

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

RSA No. 3314 of 2013(O&M)

Date of decision: 21.4.2018

Mukhtiar Singh and another

....Appellants

VERSUS

Bhinder Kaur

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. K.S. Boparai, Advocate for the appellants.

Mr. S.S. Rangi, Advocate for the respondent.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for specific performance qua agreement to sell dated 21.04.2005 in respect of land measuring 17 kanal 17-3/5 marlas situated in village Uksi, Tehsil Payal, District Ludhiana at the rate of Rs.1,15,000/- per bigha was decreed by the trial Court and affirmed in appeal.

Counsel for the appellants, at the outset, would inform that there is no dispute between the parties with regard to execution of agreement to sell dated 21.04.2005 Ex.P1, terms and conditions incorporated therein and payment of an amount of Rs.6,80,000/- towards earnest money at the time of execution of the agreement. It has been submitted that there is a serious dispute between the parties with regard to

readiness and willingness of the respondent/plaintiff to perform her part of the agreement i.e. getting the sale deed executed on payment of balance sale consideration and incurring expenses qua registration and purchase of stamp papers etc. In this regard, it has been argued that as per the agreement, stipulated date for execution of sale deed was 30.04.2005. The respondent/plaintiff called upon the appellants to come to the office of Sub Registrar concerned on 28.04.2005 for execution of the sale deed. It is argued with vehemence that the appellants went to the office of Sub Registrar Malout on 28.04.2005 and 02.05.2005 as during the intervening three days, office of Sub Registrar, Malout was not working but the respondent/plaintiff did not come forward to pay the balance sale consideration and get the sale deed executed though she tried to create evidence in her favour that she had gone to the office of Sub Registrar on the aforesaid two dates i.e. 28.04.2005 and 02.05.2005. To bring home his contention with regard to conduct of the respondent/plaintiff, it is argued with vehemence that the respondent/plaintiff examined a witness from Bank of India, Malout to prove withdrawal of an amount of Rs.5,50,000/- on 02.05.2005 but the said amount was again deposited with the Bank on 02.05.2005 itself, sufficient to show that entries of withdrawal and deposit were got made with an intent to create evidence to be used in future. It is argued that had the respondent/plaintiff been ready and willing to perform her part of the agreement, she should have waited in the office of Sub Registrar till 5 PM on 02.05.2005 but she was not there upto that time as the amount withdrawn on that day has been deposited on 02.05.2005 itself when as per the statement of Pawan Kumar PW-5, the bank receives deposits only upto 4 PM.

Much stress has been laid by counsel for the appellants that as the appellants have entered into an agreement to purchase dated 22.04.2005 and paid earnest money to their vendor out of earnest money received from the respondent/plaintiff and even the outstanding loan qua the land in question was cleared by payment to the bank concerned prior to 28.04.2005 and the said deal of the appellants with Kaur Singh failed on account of failure of the respondent to pay the balance sale consideration on or before 02.05.2005 as the sale deed in favour of the appellants on the basis of agreement of sale was to be executed on or before 03.05.2005, in the given scenario, time was essence of the contract, therefore, Courts have seriously erred by exercising their discretion in favour of the respondent and allowing relief of specific performance of agreement. In support of his contention, he has referred to judgments of Hon'ble the Supreme Court **His Holiness Acharya Swami Ganesh Dass Ji Vs. Sita Ram Thapar, (1996) 4 Supreme Court Cases 526, Saradamani Kandappan Vs. S. Rajalakshmi and others, 2011(4) RCR (Civil) 130, I.S. Sikandar (D) by LRs Vs. K. Subramani and others, 2014(1) RCR (Civil) 236, M/S Citadel Fine Pharmaceuticals Vs. M/s Ramaniyam Real Estates P. Ltd. and another, 2011 (9) SC 265 and Kalawati (D) through LRs and others Vs. Rakesh Kumar and others, 2018(2) RCR (Civil) 125.**

Another submission made by counsel is that the respondent is not entitled to specific performance of the agreement as it would cause hardship to the appellants but no hardship would be caused to the respondent/plaintiff in case specific performance is refused. In this context, reference has been made to Division Bench judgment of this Court **Gurpreet Vs. Chatterrbhuj Goel, 1991 PLJ 570.**

Counsel representing the respondent/plaintiff has supported judgments passed by the Courts by contending that the appellants have failed to raise a question of law that needs determination in the Regular Second Appeal. Further argued that the very fact that the respondent/plaintiff called upon the appellants to come present in the office of Sub Registrar, Malout on 28.04.2005, two days prior to the stipulated date of agreement, it speaks volumes about intention and conduct of the respondent with regard to her readiness and willingness to get the sale deed executed by performing her part of the agreement i.e. payment of balance sale consideration of approximately Rs.5,50,000/- along with money required for meeting expenses on registration etc. It is further argued that the respondent not only withdrew an amount of Rs.5,50,000/- from her account with Bank of India, Malout as proved by Pawan Kumar PW-5 but she had sufficient funds in her another account Ex.P17 to meet her liability to pay balance sale consideration and expenses on registration etc. It is argued with vehemence that as the respondent/plaintiff had gone to the office of Sub Registrar, Malout on 28.04.2005 and 02.05.2005 and got her presence marked by executing affidavits in this regard marked as exhibits and filed the suit at the earliest available opportunity on 05.05.2005, nothing is lacking in her conduct qua readiness and willingness to perform her part of the agreement. It is further argued that counsel for the appellants has failed to elicit any facts in cross examination of the respondent/plaintiff to create a slightest doubt with regard to her stand that she always remained ready and willing to perform her part of the agreement since the agreement was executed. The last submission made by counsel is that as the respondent/plaintiff has not faulted in any manner

whatever, appellants cannot derive any advantage to their contention from the referred authorities though there is no dispute about the settled position in law that ordinarily time is not essence of the contract in transactions of sale of immovable property but the parties may settle that the time would be essence of the contract.

I have heard counsel for the parties, perused the paper-book and various documents made available during the course of hearing.

Perusal of the statement of Bhinder Kaur – respondent/plaintiff PW-1 leaves no manner of doubt that in her cross examination, there is hardly any challenge to her statement with regard to her presence in the office of Sub Registrar, Malout on 28.04.2005 and 02.05.2005 and the respondent being in possession of balance sale consideration and expenses to be incurred on the sale deed. I would hasten to add that though the appellants have been able to prove that they were present in the office of Sub Registrar, Malout on both the above-said dates and even got marked their presence by execution of affidavit entered in the register maintained in the office of Sub Registrar, Malout, which was initially got produced by the respondent/plaintiff but there is no material on record to doubt correctness of testimony of Bhinder Kaur PW-1 duly supported by other evidence adduced with regard to her readiness and willingness to perform her part of the agreement. Had Bhinder Kaur been not ready and willing to perform her part of the agreement, there was no reason for her to institute the suit just after 2/3 days of 02.05.2005. On 02.05.2005 affidavit of Bhinder Kaur in regard to her presence in the office of Sub Registrar is entered at Sr. No.16 and that of the appellants at the next serial number. It has also been proved that there is an entry of

withdrawal of an amount of Rs.5,50,000/- from the account maintained in Bank of India, Malout on 02.05.2005. If Bhinder Kaur after waiting for the appellants went back and re-deposited the amount in the Bank, she cannot be condemned for the same nor can it be construed that she was not ready and willing to perform her part of the agreement. In cross examination of Bhinder Kaur, counsel for the appellants did not ask her as to the time upto which she was present in the office of Sub Registrar on 02.05.2005. Counsel for the appellants has failed to point out any such requirement that Bhinder Kaur was supposed to wait for the appellants till 5 PM on 02.05.2005, therefore, deposit of Rs.5,50,000/- in the Bank on 02.05.2005 can be taken prejudicial to her claim of readiness and willingness to perform her part of the agreement. As a matter of fact, counsel for the appellants has failed to substantiate that concurrent findings recorded by the Courts accepting plea of the respondent that she always remained ready and willing to perform her part of the agreement suffer from perversity or the appeal raises a question of law that needs determination in Regular Second Appeal.

To be fair to the appellants, counsel has raised the plea of time being essence of the contract in the given circumstances that the appellants had to get the sale deed executed from their vendor(s) on payment of balance sale consideration, to be paid by the respondent/plaintiff. As has been rightly conceded by counsel for the respondent/plaintiff that ordinarily time is not essence of the contract in such like transactions unless the parties so intended which can be gathered from the terms and conditions or other surrounding circumstances. In the instant case, the said question does not assume any significance for the reason that the

respondent/plaintiff had acted diligently to perform her part of the agreement two days prior to the stipulated date as well as on 02.05.2005, the first date of opening of office of Sub Registrar after the stipulated date i.e. 30.04.2005. As has been noticed hereinbefore but for the sake of repetition, she instituted the suit for specific performance on 05.05.2005. In the given scenario, the respondent/plaintiff cannot be blamed even if time was essence of the contract in view of the plea raised by the appellants that they had to get the sale deed executed on payment of balance sale consideration to their vendor after receipt of money from the respondent/plaintiff.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed. No order as to costs.

APRIL 21, 2018
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no