

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

RSA No.3830 of 2017 (O&M)

Date of decision : 04.08.2017

Kulwant Singh

...Appellant

Versus

Charanjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Piyush Sharma, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.9485-C of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 8 days in filing the present appeal is condoned.

Application stands allowed.

Main Case

The defendant-appellant is in present Regular Second Appeal against the concurrent findings of fact arrived at by the Court while deciding the suit for possession by way of specific performance of agreement to sell.

The plaintiff had setup an agreement to sell dated 21.12.2009 with respect to the sale of plot measuring 37'-6" (i.e. 37 feet 6 inches) x

11' for a total sale consideration of ₹1,20,000/-. ₹80,000/- was stated to have been paid as earnest money.

In defence, defendant claimed that he had taken a loan of ₹80,000/-. For security purpose only the agreement to sell was executed. The loan was repayable alongwith interest at the rate of 3% per month.

The learned trial Court after appreciating the evidence available on the file decreed the suit filed by the plaintiff. The learned trial Court further noticed that the appellant-defendant had filed a suit for declaration under Section 31 of the Specific Relief Act declaring the agreement to sell dated 21.12.2009 as null and void. Learned counsel for the appellant has fairly stated that the aforesaid suit was dismissed for non-prosecution. Defendant filed first appeal which has also been ordered to be dismissed after re-appreciating the evidence.

Learned counsel for the appellant has submitted that it is a case of hardship and Court should have considered the hardship of the appellant while granting decree for specific performance of the contract. Learned counsel for the appellant has further submitted that the plaintiff was not ready and willing as extended target date for execution and registration of the sale deed was 30.06.2011, however, the suit was filed on 15.03.2012. Therefore, there is delay of 8 ½ months.

I have considered the submissions made by learned counsel for the appellant and with his able assistance gone through the judgments passed by the Courts below.

A reading of the judgments passed by the Courts would show

that the defendant-appellant did not plead hardship in the written statement. The defendant-appellant did not even seek a issue on the plea of hardship. The plea of hardship was not even pressed during the course of arguments. Therefore, the appellant cannot be permitted to plead hardship for the first time in the Regular Second Appeal.

Learned counsel for the appellant has submitted that for grant of decree of specific performance, plaintiff has to prove that he was always ready and willing to perform his part of the contract. According to him, the readiness and willingness to perform his part of contract is 'sine qua non' for decreeing the suit for specific performance. He further submits that since the suit was filed after a period of 8 ½ months from the extended target date for execution of the sale deed, therefore, the suit is belated.

I have considered the submission. The original agreement to sell was executed on 21.12.2009. The target date for registration of the sale deed was 21.12.2010 i.e. after a period of one year. Thereafter, the date of execution of the sale deed was extended to 30.06.2011. Since, the defendant did not come forward to execute the sale deed, therefore, the plaintiff served a notice in July, 2011 on the plaintiff to come and execute the sale deed. Thereafter, the defendant filed a suit under Section 31 of the Specific Relief Act seeking cancellation of the agreement to sell. In these facts, it is not possible to conclude that suit filed by the plaintiff suffers from any delay dis-entitling the plaintiff to get a relief of specific performance. The plaintiff has stepped into the witness-box and has

pleaded that he was always ready and willing to perform his part of the contract. In these circumstances, I do not find any reason to accept the arguments of learned counsel for the appellant.

Finding no merit in the appeal, hence, the present Regular Second Appeal is dismissed.

04.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No