

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

107

RSA No.5245 of 2012 (O & M)
Date of Decision:23.04.2018

Jagjit Singh

...Appellant

Versus

Bhan Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.S. Sidhu, Advocate
for the appellant.

Mr. Deepak Aggarwal, Advocate
for respondent No.2.

Mr. A.D.S. Jatana, Advocate
for respondent Nos.3 to 5.

ANIL KSHETARPAL, J.(Oral)

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court while ordering refund of the earnest money along with interest and refusing to grant specific performance of the agreement to sell, after noticing following facts:-

(i) Defendant had admitted the agreement to sell, receipt of earnest money and further payment of Rs.30,000/-. However, the defendant pleaded that the plaintiff was not ready and willing to execute the sale deed on the target date for execution and registration of the sale deed. Extended target date was 20.01.2005; (ii) defendant went to the Office of Sub Registrar and marked his presence. Plaintiff, although, asserts that he visited the Office of Sub Registrar, however, did not produce any evidence to prove that he was present along with the requisite amount to execute the sale deed;

(iii) plaintiff is an Advocate and knows law, however, the plaintiff has failed to prove that on the target date fixed for execution and registration of the sale deed, he was ready and willing to perform his part of the contract. The Court has noticed that in such circumstances specific performance of the agreement to sell cannot be granted as the plaintiff is required to prove his readiness and willingness through out as required in Section 16 of the Specific Relief Act.

Learned counsel for the appellant has argued that in the present case, suit was promptly filed after the target date i.e. on 29.01.2005, whereas as per the extended agreement to sell, sale deed was to be executed on 20.01.2005. He submitted that in the plaint, the plaintiff has asserted that he was always ready and willing to perform his part of the contract.

Learned counsel for the appellant has further pointed out that when the plaintiff appeared in the witness box, he has stated he was having ready cash and was carrying the same on the target date i.e. 20.01.2005. Hence, learned counsel for the appellant prayed for grant of decree of specific performance of agreement to sell.

On the other hand, learned counsel for the respondent has submitted that the defendant was present in the office of the Sub Registrar and had marked his presence. He further submitted that the plaintiff is an Advocate and he has not even marked his presence, although he has taken a plea that he was present on the date fixed for registration of the sale deed. Learned counsel has further pointed out that the plaintiff has not produced any evidence i.e. Bank account etc. to prove that he was having balance sale consideration of Rs.7,10,000/- apart from registration expenses on the

This Court has considered the arguments of learned counsel and with their able assistance gone through the judgments passed by both the Courts below.

In the present case, learned First Appellate Court has exercised its discretion as available under Section 20 of the Specific Relief Act, 1963. Discretion has been exercised by the Court by giving cogent and valid reasons. The discretion exercised is not found to be perverse.

No doubt, the plaintiff had filed a suit promptly, however, the date fixed for execution and registration of the sale deed has significance. It is well settled that the plaintiff has to prove that he was ready and willing to perform his part of the contract. As per agreement to sell, the plaintiff was required to pay huge amount of Rs.7,10,000/- at the time of registration of the sale deed. Plaintiff on 20.01.2005 has failed to show that he was having sufficient resources to execute the sale deed. No doubt, suit was filed with promptitude and the plaintiff has pleaded that he was ready and willing to perform his part of the contract, however, keeping in view the facts, which have been noticed by the learned First Appellate Court, this Court does not find that the discretion exercised by the learned First Appellate Court needs any interference.

In view thereof, there is no scope for interference.

Regular second appeal is dismissed.

23.04.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No