

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

RSA No.999 of 2016 (O&M)

Date of decision:26.11.2018

Om Parkash

... Appellant

Vs.

Kuldeep Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Gaurav Rana, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.2739-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 20 days in re-filing the appeal is condoned.

C.M. stands allowed.

RSA No.999 of 2016 (O&M)

The appellant-plaintiff has not been successful in claiming the discretionary relief in respect of agreement to sell dated 18.05.1996 *vis-a-vis* land measuring 46 square yards alongwith permanent injunction on the premise that defendants had agreed to sell the land for a total sale consideration of ₹72,000/- and possession thereof, was also handed over. The stipulated date for execution and registration of the sale deed was 30.07.1996 but defendant no.1 had received the amount of ₹22,200/- on

20.07.1996, ₹10,000/- on 21.09.1996, ₹10,000/- on 19.10.1996, ₹10,000/- on 17.12.1996 and ₹10,000/- in the month of August 1999 from the plaintiff, therefore, the time was not essence of the agreement. When defendant refused to honour the commitment, suit was filed on 20.05.2002. Defendants no.2 and 3, were arrayed as parties, for, defendant no.1 misrepresented the plaintiff that he was an agreement holder from defendant no.2, and defendant no.2 from defendant no.3.

Defendant no.1 opposed the suit by stating that it was a loan transaction and denied the intention of the parties to part with the suit land by branding it to be an agreement to sell.

The plaintiff examined three witnesses, whereas, the defendant did not step into witness box. PW1-Susheel Kumar, attesting witness of the agreement to sell, according to argument of Mr. Rana, proved the same, much less consideration but despite that the Courts below denied the discretionary relief. The factum of defendant having become the owner as per the sale deed dated 24.02.1996 (Ex.PX) was also established on record .

I am afraid the aforementioned argument is not sustainable, for, payment of amount on various dates had not been proved on record, and therefore, the argument of Mr. Rana, time being not essence of agreement is wholly devoid of merit. The continuous act of readiness and willingness has to be proved on record which is essential requirement of law for granting the discretionary relief. The aforementioned view of mine is derived from the ratio decidendi culled out in **B.Vijaya Bharati Vs. P. Savitri and**

others 2017(4) CCC 291 SC.

During the course of hearing, Mr.Rana informed that defendant has also filed the suit for possession.

Be that as it may, the plaintiff has to discharge the onus and cannot rely upon the weak wicket of defendant.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 26, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No