

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

**RSA No.5082 of 2017 (O & M)
Date of Decision:6.11.2017**

Amarjit Kaur

...Appellant

Versus

Narinder Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Divanshu Jain, Advocate for the appellant.
Mr.Parveen K. Kataria, Advocate for the respondent/caveator

ANIL KSHETARPAL, J.(Oral)

Defendant-appellant is in regular second appeal against the judgment passed by learned first appellate court.

It is an admitted position on the record that the plaintiff-respondent and the defendant-appellant had entered into an agreement to sell with respect to a house on 10.11.2004. Out of total sale consideration of Rs.4.50 lacs, Rs.25,000/- was paid as earnest money. It was agreed that the sale-deed would be executed on or before 25.1.2005.

The only dispute between the parties is whether the plaintiff was ready and willing to perform his part of the contract.

Learned first appellate court has recorded a finding of fact after appreciation of evidence that the plaintiff was ready and willing to perform his part of the contract.

I have heard learned counsel for the parties at a considerable length and with their able assistance gone through the judgments passed by the learned courts below as well as photocopies of the record produced before me.

In my considered opinion, the plaintiff has proved his readiness and willingness to perform his part of the contract on account of following reasons:-

- (i) Plaintiff was employed in the Border Security Force and posted in Jammu and Kashmir. On the target date, i.e. 25.1.2005, the date fixed for execution and registration of sale-deed, he has taken leave on 25.1.2005 and come to Jandiala Guru, District Amritsar to execute the sale-deed.
- (ii) Plaintiff visited the office of the Sub Registrar, got his presence marked and also executed a general power of attorney registered with the same Registrar in favour of his brother Parminder, authorising him to get the sale-deed executed in his favour.
- (iii) Plaintiff through his brother served a notice on the defendant calling upon him to come to execute the sale-deed, although in the notice, the date was wrongly mentioned as 3.1.2005. However, since the target date was 25.1.2005, there was obviously a typographical mistake in the date. In the notice, it was specifically recorded that on 25.1.2005, plaintiff had visited the office of Sub Registrar but the defendant had not come present. This fact could not be recorded by the plaintiff on 3.1.2005.
- (iv) It is proved on file that as per agreement to sell, defendant was to take clearance certificate from the concerned Municipal Committee. However, no clearance was taken.
- (v) Plaintiff has examined Ashwani Kumar Joshi, brother-in-law of the plaintiff as PW-3, who has proved that he has withdrawn Rs.1.80 lacs from the bank vide Ex.PW3/1. PW-4 Ashok Kumar has appeared in the witness box. He has proved that he had withdrawn Rs.1 lac from the Post Office vide Exhibits PW4/1 and PW4/2.

Learned counsel for the appellant has vehemently argued that learned first appellate court has not reversed the finding of learned trial court that the plaintiff was not ready and willing to perform his part of the contract.

In my considered opinion, the contention raised by learned counsel for the appellant is not correct. Learned first appellate court has specifically recorded that the plaintiff by leading evidence has duly proved on record that he remained ready and willing to perform his part of the contract.

Taking into consideration these facts and also taking into consideration that the plaintiff filed a suit for specific performance on 8.4.2005 i.e. after a period of 2 months and 13 days from the date when the sale-deed was to be registered as per agreement to sell, this Court does not find any good ground to interfere with the findings of fact arrived at by the court below.

In view of the above, the appeal stands dismissed.

6.11.2017
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No