

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

**RSA No.918 of 1990 (O&M)  
Date of Order:30.01.2018**

**Saudagar Singh**

**..Appellant**

**Versus**

**Geju Ram**

**..Respondent**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Ggandeep S. Wasu, Advocate,  
for the appellant.

Mr. Harkesh Manuja, Advocate,  
for the respondent.

**ANIL KSHETARPAL, J(Oral)**

Plaintiff-appellant is in regular second appeal against the judgment passed by the learned first appellate court reversing the judgment and decree passed by the learned trial Court.

Plaintiff had filed a suit for specific performance of the agreement to sell dated 18.06.1982 with respect to the land measuring 51 kanals 19 marla agreed to be sold @ Rs.7,000/- per acre.

It is the case of the plaintiff that Rs.30,000/- was paid as earnest money and sale deed was to be executed and registered on 16.01.1983. It is further the case of the plaintiff that out of earnest money of Rs.30,000/-, he had received back Rs.19,000/- on 20.10.1982 due to his domestic need. However, by a subsequent endorsement agreement to sell was continued and it was decided that the sale deed would be registered on 10.08.1983.

Defendant, on the other hand, contested the suit and pleaded that the plaintiff was not ready and willing to perform his part of the

contract.

Learned first appellate court has noticed three circumstances to reverse the findings of the learned trial Court with regard to readiness and willingness of the plaintiff; (i) that the plaintiff himself had received Rs.19,000/- out of earnest money of Rs.30,000/- vide writing dated 20.10.1982 as the plaintiff was in need of money; (2) plaintiff is proved to be under heavy debt as per evidence produced by the defendant; (3) plaintiff was having no bank balance, as on 16.12.1982 the balance was Rs.197.92 paise, whereas his bank balance on 16.06.1987 was Rs.5.90 paise. With these findings, the learned first appellate court reversed the judgment of the trial Court.

Learned counsel for the appellant has vehemently argued that once pursuant to the decree passed by a trial court, plaintiff-appellant had deposited the amount, inference must be drawn that the plaintiff was ready and willing to perform his part of the contract. Learned counsel has further submitted that the readiness and willingness has to be shown after the judgment was passed by the trial court.

In the considered opinion of this Court, the arguments of learned counsel for the appellant are wholly fallacious. The readiness and willingness has to be shown throughout after the date the agreement to sell was entered into. In the present case, one can give leverage to the plaintiff till 28.03.1985 when an order of injunction passed in a civil suit was vacated and the suit having been decided. However, the plaintiff was required to show that from 28.03.1985, the plaintiff had sufficient funds and was ready and willing to perform his part of the contract. Learned counsel for the appellant has referred to various notices issued by the plaintiff-

appellant calling upon the defendant to perform his part of the contract.

Learned counsel wants that from these notices the court must draw a inference that the plaintiff was ready and willing to perform his part of the contract. The plaintiff was required to pay Rs.34500/- however, plaintiff has failed to produce any evidence on the record that he had sufficient funds to execute the sale deed. Merely because the notices were issued, the readiness and willingness cannot be inferred.

In view thereof, there is no scope for interference in the order passed by the learned first appellate court.

The regular second appeal is dismissed.

**January 30, 2018**  
**nt**

**(ANIL KSHETARPAL)**  
**JUDGE**

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