

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

**RSA No.4975 of 2017 (O&M)
Date of Decision: 26.10.2017**

Rakesh Bhargava & others

... Appellants

Versus

Partap and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Sanjay Vashisht, Advocate,
for the Appellants.

ANIL KSHETARPAL, J. (ORAL).

CM 13097-C of 2017

For the reasons stated in the application, delay of 11 days' in
refiling the present appeal is condoned.

Main Case.

The defendants/appellants are in Regular Second Appeal
against the concurrent finding of fact arrived at by the Courts below.

In the present case, the plaintiffs filed a suit for specific
performance of the agreement to sell dated 20.05.2005. As per the
agreement to sell, the sale deed was to be executed within a period of three
months. It is the case of the plaintiffs that on 19.08.2005 after informing the
defendants/appellants, they visited the office of the Sub Registrar where the
sale deed was to be executed and registered, but the defendants did not
come present to execute the sale deed.

Execution of the agreement to sell and receipt of earnest money

is admitted. However, the defendants/appellants have come up with a plea that on 19.08.2005, they visited the office of the Sub Registrar, however, the plaintiffs informed them on that date that sale deed cannot be registered.

Both the Courts below after appreciating the evidence available on the file have held that the plaintiffs were always ready and willing to perform their part of the contract.

I have heard learned counsel for the appellants at length and with his able assistance gone through the records of the case.

Learned counsel for the appellants has submitted that the plaintiffs/respondents had served the defendants/appellants with a notice dated 17.12.2005. Learned counsel has read over the notice. He has submitted that the presence of the defendants in the Tehsil premises i.e. the office of the Sub Registrar is admitted by the plaintiffs. He has submitted that once the plaintiffs and both the defendants were present, the obvious inference is that the plaintiffs were not having sufficient money to execute the sale deed.

No doubt the plaintiffs in the notice dated 17.12.2005 have stated that the defendants were present in the complex where the office of the Sub Registrar is situated, however, from such fact only, inference cannot be drawn that the plaintiffs were not having sufficient money or they were not ready and willing to perform their part of the contract.

It is not in dispute that the plaintiffs got served a notice on the defendants/appellants calling upon them to come and execute the sale deed on 17.12.2005. The plaintiffs filed a suit on 3.01.2006. The defendants did

not reply to the aforesaid notice. The plaintiffs in the affidavit for marking presence in the plaint as well as in evidence as also in the notice, have specifically pleaded that they are ready and willing to perform their part of the contract. Had the plaintiffs not been ready and willing, they would not have filed the suit within a period of four months from the target date for execution and registration of the sale deed.

Taking into consideration the aforesaid facts, this Court does not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

The appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

26.10.2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No