

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

R.S.A.No.3484 of 2013 (O&M)

Date of Decision: May 18, 2018

Veena Goyal

...Appellant

Versus

Vaneet Kumar

...Respondent

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL**

Present: Ms.Ritam Aggarwal, Advocate,  
for the appellant.

Mr.Ashok Sehgal, Advocate,  
for the respondent.

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**AMIT RAWAL, J.**

Present Regular Second Appeal is directed against the judgments and decrees of the Courts below, whereby the suit seeking specific performance of the agreement to sell dated 19.11.2004, has been decreed in part by granting alternative relief of earnest money of ₹3,50,000/- along with interest @ 12% per annum.

Respondent-plaintiff instituted the suit aforementioned on the premise that the appellant-defendant had entered into an agreement to sell dated 19.11.2004 for selling the land in dispute for a total sale consideration of ₹13,50,000/- against receipt of earnest money of ₹3,50,000/-. The stipulated date for registration and execution of the sale deed was 19.2.2005. The plaintiff was ready and willing to perform his part of the agreement, but the defendant did not come forward for execution of the sale

deed giving cause of action to file the suit on 18.2.2008.

Appellant-defendant filed written statement and contested the suit by admitting the agreement to sell, but stated that the respondent-plaintiff was not ready and willing to perform the part of the agreement, neither he appeared before the Sub Registrar on 19.2.2005 and 20.2.2005, the next working day and non-proved readiness and willingness. It is in that background, the earnest money of ₹3,50,000/- was forfeited.

The trial Court, after noticing all these facts, particularly the suit having been filed on 18.2.2008, did not grant the discretionary relief, but ordered for alternative relief by directing the appellant-defendant to refund ₹3,50,000/- along with interest @ 12% per annum.

Both the parties assailed the aforementioned judgment and decree before the Lower Appellate Court by filing two appeals. Both the appeals have been dismissed, but only one appeal on behalf of the appellant-defendant has been filed in this Court.

Ms.Ritam Aggarwal, learned counsel representing the appellant-defendant submitted that the readiness and willingness on the part of the respondent-plaintiff was conspicuously wanting as there is no explanation in the suit as to how and under what circumstances, the plaintiff had been ready and willing to perform his part of the contract from the expiry of the stipulated date till the filing of the suit. There is no explanation of almost three years as the suit had been filed just few months before the expiry of the limitation. The property agreed to be sold was under mortgage with the Punjab National Bank, but the permission from the Bank was obtained after the agreement to sell but before the stipulated date, i.e., on 31.12.2004. Respondent-plaintiff did not appear before the Sub Registrar

and that was the clincher of non-performing of the agreement to sell. Even awarding of interest @ 12% per annum is on the higher side, for, the respondent-plaintiff cannot be permitted to earn interest for the period he did not avail the remedy of filing the suit and, thus, urged this Court for setting-aside the findings under challenge.

Mr.Ashok Sehgal, learned counsel representing the respondent-plaintiff submitted that findings of fact and law arrived at by the Courts below are perfect, legal and justified. The Courts had rightly granted the interest @ 12% per annum, for, the appellant-defendant had realised the aforementioned amount. The suit categorically contained the averment with regard to the continuous readiness and willingness. Even if the appeal had not been filed, the plaintiff can always seek the alternative prayer by taking the aid of provisions of Order 41 Rule 33 CPC. Since the appellant-defendant had not intimated regarding the permission from the Bank, time was not the essence of the agreement and, thus, urged this Court for affirming the findings under challenge by granting discretionary relief.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is some force and merit in the submissions of the learned counsel for the appellant-defendant.

The execution of the agreement to sell, payment of earnest money, stipulated date and its admission are not in dispute. The only point to be pondered upon by this Court is whether in the facts and circumstances of the case, the respondent-plaintiff had been able to bring the case for the purpose of alternative relief @ 12% per annum, for, the agreement to sell contained a clause of forfeiture of the earnest money on account of non-performance of the part of the agreement by the respondent-plaintiff. In

order to answer the question posed, it would be in the fitness of things to notice few facts.

No evidence has come on record as to whether the appellant-defendant had intimated or communicated in writing to the respondent-plaintiff regarding the aforementioned permission, for, the perusal of the cross-examination of Veena Goyal, it surfaced that till 21.2.2005, the loan of the Bank was not cleared. For all intents and purposes, title was not clear. In such circumstances, I am of the view that the vendor cannot be permitted to forfeit the earnest money as time did not remain the essence of the agreement to sell.

Now coming to the point of awarding of interest @ 12% per annum, I am of the view that since the suit property was agricultural and not commercial, the Courts ought not to have awarded interest @ 12% and particularly the fact that from 21.2.2005 to 18.2.2008, the plaintiff did not avail the remedy. Thus, the judgments and decrees of the Courts below vis-a-vis granting of interest only are liable to be modified. The decree of the trial Court is modified to the extent that the respondent-plaintiff will be entitled to refund of earnest money of ₹3,50,000/- with interest @ 6% from the date of execution of the agreement, till filing of the suit excluding the period when suit was not filed and thereafter from the date of judgment and decree of the trial Court till its realisation.

With the aforementioned modification, rest of the findings of the Courts are upheld.

The argument of Mr.Sehgal for granting discretionary relief is also hereby rejected, for, the respondent-plaintiff has not been able to bring the case within the parameters of provisions of Section 16-C of the Specific

Relief Act as the continuous readiness and willingness has to be from the date of agreement to sell, till filing of the suit and during the pendency of the suit.

Appeal stands disposed of accordingly.

**May 18, 2018**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

**Whether speaking/reasoned**

**Yes/No**

***Whether Reportable:***

***Yes/No***