

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-5898-2015 (O&M)

Date of decision: 25.05.2018

Mahendra Pal (since deceased) through LRs

.....Appellant

versus

Deepak Gupta and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Anupam Gupta, Senior Advocate with
Mr.Bhavnik Mehta, Advocate for the appellant
Mr.M.L.Sarin, Senior Advocate with
Ms.Himani Sarin, Advocate for the respondents

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

The present Regular Second Appeal is directed against the judgment dated 20.8.2015, passed by learned Additional District Judge, Chandigarh, affirming the judgment and decree dated 3.6.2009 passed by learned Civil Judge (Junior Division), Chandigarh, vide which, suit filed by the plaintiff –respondent for specific performance was decreed with costs directing the plaintiff to pay the remaining part of the consideration amount to the defendants and thereafter defendants were directed to execute the sale deed regarding House NO.252, Sector 16-A, Chandigarh in favour of the plaintiff within two months from the date of the passing of the judgment.

The controversy involved in the present suit is that the plaintiff is a Non Resident Indian and presently settled in Singapore. On the mediation of one Shri J.D.Gupta of M/s Gupta Associates, plaintiff through

his brother and general attorney, namely, Shri Manoj Gupta, entered into an agreement dated 11.6.2002 to purchase House No.252, Sector 16-A, Chandigarh belonging to the defendant. Rs.30 lakhs were paid as earnest money, vide demand draft No.40202 dated 28.5.2002 for a sum of Rs.29 lakhs drawn on State Bank of India, Singapore payable at Chandigarh and Rs.one lakh were paid through Cheque No.169555 dated 28.5.2002 drawn on HDFC Bank, Panchkula. Defendant executed a receipt dated 11.6.2002 in this regard. It was agreed that the sale deed of the house will be executed in two parts. Sale deed of half portion will be executed on or before 30.8.2002 and actual vacant possession of first floor consisting of two bedrooms, two attached bathrooms along with separate garage, two servant quarters with common bathrooms, toilet on the ground floor, will be handed over to the plaintiff on the payment of Rs.1.08 crore. Earnest money of Rs.30 lakhs will be adjusted at the time of second sale deed, which was to be executed on 30.9.2002. With the mutual consent, the date of first sale deed was extended upto 30.9.2002 and the second sale deed was extended upto 30.10.2002. Plaintiff had got No Objection Certificate valid upto 30.9.2002, which he was to get extended. Plaintiff, through his brother and general power of attorney was ready and willing for execution of the first sale deed. He even prepared three Pay Orders for a total sum of Rs.1.08 crore. He also purchased stamp papers worth Rs.6,48,000/- before 30.9.2002 and he was having enough funds to pay for the registration charges. Plaintiff on 30.9.2002 and 30.10.2002 remained present in the office of Sub-Registrar, Chandigarh and got his presence marked, but the defendant did not turn up to execute the sale deed. In terms of the agreement, defendant was liable to pay a penalty of Rs.60 lakhs or plaintiff

could enforce the agreement. Since, the defendant did not execute the sale deed, therefore, suit was filed on 26.11.2002 i.e. Within 25 days of last date for execution of sale deed.

In the written statement, defendant took the plea that from the correspondence between the parties, it is clear that the plaintiff was never ready and willing to perform his part of the contract. Agreement was admitted. It was denied that Rs.30 lakhs were paid as earnest money. The extended dates of sale deeds in two parts i.e. on 30.9.2002 and 30.10.2002 were admitted. It was stated that NOC was prepared from the Estate Office on 19.8.2002 and was valid upto 30.9.2003. Defendant held a meeting with the attorney of the plaintiff on 29.9.2002 to get first sale deed executed. But the plaintiff was not ready and willing to perform his part of the contract. Before the date of execution of the second sale deed, defendant applied to the Estate Office for extension of the NOC on 30.9.2002, reply to which is still awaited.

From the pleadings, following issues were framed:-

- 1. Whether the plaintiff has remained ready and willing to perform his part of an agreement to sell dated 11.6.2002 executed between him and defendant for the sale of suit property and defendant has made breach of the said agreement? OPP*
- 2. If issue no.1 is proved, whether the plaintiff is entitled for a decree of specific performance with possession? OPP*
- 3. Whether the earnest money paid by the plaintiff is liable to be forfeited on account of breach of agreement by the plaintiff? OPD*

Trial Court took the view that the plaintiff was ready and willing to perform his part of the contract and in fact defendant was not ready and willing to perform his part of the contract. Hence, the suit was decreed. Findings were affirmed in appeal.

I have heard learned counsel for the parties and have also carefully gone through the record.

The main emphasis on behalf of the appellant is that the plaintiff-respondent was not ready and willing to perform his part of the contract and that it was on account of the fault of the plaintiff-respondent that the sale deed could not be executed. A comprehensive reference has been made to the correspondence between the parties before the execution of the sale deeds on 30.9.2002 and 30.10.2002.

Learned counsel for the appellant has referred to the letter dated 29.10.2002 (Ex.P8) from the plaintiff addressed to the defendant, wherein the plaintiff talks about the preparing of the two drafts and had blamed the defendant that he was unable to deliver the possession of the first half portion. Defendant was further informed that the plaintiff had remained present in the office of the Sub Registrar. Defendant was blamed for extending the excuses to avoid the bargain. Further reference has been made to the letter dated 24.9.2002 (Ex.P12) addressed by the defendant to the plaintiff, wherein the plaintiff was blamed that Manoj Gupta GPA was not having sufficient funds with him. Further reference is made to the letter dated 27.9.2002 (Ex.P13) addressed by Manoj Gupta GPA of the plaintiff to the defendant. Reference is also made to letter dated 29.9.2002 (Ex.P14) in which defendant expressed his willingness to perform his part of the agreement.

Admittedly, in this case the first sale deed was to be executed on 30.9.2002 and the second sale deed was to be executed on 30.10.2002. There is overwhelming evidence on the file to show that the plaintiff was ready and willing to perform his part of the contract. He had sufficient funds and in fact, it was the defendant who was trying to delay the matter on one or the other pretext. The total sale price was Rs.2.16 crore, Rs.30 lakhs was paid as earnest money, Rs.1.08 crore was to be paid on 30.9.2002. Plaintiff has produced demand drafts Ex.P4, Ex.P5 and Ex.P6 for Rs.28 lakhs, Rs.80 lakhs and Rs.78 lakhs, respectively. First two drafts are dated 28.9.2002 and third draft is dated 29.10.2002. First two drafts show that the two drafts of Rs.1.08 crore were ready before 30.9.2002. Not only this, plaintiff purchased the stamp papers to the tune of Rs.6,48,000/- and prepared the draft of sale deeds. If the plaintiff was not ready and willing, he would not prepare the demand drafts and purchased stamp papers. Plaintiff also got his presence marked before the Sub-Registrar on 30.9.2002 and 30.10.2002, whereas there is nothing on file to show that the defendant appeared before the Sub Registrar to execute the sale deed and deliver the possession of the first floor. Ultimately, the plaintiff had to get those demand drafts cancelled. Plaintiff had the sufficient funds and financial capacity and in fact money was ready with him on both dates i.e. on 30.9.2002 and 30.10.2002. Attorney of the plaintiff appeared before the Sub Registrar. The No Objection Certificate of the plaintiff was valid upto 30.9.2002 and even then he did not execute the first sale deed. Extension of said No Objection Certificate was applied for but never came through.

The Civil Suit was promptly filed within less than one month i.e. on 26.11.2002, which also shows the ready and willingness of the

plaintiff. During proceedings, defendant nowhere made a statement or took the stand that he was ready and willing and plaintiff may be directed to go to the office of the Sub Registrar and get the sale deed executed. In fact, he moved an application seeking three month's time and sought to change terms and conditions of the agreement.

Plea of learned counsel for the appellant is that the sale deed was to be executed in two parts, whereas the plaintiff was insisting on execution of one sale deed.

I am of the view that on the due date, only one sale deed of half portion was to be executed on 30.9.2002 and sale deed of second portion was to be executed on 30.10.2002. After the expiry of last date, the plaintiff was entitled to get the sale deed executed regarding the entire house.

Learned counsel for the appellant has further argued that defendant was to purchase a house with the funds from the sale of the first portion. Therefore, he was to execute the sale deed in parts. This was not part of the terms and conditions of the agreement.

From the letters, referred to by learned counsel for the appellant, it is clear that defendant-appellant was living at two different addresses. One is House No.100, Sector 23, Chandigarh and the other was House No.252, Sector 16-A, Chandigarh. Both the Courts below have recorded the findings of facts to the effect that the defendant was not ready and willing to perform his part of the contract. Under Section 41 of the Punjab Courts Act, 1918, read with Section 100 of Code of Civil Procedure 1908, this Court can interfere only when a question of law is involved. In the present case, no question of law is involved. Moreover, this Court has examined the entire evidence and find itself in agreement with the

conclusions on facts drawn by both the Courts below.

It being so, there is no illegality or infirmity in the findings recorded by both the Courts below. Accordingly, the present Regular Second Appeal is found to be without force and same is hereby dismissed with costs.

In view of the decision, the plaintiff is directed to deposit the balance sale consideration within one month from today before the trial Court, if not already deposited, and get the sale deed executed through process of Court thereafter.

25.05.2018
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	No