

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

**RSA No.290 of 2016 (O&M)
Date of Decision.18.12.2018**

Jagtar Singh

....Appellant

Vs

Gurdev Singh

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jagnahar Singh, Advocate for
Mr. S.S. Rangi, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.921-C of 2016

For the reasons stated in the application, delay of 420
days in re-filing of the appeal is condoned.

Application is allowed.

RSA No.290 of 2016

The present appeal is directed against the judgment and
decree dated 17.02.2014 of the lower Appellate Court passed in
appeal preferred by the defendant whereby suit of the appellant-
plaintiff, herein, for specific specific of agreement to sell dated
30.04.2004 decreed by the trial Court, was confined to the alternative
relief i.e. refund of earnest money of ₹2 lakhs along with interest
@12% per annum from the date of payment till the date of decree and
future interest @6% per annum from the date of decree till its
realization.

The appellant-plaintiff in the month of July, 2007
instituted the suit claiming specific performance of agreement to sell

ibid in respect of the suit land against the payment of earnest money of ₹2 lakhs. The stipulated date for registration and execution of the sale deed was 30.04.2006. However, during the subsistence of the agreement, plaintiff instituted the suit on 18.05.2005 seeking injunction against the defendant-vendor not to alienate the suit land. The aforementioned suit was dismissed on 08.12.2006 under the provisions of Order 17 Rule 3 CPC. The plaintiff stated to have orally informed the defendant to appear before the Registrar on 15.05.2007 and got his affidavit attested through the Notary Public and thereafter, sent the legal notice of even date fixing date for execution and registration of sale deed as 23.05.2007. It is in these circumstances, suit, aforementioned was filed.

The defendant opposed the suit by denying the agreement to sell or receipt of the earnest money. It was stated that plaintiff along with his brother was running commission agency to whom defendant had been selling his agricultural produce. In this process, plaintiff used to obtain signatures on the printed forms, bahis and stamp papers, that have been converted into agreement to sell.

Plaintiff in support of aforementioned assertions examined four witnesses namely Ishwar Kumar, marginal witness as PW1, Narinder Singh, deed writer as PW2, plaintiff himself as PW3 and Jaswinder Singh, another marginal witness as PW4 whereas defendant examined himself as DW1 and Paramjit Singh Clerk as DW2.

Learned counsel appearing on behalf of the appellant submitted that the lower Appellate Court has erroneously and

perversely set aside the well reasoned judgment and decree of the trial Court whereby the suit was decreed but it confined the same to alternative relief while holding that readiness and willingness on the part of the plaintiff was not proved. In fact, readiness and willingness has been proved throughout from the date of agreement to sell, till the filing of the suit for injunction and the present suit. No doubt, non-examination of the plaintiff in injunction suit cannot be fatal and in these circumstances, provisions of Order 2 Rule 2 CPC will also not be attracted. The lower Appellate Court could not have gone into the question of readiness and willingness, in view of the denial of the execution of the agreement to sell. The ingredients of Section 16 (c) for obtaining the discretionary relief under Section 20 of the Specific Relief Act have been proved to the hilt.

I am afraid aforementioned arguments of learned counsel appearing for the appellant are not sustainable, for, once the appellant-plaintiff had expressed the breach at the hand of the defendant when the injunction suit was filed on 18.05.2005, no explanation has come forward in not seeking relief of specific performance, even if the stipulated date had not reached. It is settled law that whenever act of the vendor reflects breach, cause of action arises in favour of the plaintiff to seek specific performance and alternative refund of earnest money along with damages. No concrete or positive evidence with regard to fixing the date as 15.05.2007 has been brought on record. It was, in my view, a figment of imagination. Had the plaintiff examined himself in the suit that he had been continuously ready and willing, perhaps judgment and decree of the

trial Court would have been affirmed.

The appeal is also accompanied by an application for condonation of delay of 94 days in filing of the appeal. No plausible and reasonable explanation has come forward to bring the case within the parameters of ratio decidendi culled out by Hon'ble Supreme Court in Office of the Chief Post Master General and others Vs. Living Media India Ltd. and another (2012) 3 SCC 563 for condoning the delay.

In this view of the matter, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court, 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 both on the ground of delay as well as on merits.

(AMIT RAWAL)
JUDGE

December 18, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No