

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

**RSA No.2530 of 2016 (O&M)
Date of Decision.16.11.2018**

Narinder KumarAppellant
Vs
Darshan Lal and another ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.L. Batta, Senior Advocate with
Mr. Mandeep K. Sajjan, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff has not been successful in seeking discretionary relief for specific performance of the agreement to sell dated 23.6.2005 in respect of a house measuring 10 marlas, agreed to be sold for total sale consideration of ₹4,80,000/- against receipt of ₹2,50,000/- as earnest money. The trial Court granted the alternative relief of recovery of ₹4,80,000/- i.e. ₹2,50,000/- plus ₹1,30,000/- as damages, which was upheld by the lower Appellate Court.

Mr. R.L. Batta, Senior Advocate assisted by Mr. Mandeep K. Sajjan, learned counsel appearing on behalf of the appellant submitted that the suit has been dismissed on two counts; (i) plaintiff had not issued a legal notice preceding to filing of the suit; (ii) no explanation in not filing the suit within reasonable time, which was filed on 08.09.2007 has come forth. Though the limitation to claim specific performance is three years, the Courts below should not have non-suited the plaintiff in not granting of discretionary relief.

I am afraid aforementioned argument of Mr. Batta is not

sustainable, for, readiness and willingness, as per the ratio decidendi culled out in **B. Vijaya Bharathi Vs. P. Sawitri and others 2018(1) RCR (Civil) 4** has to be proved till filing of the suit, during its pendency and till disposal. Except a bald statement in the plaint that he was ready and willing, no overt act of readiness and willingness has been proved from the date of expiry of agreement i.e. 10.01.2006 till filing of the suit on 08.09.2007. There was a gap of 1 year and 8 months. It is on that account that only alternative relief has been granted. The prayer for interest is also not sustainable as plaintiff has been compensated in terms of damages by awarding a sum of ₹1,30,000/-.

As an upshot of my finding, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 16, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No