it is, therefore, that she did not agree to the facts recorded in the draft sale deed. It was not the case of the defendant that she was not in actual physical possession of that area. All the facts were considered by the Courts below and a finding was recorded against the defendant and I find no infirmity in the findings recorded by the Courts below.

There is no merit in the appeal. The appeal is dismissed in
limine.

March 16, 2017
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No