

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

**RSA No.370 of 2016 (O&M)
Date of Decision.02.11.2018**

Raghubir SinghAppellant
Vs
Krishna ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.N. Lohan, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.1122-C of 2016

For the reasons stated in the application, delay of 157 days in re-filing the appeal is condoned.

Application is allowed.

RSA No.370 of 2016

The appellant-plaintiff has not been successful in seeking specific performance of agreement to sell dated 21.02.2006, allegedly agreed to be sold by defendant in respect of land measuring 24 kanals at the rate of ₹7 lakhs per acre, against the alleged payment of ₹2 lakhs as earnest money. 25.06.2006 was agreed to be the date for execution and registration of the agreement to sell.

As per the general averments in the plaint, the plaintiff had been ready and willing to perform his part of the agreement but it was alleged that defendant had committed fraud by concealing material facts regarding mortgage of the land agreed to be sold to the plaintiff and in this regard, a criminal case i.e. FIR under Sections 420, 120-B IPC was lodged against the defendant. The suit for specific performance was filed on 19.04.2008.

The defendant opposed the suit and relied contents of the FIR whereby plaintiff had demanded back sum of ₹2 lakhs. In such circumstances, it was averred that readiness and willingness had ceased to exist. Plaintiff did not appear before the office of Sub Registrar but the defendant did. Both the parties examined witnesses in support of their respective stand.

The trial Court noticing the fact that the appellant-plaintiff has not been ready and willing, dismissed the suit. The appeal taken before the lower Appellate Court by the plaintiff was also dismissed.

Mr. Lohan, learned counsel appearing on behalf of the appellant submitted that there is gross illegality and perversity, much less, misreading of the pleadings and documentary evidence as contents of the written statement were not read in the correct perspective. The Courts below have failed to notice that contents of the agreement to sell, much less, readiness and willingness has been proved to the hilt, as the presence before the Sub Registrar was proved. The agreement could not have been said to be unenforceable. The defendant had also not disclosed the factum of the mortgage and in that regard, plaintiff was forced to lodge appropriate criminal proceedings.

I am afraid the aforementioned argument of Mr. Lohan is not sustainable, as the contents of the FIR revealed that the plaintiff demanded return of money. In such circumstances, readiness and willingness cannot be said to be subsisting. It is settled law that it has to be continuous from the date of execution of the agreement to sell,

during all the period till the suit is filed, much less, during the pendency of the suit. The aforementioned view of mine is derived from the ratio decidendi culled out by the Hon'ble Supreme Court in **B. Vijaya Bharathi Vs. P. Savitri and others 2017 (4) CCC 291 SC.** Ex.D5, FIR has been proved on record wherein following recital was made:-

“That the complainant submitted an application before the SHO P.S. Sadar Jind against the accused on 8.8.2006 but the accused in presence of witnesses have flatly refused to return the amount of ₹ 2,00,000/- obtained by her by playing fraud upon the complainant and the police also has not taken any action against the accused, hence the present complaint.”

All these facts weighed in the mind of the Courts below to decline the discretionary relief. I do not subscribe to the arguments raised by Mr. Lohan to form an opinion different than the one already arrived at, 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 02, 2018

Pankaj*

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No