

In the High Court of Punjab and Haryana at Chandigarh

RSA-4844 of 2013(O&M)

Date of Decision: October 08, 2018

Rakesh Kumar

---Appellant

versus

Mool Chand

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. B.D.Sharma, Advocate
for the appellant

Mr. Rakesh Gupta, Advocate,
for the respondent

Rekha Mittal, J.

The present appeal directs challenge against the judgment and decree dated 25.7.2013 passed by the Additional District Judge, Shri Muktsar Sahib whereby appeal preferred by the respondent-plaintiff against the judgment and decree dated 26.9.2012 passed by the trial court was allowed, the judgment and decree were modified by allowing the principal relief of specific performance of agreement to sell dated 30.6.2006 regarding land measuring 40 kanals, situated in village Kollianwali, Tehsil Malout, District Sri Muktsar Sahib.

The case set up by the respondent-plaintiff is that the appellant entered into agreement to sell dated 30.6.2006 @ Rs. 2,67,000/- per killa. A sum of Rs. 3,25,000/- was received by the appellant towards earnest

money and date for execution of sale deed was fixed for 30.12.2006. The respondent always remained ready and willing to perform his part of the agreement on payment of balance sale consideration. He remained present in the office of Sub Registrar, Malout on 2.1.2007 as 30.12.2006 to 1.1.2007 were holidays. The appellant did not turn up to execute the sale deed. The respondent got his presence marked from Sub Registrar, Malout and also served legal notice dated 9.1.2007 through registered post calling upon the defendant to execute the sale deed in his favour.

The appellant-defendant admitted execution of agreement to sell with the averments that after execution of agreement, Partap Singh son of plaintiff tried to interfere in the suit property and he filed a suit for permanent injunction against him. The Court restrained Partap Singh from interfering in appellant's possession. When the respondent came to know about this fact, he approached the appellant and negotiated with him. With mutual consent of the parties to the suit, they cancelled the disputed agreement to sell and the appellant agreed to return the earnest money to the respondent alongwith interest @ 1.5% per month and it was settled between the parties that till payment of earnest money, appellant would give surety towards satisfaction of the respondent. The appellant alongwith his brother Satish Kumar mortgaged their another property i.e. house measuring 20' x 60' out of 8 biswa 4 biswasi bearing khasra No 2921/2692(0-8-4-0) in favour of Tarun Kumar son of the respondent for Rs. 4,60,000/-. The amount of earnest money alongwith interest was adjusted towards mortgage amount. The mortgage deed was executed by the respondent on behalf of his son and as such after execution of mortgage deed, disputed agreement to sell got cancelled.

The controversy between the parties led to framing of issues, reproduced in para 4 of judgment of the trial court. The parties were permitted to adduce evidence in support of their respective contentions and they adduced oral as well as documentary evidence, referred to in para 5 and 6 of the judgment of trial court. The trial court in view of its findings in paras 13 and 14 of the judgment and by relying upon judgment of Hon'ble the Supreme Court of India **K.S.Kidyanadam and others vs. Vairavan 1997(ACJ) 423** allowed alternative relief of recovery of Rs. 3,25,000/- with simple interest @ 9% per annum with effect from 30.6.2006 till filing of the suit and pendente lite and future interest @ 6% per annum on the principal amount.

The judgment and decree passed by the trial court became subject matter of appeal preferred by respondent-plaintiff Mool Chand but the appellant did not file an appeal to assail his liability qua payment of Rs. 3,25,000/- with interest allowed by the trial court.

As has been noticed hereinbefore, the Court in Appeal reversed findings of the trial court with regard to the respondent being not ready and willing to perform his part of the agreement or there is unreasonable/unexplained delay in filing the suit and resultantly, plea of the respondent for specific performance of agreement to sell was allowed with a direction to the appellant to execute sale deed in favour of the respondent on receipt of balance sale consideration of Rs. 10,10,000/- within 30 days. In case the appellant fails to execute the sale deed on receipt of balance sale consideration, the respondent was directed to deposit the same with the Court within next one month and to get the sale deed executed through process of the Court.

Counsel for the appellant has supported findings of the trial court whereby the court dismissed plea of the respondent qua specific performance of the agreement and allowed alternative relief of recovery with interest. It is argued that the sale deed was agreed to be executed on 30.12.2006. The legal notice through registered post Ex. PW2/E is dated 9.1.2007. The suit for specific performance was filed on 23.1.2009 i.e. two years after the target date fixed for execution and registration of the sale deed. In between, admittedly, mortgage deed Ex. D1 was executed by the appellant and his brother in favour of Tarun Kumar son of the respondent in February 2008. It is vehemently argued that had the respondent been ready and willing to perform his part of the agreement, there was no reason for him to wait for two years from the target date and almost one year after the mortgage deed to approach the court for necessary relief seeking specific performance of the agreement. It is further argued that discretion exercised by the trial court based upon well founded reasoning should not have been interfered with by the Court in Appeal. In support of his contention, he has relied upon judgment of the Allahabad High Court **Ram Singh and others vs. Sughar Singh 2011 (1) Civil Court Cases 766** wherein it has been held that relief of specific performance is discretionary in nature. Court is not bound to grant such relief merely because it is lawful to do so. Grant of relief of specific performance is dependent upon principles of justice, equity and good conscious.

Counsel for the respondent, on the contrary, has supported judgment passed by the Court in Appeal with the submission that the trial court failed to notice conduct of the appellant while exercising discretion to deny the relief of specific performance. It is argued that the appellant's plea

that the amount of earnest money paid under the agreement was adjusted towards mortgage money paid under the mortgage deed Ex. D1 has been rejected, therefore, the respondent has rightly been allowed the principal relief of specific performance by the Court in Appeal. In this regard, reference has been made to judgment of Hon'ble the Supreme Court **Silvey and others vs. Arun Vargese and another 2008(2) RCR (Civil) 591**. Counsel would further argue that relief of specific performance cannot be denied merely on the ground that suit has been filed after two years of the date of performance. In this context, reference has been made to judgments of this Court **Bhaiya Ram and another vs. Rajesh Kumar and another 2007(5) RCR (Civil) 468** and **Kurshid Akbar and Smt. Kalia Rani 2012 (4) PLR 325**.

I have heard counsel for the parties, perused the paper book and the records.

The appellant has not denied execution of agreement of sale, terms and conditions incorporated in the agreement and receipt of earnest money of Rs. 3,25,000/- out of sale consideration of approximately Rs. 14,00,000/-. It is not plea of the appellant that on the stipulated date or on 2.1.2007, he was present in the office of Sub Registrar, Malout for discharging his obligation under the agreement to sell. The plea of the appellant that amount of earnest money paid under the agreement was adjusted towards mortgage money paid under mortgage deed Ex. D1 has not been accepted by the trial court. The appellant did not file an appeal against the decree passed by the trial court allowing refund of earnest money alongwith interest. Even in the appeal preferred by the respondent to express his grievance against non-grant of principal relief of specific

performance, the appellant did not file any cross objections.

The trial court by taking into consideration that mortgage deed in respect of some other property was executed by the appellant and his brother in favour of Tarun Kumar, one of the sons of the appellant and relying upon judgment of the Apex Court in **K.S.Kidyanadam and others' case (supra)** rejected claim of the respondent for specific performance of agreement of sale. In **K.S.Kidyanadam and others' case (supra)**, the plaintiff remained quiet for 2 ½ years without taking any steps to perform his part of the contract. It was held that delay was coupled with substantial rise in price of the property, it would be inequitable to give relief of specific performance to the plaintiff.

The trial court in para 15 of the judgment has held that on account of unexplained and unreasonable delay coupled with very high price hike of properties, plaintiff is only entitle to alternative relief of recovery of earnest money alongwith reasonable rate of interest. Counsel for the appellant has failed to point out any materials on record much less a plea raised by the appellant in this regard that price of the property in question had increased in between the target date and date of institution of the suit in order to attribute something to the respondent that he instituted the suit for specific performance being attracted by rise in price of the property. In this view of the matter, it can safely be held that discretion exercised by the trial court allowing alternative relief of recovery is not based upon correct appreciation of materials on record and the ratio of judgment in **K.S.Kidyanadam and others' case (supra)**. On the contrary, trial court failed to appreciate that plea raised by the appellant with regard to adjustment of earnest money towards the mortgage amount under the

mortgage deed Ex. D1 is found to be incorrect and false, therefore, conduct of the appellant assumed significance while deciding whether to allow or not to allow specific performance of agreement. As such, interference in the discretion exercised by the trial court cannot be faulted with.

This court in **Bhaiya Ram and another's case (supra)** has held that the appellant-defendant has not pleaded any hardship so as not to exercise the discretion in granting a decree for specific performance in terms of Section 20 of the Specific Relief Act. In the absence of any pleading or proof of any hardship, mere fact that the suit has been filed after two years of the date of performance of the agreement is not a ground to decline the decree for specific performance when both the courts have granted such decree in favour of the plaintiff.

In **Kurshid Akbar's case (supra)**, no plea was raised by the defendant in his written statement nor any evidence was adduced to substantiate contention of hardship and this court refused to interfere in the judgments passed by the courts.

In the case at hand, neither the appellant has pleaded any hardship in case of specific performance nor is able to counter plea of the respondent that he always remained ready and willing to perform his part of the agreement, therefore, I do not find any reason to interfere in the judgment passed by the Court in Appeal. I would hasten to add that at one point of time, counsel for the appellant expressed that the appellant is ready to pay entire amount to the decree holder in pursuance of money decree passed by the trial court and ensure presence of the appellant before the court to make a statement in this regard. On the adjourned date i.e. 17.4.2018, counsel for the appellant stated that he (appellant) is not ready

to pay the money in pursuance of the decree passed by the trial court unless the dispute raised in the other appeal RSA No. 6105 of 2017 is also amicably settled between the parties. The conduct of the appellant reflected in view of contradictory stand taken before this Court on 23.3.2018 and 17.4.2018 further shows that he is not entitled to any relief on equitable considerations.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed with costs. As a consequence, judgment and decree passed by the Court in Appeal are affirmed.

(Rekha Mittal)
Judge

October 08, 2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No