

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

RSA No.1037 of 2016(O&M)

Date of decision: 20.7.2018

Manohar Lal

.....Appellant

VERSUS

Sanjeev Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sandeep Jasuja, Advocate for the appellant.

Mr. Vipin Mahajan, Advocate for respondents.

REKHA MITTAL, J.

Manohar Lal, the unsuccessful defendant, has filed the appeal to assail judgment and decree dated 08.01.2016 passed by the District Judge, Pathankot whereby the judgment and decree dated 06.04.2015 passed by the Additional Civil Judge (Senior Division), Pathankot (hereinafter to be referred as 'the trial Court') were set aside and suit filed by the plaintiffs/respondents for specific performance of agreement of sale dated 20.12.2011 has been decreed to the following effect:-

“The suit of the plaintiffs for relief of specific performance of agreement of sale dated 20.12.2011 is decreed with costs. Plaintiffs are directed to pay the balance sale consideration to the defendant within a period of two months where after the defendant shall execute the sale deed in favour of the plaintiffs within further one month failing which the plaintiffs shall be entitled to get the sale deed registered through the trial court by way of appointment of local commission.

However all the expenses of execution and registration of sale deed would be borne by the plaintiffs and in case the defendant failed to execute the sale deed registered then all the expenses to be borne by the plaintiffs for execution and registration of sale deed through local commission shall be the liability of the defendant and the same shall be deducted from the balance sale consideration. The defendant is further restrained from alienating the land in dispute in favour of any other person except the plaintiffs and from raising any sort of construction and changing its nature. Allowed with costs.”

Counsel for the appellant would contend that Kuldeep Saini was the original owner in possession of the land in dispute. He entered into an agreement of sale with appellant Manohar Lal at the rate of Rs.14,00,000/- per killa, received earnest money of Rs.5,00,000/- and agreed to execute the sale deed on receipt of balance consideration on 30.04.2012. On the basis of agreement dated 04.07.2011 executed by Kuldeep Saini, the appellant entered into an agreement of sale of suit land in favour of the respondents/plaintiffs at the rate of Rs.15,80,000/- per acre and received earnest money of Rs.5,00,000/-. The date for execution and registration of the sale deed was fixed as 30.04.2012. The appellant undertook to get the sale deed registered in favour of the respondents from the original owner or through his Power of Attorney on the stipulated date. In the event of his failure to do so, he undertook the liability to pay earnest money of Rs.5,00,000/- along with penalty of Rs.5,00,000/- totalling Rs.10,00,000/- In the event of failure of proposed vendee to get the sale deed executed and registered, the earnest money was liable to be forfeited.

Counsel would argue that there is no dispute between the parties with

regard to agreement of sale dated 04.07.2011 between the appellant and Kuldeep Saini and so also the agreement of sale dated 20.12.2011 between the appellant and respondents/plaintiffs. He would further inform that the only dispute between the parties is with regard to entitlement of the respondents to seek specific performance of agreement of sale as they were not ready and willing to perform their part of the agreement.

To bring home his contention, it is argued that the respondents did not have money to pay the balance sale price. The appellant was compelled to get the sale deed executed in his favour from Kuldeep Saini on 23.04.2012. On 30.04.2012, the appellant appeared in the office of Sub Registrar concerned but the respondents did not turn up but they have been able to manage to mark their attendance in the office of Sub Registrar on 30.04.2012. The respondents / plaintiffs served the registered notice dated 07.05.2012 calling upon the appellant to come present in the office of Sub Registrar on 14.05.2012 but the said notice was received by the appellant after 14.05.2012, therefore, there was no opportunity with the appellant to cause appearance in the office of Sub Registrar on 14.05.2012 in response to the notice, admittedly, received by the appellant. It is argued with vehemence that in response to notice dated 07.05.2012, the appellant sent a detailed reply wherein it was specifically mentioned that the respondents/ plaintiffs informed the appellant that they were not having sufficient funds for getting the sale deed executed and registered and requested the appellant to wait for some time. It is further submitted that in reply to the notice, it has been the categoric stand of the appellant that he always remained ready and willing to perform his part of the agreement and is still ready to execute the sale deed in favour of client of Sh. Vikram Puri, Advocate, through whom the respondents served notice dated 07.05.2012.

Counsel would further argue that the respondents did not disclose the facts incorporated in the reply in their plaint with a clear intent to mislead the Court. One of the respondents appeared in the witness box and denied the suggestion that Manohar Lal replied to the notice. He has also stated that he has no proof to show that he was in possession of sale deed amount. According to counsel, as the respondents/plaintiffs did not have sufficient funds to pay the balance sale price and expenses of registration etc., they have been wrongly allowed specific performance of agreement in appeal by setting aside the judgment and decree dated 06.04.2015 passed by the trial Court.

Counsel representing the respondents/plaintiffs has supported the impugned judgment and decree with the submission that error committed by the trial Court in dismissing the suit has rightly been rectified by the Court in appeal and allowed relief of specific performance in exercise of its discretionary jurisdiction which is based upon detailed and correct appreciation of the factual and legal aspects involved in the case. It is argued that 30.04.2012 was the target date for execution and registration of the sale deed, on payment of balance sale consideration. The respondents have adduced clear, cogent, oral and documentary evidence to establish their plea that on the target date, they were present in the office of Sub Registrar and got marked their presence by way of affidavit of Sh. Ranjeev Kumar Ex.P5 duly attested by the Executive Magistrate, Pathankot. Within a week thereafter, the plaintiffs served legal notice dated 07.05.2012 Ex.P2 calling upon the appellant to come present in the office of Sub Registrar on 14.05.2012 but the appellant failed to respond to the notice by ensuring his presence on 14.05.2012. He sent reply to the notice and raised incorrect version with regard to the respondents not having

sufficient funds or asked the appellant to wait for some time. It is vehemently argued that once it had been agreed between the appellant and his vendor to execute the sale deed on 30.04.2012 and same was the target date in the agreement executed between the parties to the suit, surprisingly the appellant got sale deed registered from Kuldeep Saini on 23.04.2012 and thereafter did not cause appearance in the office of Sub Registrar on 30.04.2012 for executing the sale deed in favour of the respondents. In addition, it is argued that the respondents instituted the suit on 31.05.2012 i.e. within 17 days of the date given to the appellant to get the sale deed executed vide notice Ex.P2 and there may not be a case better than that of the respondents with regard to they being ready and willing to perform their part of the agreement.

I have heard counsel for the parties, perused the paper-book and copies of documents supplied during course of hearing, correctness thereof has been vouched by counsel for the parties.

Indisputably, the target date for execution of sale deed was 30.04.2012. The respondents have stated that on the target date, they were present in the office of Sub Registrar for getting the sale deed executed and registered. On 07.05.2012, they issued a notice through Sh. Vikram Puri, Advocate calling upon the appellant to execute the sale deed on 14.05.2012. Admittedly, the appellant received the notice though he had raised the plea that it was received subsequent to 14.05.2012. In reply to the notice, though the appellant has raised a plea that the respondents did not have sufficient amount for getting the sale deed executed and requested the appellant to wait for some time but no date and month has been given when the respondents expressed any such difficulty or requested to wait for sometime, sufficient to show that a vague plea has been raised by the

appellant. In para 3 of the reply to notice, it is mentioned that client of Sh. Naresh Paul Sharma, Advocate, Pathankot i.e. the appellant is still ready to execute the sale deed in favour of respondents/plaintiffs.

The respondents/plaintiffs filed the suit for specific performance within the shortest possible time from the stipulated date as well as 14.05.2012, the date for which the appellant was called upon to appear in the office of Sub Registrar vide notice dated 07.05.2012 Ex.P2. Had it been true that the appellant was ready to perform his part of the agreement as has been stated in reply to the notice, he should have offered to execute the sale deed in favour of the respondents immediately on receipt of notice of the suit and appearance in the case. In this view of the matter, it is difficult to accept contention of the appellant that the respondents/plaintiffs can be blamed for non-execution of the sale deed on the target date.

To be fair to the appellant, counsel has pointed out two sentences from the testimony of PW1 by referring to paras 5 and 7 of the grounds of appeal. Firstly, the testimony of a witness is to be read as a whole for correct appreciation of its evidential value. As per the settled position in law, picking up sentences from here and there divorced of remaining testimony may lead to miscarriage of justice. This apart, once the respondents/plaintiffs have admitted the receipt of reply to notice in the plaint itself, any mistake on the part of Ranjeev Kumar to deny the suggestion that Manohar Lal replied to his legal notice is of no consequence. Ranjeev Kumar in his cross examination has stated that he has no proof to show that he was in possession of sale deed amount. There is nothing on record suggestive of the fact that it is the plea of the respondents/plaintiffs that they had withdrawn the amount from the bank

or some other financial institution or borrowed the money on the basis of a document. If it is so, how could the respondents/plaintiffs be called upon to produce documentary evidence with regard to their being in possession of balance sale consideration etc. In this view of the matter, the appellant cannot derive any advantage to his contention from the aforesaid fact elicited in cross examination of Ranjeev Kumar.

The appellant, in reply to the notice, had stated that he is ready to execute the sale deed in favour of the respondents/plaintiffs. The plaint makes reference to receipt of reply, meaning thereby that reply was received even before institution of the suit. There is nothing on record suggestive of the fact that after receipt of reply to legal notice, the respondents approached the appellant to execute the sale deed on a particular date. Rather they hurriedly instituted the suit on 31.05.2012. In the given scenario, the respondents shall not be entitled to costs of the suit as well as appeal.

In view of what has been discussed hereinabove, the appeal stands disposed of. The judgment and decree passed by the Court in appeal are affirmed except that the respondents/plaintiffs shall not be entitled to costs throughout. In the peculiar facts and circumstances, the parties are left to bear their own costs.

JULY 20, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

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