

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

**RSA No.2557 of 2016 (O&M)
Date of Order:01.08.2018**

Baldev Singh

..Appellant

Versus

Jarnail Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Divjyot S. Sandhu, Advocate,
for the appellant.

Mr. Vikas Bahl, Sr. Advocate, with
Ms. Japneet Kaur, Advocate and
Mr. Akshay Rawal, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below while decreeing the suit for specific performance of the agreement to sell dated 02.03.2007 executed by the defendant-appellant through his son who was general power of attorney holder.

As per the agreement to sell, the target date for execution and registration of sale deed was 15.05.2008. Plaintiffs had paid earnest money of Rs.18,00,000/- and thereafter paid additional amount of Rs.14,50,000/- on 05.03.2007 and possession was delivered. There is a further endorsement on the reverse of the first page of the agreement to sell wherein date was sought to be extended as it is pleaded case of the plaintiffs that the defendant made a request for extension of the date as he wanted to

consult his income tax lawyer. However, thereafter, without signing he left the place. The execution of the agreement to sell and payment of the amount is not in dispute. The only plea taken by the defendant-appellant is that he is a Non Resident of India and he had come down to India from USA to executed the sale deed but the plaintiffs did not come forward.

Both the courts after appreciating the evidence available on the file decreed the suit after noticing that the suit was filed within 8 days of the agreed date for execution and registration of the sale deed.

Learned counsel for the respondents has pointed out that notice of the suit was given and the defendant-appellant appeared before the court on 03.06.2008 pursuant to the notice. If the defendant was ready and willing to perform his part of the contract, he would have conceded to the suit filed by the plaintiff at the stage itself in beginning. Still further both the courts have noticed that the defendant has not appeared in the witness box to face cross-examination.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below.

Learned counsel for the appellant has submitted that the plaintiffs were not ready and willing to perform their part of the contract as on the target date, defendant-appellant had also visited the office of the Sub-registrar. He submitted that the plaintiffs have lead no evidence to prove that they were in possession of the balance amount payable on the target date.

This court has considered the submission. Out of total sale consideration of Rs.1,29,84,375/-, Rs.32,50,000/- had already been paid. It

is also not in dispute that both the plaintiffs attended the office of the Sub-Registrar where execution and registration of the sale deed was to take place. They in token of their presence got the affidavit attested. In the affidavit it is specifically mentioned that they are carrying money for execution and registration of the sale deed.

Still further when the suit was filed, it was again pleaded in the plaint that plaintiffs were ready and willing to execute the sale deed on 15.05.2008. In such circumstances, this court does not find any substance in the argument of learned counsel for the appellant.

In view thereof, there is no good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

August, 01, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No