

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) RSA No.5942 of 2015 (O&M)
Date of Order: 3rd August, 2017

Bindu Jain

..Appellant

Versus

Amarjit Singh Dhillon and others

..Respondents

(2) RSA No.233 of 2016 (O&M)

Kulbir Jain

..Appellant

Versus

Amarjit Singh Dhillon and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shailendra Jain, Senior Advocate, with
Mr. Sahil Nayyar, Advocate,
for the appellant (in RSA No.5942 of 2015) &
for respondent no.4(in RSA No.233 of 2016).

Mr. Vikas Bahl, Senior Advocate, with
Ms. Japneet Kaur, Advocate,
for respondent no.1 (in RSA No.5942 of 2015) &
for respondent no.1 (in RSA No.233 of 2016).

Mr. Ashish Rawal, Advocate,
for respondent no.2 (in RSA No.5942 of 2015)

Ms. Geeta Sharma, Advocate,
for respondent no.2(in RSA NO.233 of 2016)

Ms. Deepali Puri, Advocate,
for respondent no.3.(in RSA No.5942 of 2015) &
for respondent no.3 (in RSA No.233 of 2016).

Mr. Kanwaljit Singh, Senior Advocate, with
Mr. Abhishek Bajaj, Advocate,
for the appellant (in RSA No.233 of 2016) &
for the respondent No.4(in RSA NO.5942 of 2015).

ANIL KSHETARPAL, Judge.

I shall be disposing of two connected regular second appeals, bearing Nos.5942 of 2015 and 233 of 2016, filed separately by husband (Respondent No.1) and wife (Respondent No.2), against a common judgment.

Detailed facts of the case have already been noticed by the Courts below. However, to complete the narrative, some facts are being noticed.

Plaintiff-respondent filed a suit on 21.07.2005, for possession for specific performance of agreement to sell dated 31.03.2004. The execution of the agreement to sell dated 31.03.2004, is admitted. It is also admitted by the parties that out of total sale consideration of Rs.37,25,000/-, Rs.5,00,000/- was received as earnest money. It was agreed that the sale deed would be executed and registered on 16.08.2004. The target date for execution of the sale deed was extended on 09.09.2004 to 28.02.2005. Bindu Jain, the wife had not signed this endorsement/extension of the date of execution of sale deed. Kulbir Jain, the husband had signed. At this stage, it would be relevant to note few clauses of the agreement to sell. Clause 3 of the agreement to sell reads as under:-

“That the said house is fully paid up and seller shall clear if anything is found due against the said house including water and electricity bills and will obtain No Objection Certificate for sale of said house from the Chandigarh Housing Board before the completion of this bargain.”

A endorsement/writing for extension of target date, which is on the back page of agreement to sell, reads as under:-

“On the request of the seller, the time for completion of this bargain has been extended on or before 28th Feb. 2005. The seller will obtain “No Objection Certificate” for the sale of the said house from CHANDIGARH HOUSING BOARD, before the completion of this bargain. The seller further undertaken not to get any further extension from the purchaser.

Sd/-9/9/04

(Capt.Amarjit Singh Dhillon)

Sd/-9/9

(Kulbir Jain)

*H.No.6141, Modern
Complex, Manimajra,
Chandigarh.*

Witness:-

1. Sd/-(P.C.Grover)

*5133/3, Cat I
MANIMAJRA*

2. Sd/-(R.P.Gupta)9/9/04

*Dr.R.P.Gupta,
817/8, PKL.”*

In response to the suit filed, both the appellants who were defendants in the suit, filed a joint written statement and contested the suit. Paragraph 8 of the written statement filed by the defendants is important, which reads as under:-

“8. Contents of para 8 are wrong, incorrect and hence denied vehemently. It is wrong that the plaintiff was always ready and willing to perform his part of the agreement to sell dated 31.03.2004 and was ready to pay the balance sale consideration. It may not be out of place to mention here that the plaintiff could not arrange the entire money till 16th August, 2004 and then made requests to the defendant's no.1 to extend the time for the purpose of execution of sale deed. The defendant, however, did not agree unless the plaintiff

pays a sum of Rs.10 lakhs to him. The plaintiff on the other hand kept on making false promises to pay the above said amount but failed to pay the same to the defendants. Apart from that the plaintiff had also told to the defendant no.1 that he has lots of contracts in the office of Chandigarh Housing Board and that he will himself get no-objection certificate from the said office. But the plaintiff neither made any effort to get No-objection certificate from the Chandigarh Housing Board nor paid the above said amount of Rs.10 lakhs, required by the defendants at that point of time. The plaintiff kept the defendants in a dark and a malafidely extended the said agreement from defendant No.1 only. It is important to state that defendant No.2 never gave her consent to extend the agreement in question nor she ever signed the said extension. The defendant No.1 signed the extension of the agreement in good faith that to taking into consideration the plea of the plaintiff that he will definitely pay a sum of Rs.10 lakh as required by the defendants. But after getting the agreement extended, the plaintiff kept on making one excuse or the other. It is important to state here that had there been any extension of the agreement the same should also been done by the defendant No2. Whereas the said extension of the agreement does not bear any signature of defendant No.2 Mrs. Bindu Jain.”

Learned trial Court after appreciating the evidence available on the file, decreed the suit with respect to 50% of the property, whereas with respect to 50% share, the Court held that the agreement has come to an end as the wife, namely, Smt. Bindu Jain has not signed the endorsement for extension of the date of registration of the sale deed.

Two first appeals were preferred, one by plaintiff, whereas other by Kulbir Jain, the husband. Both the appeals were decided by a

common judgment. The appeal filed by the plaintiff has been accepted and the specific performance of agreement to sell has been ordered with respect to the entire house, whereas the appeal filed by Kulbir Jain, the husband, has been ordered to be dismissed. Even before the first appellate court Kulbir Jain and Bindu Jain, the appellants had engaged one counsel. However, now the two appeals have been preferred.

I have heard Mr. Shailendra Jain, Senior Advocate, assisted by Mr. Sahil Nayyar, counsel for the appellant, in RSA No.5942 of 2015 and Mr. Kanwaljit Singh, Senior Advocate, assisted by Mr. Abhishek Bajaj, counsel for the appellant in RSA No.233 of 2016 and Mr. Vikas Bahl, Senior Advocate, assisted by Ms. Japneet Kaur, counsel for the plaintiff-respondent.

Mr. Shailendra Jain, has submitted as under:-

(i) Pleadings in paragraph 9 of the plaint are not supported by evidence of the plaintiff;

(ii) once the defendant refused to hand over possession on 16.08.2004, the original target date, the cause of action to file a suit had arisen. However, the plaintiff did not file the suit for a period of 11 months;

(iii) the agreement to sell came to an end on 16.08.2004;

(iv) Defendants No.1 and 2 further entered into an agreement to sell to purchase some other property, where because of delay the defendants had to pay additional amount;

(v) plaintiff was not ready and willing to perform his part of the contract.

Learned senior counsel Mr. Kanwaljit Singh has supported the arguments of Mr. Shailendra Jain, Sr. Advocate, and has submitted that the

plaintiff has failed to prove his readiness and willingness. Learned counsel has further submitted that hardship would be caused to the defendants if specific agreement to sell is decreed. Mr. Kanwaljit Singh, Sr. Advocate, has also drawn my attention to Sections 51, 52 and 53 of the Contract Act, 1872, to assert that wherever a contract consisting of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Whereas, learned counsel for the respondent-plaintiff submitted that a reading of Clause 3 of the agreement to sell and endorsement at the back, dated 09.09.2004, it was the duty of the defendants to get “No Objection Certificate” from Chandigarh Housing Board. However, it is proved on the file that defendants did not even submit the application for getting the “No Objection Certificate”. He further submitted that on the extended date for execution of the sale deed, dated 23.02.2005, the plaintiff not only got prepared draft of the balance sale consideration in favour of the defendants but also appeared before the Sub- Registrar and got his affidavit attested to prove his readiness and willingness.

I have carefully heard learned counsel for the parties and have gone through the paper book as well as the record.

Two issues arise for consideration of this Court are:-(i) what would be the effect of one of the promisee not signing the extension/endorsement and (ii) whether the plaintiff was ready and willing in terms of Section 16(C) of the specific Relief Act.

With respect to first issue, in my opinion, non-signing of extension of date/endorsement would not absolve Ms. Bindu Jain from the contract. It is not in dispute that both husband and wife are living together.

Both husband and wife had filed a joint written statement. Ms. Bindu Jain has not stepped into the witness box. She did not even disown endorsement/extension of date for execution of the sale deed before filing of the suit. No communication was sent to the plaintiff that she is not ready to extend the date. Ms. Bindu Jain did not apply for “No Objection Certificate” from Chandigarh Housing Board. It is not the case of the defendant that any of the defendant were ready to execute the sale deed on 16.08.2004 and they had applied for and obtained “No Objection Certificate”.

As noticed earlier, the extension of the target date was on the request of prospective vendor. In these circumstances, it not possible to conclude that Ms. Bindu Jain stood absolved on 16.08.2004 or non-signing of endorsement by Ms. Bindu Jain would have any adverse effect on the rights of the plaintiff to seek specific performance of agreement to sell. Once one of the vendor have signed the extension and both are husband and wife, it would be safe to assume that the extension of the date for execution of the sale deed was with the consent of wife.

The second issue is with regard to readiness and willingness. Both the courts below have found that plaintiff was ready and willing to perform his part of the contract. It may be noticed that plaintiff has been sending the communication to the defendants on 15.02.2005, 21.02.2005, 01.03.2005 through registered post calling upon the defendants to come and execute the sale deed on the extended date for execution of the sale deed i.e. 28.02.2005. Plaintiff had prepared a demand draft/banker cheque from the bank for the balance amount and had also waited for the defendants in the office of Sub-Registrar, Chandigarh, where sale deed was to be executed

and registered.

Counsel for the appellant has drawn my attention to some part of the cross-examination of plaintiff, wherein he states that he had prepared an affidavit for “No Objection Certificate” but did not submit to the vendors. However, that would not be a ground to deny the relief of specific performance. In the present case, plaintiff has been able to prove his readiness and willingness in terms of Section 16(C) of the Specific Relief Act.

Next argument of learned counsel for the appellant is that in view of Sections 51, 52 and 53 of the Contract Act, 1872, the defendants were not required to apply for “No Objection Certificate” because plaintiff did not submit his affidavit. As per agreement to sell it was the duty of the defendants to get “No Objection Certificate”. Defendants did not even claim that any written communication was sent to the plaintiff to submit the affidavit and complete the formalities. Endorsement dated 09.09.2004 further makes it clear that defendants have failed to get “No Objection Certificate” and seller will now obtain the “No Objection Certificate”. Endorsement further makes it clear that seller undertakes not to get further extension. Extension of date was on the request of the defendants-sellers. Even after 09.09.2004, no written communication has been proved calling upon the plaintiff to submit the affidavit required for getting “No Objection Certificate”. Therefore, the sellers had taken upon themselves to get the “No Objection Certificate”. Hence, the provisions of Sections 51, 52 and 53 of the Contract Act, 1872 does not come to the rescue of the appellant.

Counsel for the appellant has submitted that pleadings in paragraph 9 of the plaint are not supported by an affidavit. In paragraph 9

of the plaint, plaintiff had approached the defendants to complete their part of the agreement to sell but defendants expressed difficulty to hand over physical possession and, therefore, requested time.

In my opinion, such pleadings would not come to the help of defendants particularly when it has been found that the extension of the time for execution of the sale deed was at the behest of defendants-sellers.

Next submission of learned counsel that once the defendants had refused to hand over possession, therefore, cause of action arisen in favour of the plaintiff. There is no written refusal of the defendants to hand over possession, rather defendants had got the date of execution of the sale deed extended. Therefore, the arguments of learned counsel for the appellant cannot be accepted. Even from the original target date for execution of the sale deed, the suit was filed within a period of 11 months, therefore, there is no delay.

Learned counsel for the appellant has further submitted that the agreement to sell came to an end on 16.08.2004.

I am unable to agree with the aforesaid submission, as on 09.09.2004, the date for execution of the sale deed was extended on the request of Mr. Kulbir Jain, the husband. Further, it was for the defendants to apply for “No Objection Certificate” from Chandigarh Housing Board. However, no application was submitted. Hence the defendants cannot be permitted to capitalize on their fault.

Learned counsel for the appellant have further submitted that they had entered into an agreement to purchase some other property and because of delay on the part of the plaintiff, defendants had to pay additional amount.

I have already found that there was no delay on the part of the plaintiff. The delay was solely on account of inaction of the defendants. In these circumstances, the defendants cannot claim any additional benefit for the delay in execution of the sale deed.

The appellant has further expressed hardship. Further to perform their part of contract, however, neither any hardship was pleaded before the trial Court nor any issue was framed. Therefore, the appellants cannot be permitted at the stage of regular second appeals to plead hardship for the first time.

Finding no merit in both the regular second appeals, the same are ordered to be dismissed.

3rd August, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No