

RSA-414-2016 (O&M)

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

RSA-414-2016 (O&M)

Date of decision : 04.12.2018

Satish Kumar Passi @ Mehnga Ram

... Appellant

Versus

Mohinder Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.S. Dhami, Advocate
for the appellant.

AMIT RAWAL, J.

The appellant-plaintiff has not been successful in claiming discretionary relief in respect of agreement to sell dated 09.01.2001 with regard to the shop, in question, agreed to be sold for a total sale consideration of ₹2,50,000/- against the payment of ₹2 Lacs as earnest money. The stipulated date for registration and execution of the sale deed was earlier fixed as 09.07.2002, which as per the averments was mutually extended upto 09.11.2003. The plaintiff alleged the readiness and willingness and filed the suit claiming discretionary relief on 08.12.2006.

The defendants though admitted the agreement to sell, but averred that the plaintiff was not ready and willing to perform his part of the agreement to sell and the suit land vide sale deed dated 11.10.2005 had already been sold to defendant No.2. It was further asserted that the defendants had already sold the house vide sale deed dated 20.08.2002 to

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the plaintiff for adjustment of the loan, thus, intention of parties was not to sell the shop, in question, but executed as a security.

On the preponderance of evidence, the trial Court dismissed the suit. The appeal taken before the lower Appellate Court was also dismissed.

Learned counsel for the appellant-plaintiff submitted that non-examination of Jangi Lal Mahajan, the witness to the alleged agreement to sell, with regard to the execution of the sale deed dated 20.08.2002 of a house, was immaterial as no explanation has come forth on behalf of the defendants for not executing the part performance or disclosure of the sale of 2005, but the defendant had been putting off the matter on one pretext or other. In such circumstances, time was not essence of the agreement and when breach came into knowledge by virtue of the sale deed dated 11.10.2005, the suit was filed immediately in the year 2006. In such circumstances, the Courts below has committed illegality and perversity in not granting the discretionary relief.

I am afraid the aforementioned argument is not sustainable as the readiness and willing on the part of the plaintiff was conspicuously wanting. This view of mine is drawn from the *ratio decidendi* culled out by Hon'ble the Supreme Court in **"B. Vijaya Bharati V/s P. Savitri and others" 2017 (4) CCC 291 SC.**

No explanation has come forth as what appropriate steps the plaintiff had taken after 09.11.2003, even the sale deed was executed on 11.10.2005. The plaintiff did not deny the purchase of a house vide sale deed dated 20.08.2002, sold by the defendant No.1, thus, the story of defendants with regard to discharge of loan liability has been proved and in

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such circumstances, it has rightly been held that the parties had not intended to enter into an agreement to sell.

In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

04.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**