

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

**Civil Revision No.1288 of 2016
Date of Decision:08.01.2018**

Manjit Kaur

.....Petitioner

Vs

Balhar Singh and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Akshay Bhan, Sr. Advocate with
Mr. Alok Mittal, Advocate
for the petitioner.

Mr. Raman Goklaney, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 22.01.2016 passed by the Addl. Civil Judge (Sr. Divn.) Moga vide which the application filed by the petitioner/defendant to treat the issue of readiness and willingness as preliminary issue in a suit for specific performance was dismissed.

[2]. Brief facts are that the plaintiffs/respondents filed a suit for specific performance on the basis of agreement to sell dated 09.05.2011 entered between the petitioner and the respondents in respect of 114 *Kanals* 7 *Marlas* of land. Respondents also

prayed for execution of sale deed in their favour in equal shares of the land for a consideration of Rs.4,15,94,812.50 by adjusting Rs.1,00,00,000/- received as earnest money by the petitioner. The respondents also prayed for a decree for permanent injunction restraining the defendant from alienating the suit property by creating any encumbrance over it.

[3]. It was alleged by the petitioner that after filing the replication on 16.02.2015, the suit was adjourned on number of times on the statements of the respondents that they have compromised the matter with the petitioner and as per compromise they were ready and willing to get the sale deed executed as per agreement dated 09.05.2011 after paying the balance sale consideration to the petitioner on 15.06.2015. The counsel for the petitioner also suffered a statement that the petitioner will execute the sale deed in favour of the respondents after receiving the balance sale consideration on 15.06.2015.

[4]. Petitioner further asserted that she was resident of Mumbai and as per undertaking given by the counsel on 24.04.2015, she travelled from Mumbai to Moga to get the sale deed registered in favour of the respondents on 15.06.2015 and remained present in the office of Sub-Registrar, Dharamkot on 15.06.2015 from 9.00 a.m. to 5.00 p.m., but the respondents did

not turn up. Thereafter petitioner filed an application along with affidavit dated 15.06.2015 to show her presence before the Sub-Registrar and got her presence attested. The respondents failed to honour the commitment and prayed for time for effecting the compromise on 20.07.2015 before the trial Court.

[5]. The arguments on the application under Order 39 Rules 1 and 2 CPC were heard on 14.09.2015 and the case was adjourned to 23.09.2015 for orders in stay application. The said application was allowed by the trial Court vide order dated 23.09.2015. The petitioner moved an application for treating the issue of readiness and willingness to be a preliminary issue in the suit.

[6]. The application filed for framing of preliminary issue of readiness and willingness was contested by the respondents. Respondents took up the stand that previously the plaintiffs were ready and willing to perform their part of obligation, but the defendant/petitioner was not willing. The said fact was proved from the fact that in agreement to sell, the defendant had not given the correct address and she was proceeded against *ex parte* and appeared in the suit on 03.07.2014 i.e. at the stage of closing of *ex parte* evidence of the plaintiffs. The defendant avoided the proceedings at one pretext or the other. The plaintiffs/respondents were ready and willing to deposit the

remaining consideration within reasonable time even with the appointment of commission for doing the needful.

[7]. On 28.10.2015, the trial Court recorded that the Advocate on behalf of the defendant filed power of attorney. Reply to the application for treating the issue of readiness and willingness as preliminary issue was taken on record and both the parties got recorded their statements in the context of compromise. The trial Court recorded the statements of the plaintiffs/respondents namely Jagtar Singh, Balhar Singh and Gurjit Singh to the effect that they were ready to make the remaining sale consideration of Rs.3,15,94,812/- to the defendant on the next date of hearing in the Court, failing which they would be liable for further proceedings in terms of conditions of agreement to sell dated 09.05.2011 i.e. their suit was to be dismissed.

[8]. It was found by the trial Court that the issue of readiness and willingness could not be treated as preliminary issue as the same falls within the preview of main controversy and requires to be disposed of on the basis of evidence to be led by the parties. The trial Court dismissed the application vide order dated 22.01.2016. That is how the present revision petition came to be filed before this Court.

[9]. Learned Senior counsel for the petitioner contended that the trial Court vide order dated 23.09.2015, 17.10.2015, 20.10.2015 and 28.10.2015 deliberated upon the factum of compromise between the parties and, therefore, in the event of finding the compromise on the positive note, the controversy can be disposed of on that preliminary issue. Trial Court framed the issues vide order dated 22.01.2016. Further proceedings before the trial Court were stayed by this Court on 19.02.2016.

[10]. Learned Senior counsel vehemently submitted that the conduct of the respondents in view of orders on record is quite questionable and, therefore, preliminary issue should be framed so as to test the stand of the respondents in the context of compromise and readiness and willingness to honour the obligation arising out of the agreement to sell.

[11]. On the other hand, learned counsel for the respondents by relying upon **Salem Advocate Bar Association, Tamil Nadu vs. Union of India, 2005(3) R.C.R. (Civil) 530; Ramesh B. Desai and others vs. Bipin Vadilal Mehta and others, 2008(1) R.C.R. (Civil) 921; and Harbhajan Singh vs. Sarup Singh, 2015(3) L.A.R. 413** contended that the alternative of settlement was outside the preview of the Court as the Court was not required to mediate and, therefore, it was a question of fact which cannot be treated to be a pure question of law. The

question of fact has to be determined after the trial and the readiness and willingness is a mixed question of law and facts. Since the issues have been framed and the parties are at issue, therefore, Order 14 Rule 2 CPC cannot be resorted to as the suit itself requires leading of evidence on the factum of readiness and willingness of the parties.

[12]. Learned counsel further submitted that in terms of Section 20 of the Specific Relief Act, readiness and willingness of the parties is a question of fact and not of law. The plaintiffs have not only to prove their readiness, but also willingness to perform their part of obligation and the same is a continuous phenomenon from the date of agreement. Even under Section 16 of the aforesaid Act, the question of readiness and willingness is a question of fact and not a question of law much less substantial question of law.

[13]. Having considered the submission made by learned counsel for the parties, I am of the view that since the issues have already been framed and the question of readiness and willingness cannot be determined without referring to any evidence on record, therefore, framing of preliminary issue on the aforesaid premise is wholly unjustified. The conduct of the parties would be gone into by the trial Court at the relevant stage with reference to the evidence on record.

[14]. In view of above, the impugned order dated 22.01.2016 passed by the Addl. Civil Judge (Sr. Divn.) Moga cannot be faulted with. This revision petition is accordingly dismissed.

January 08, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No