

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

RSA No.4687 of 2014 (O&M)

Date of Order: 10.12.2018

Gurbachan Singh

....Appellant

Versus

Dharam Dev

....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gurmohan Singh Bedi, Advocate for the appellant.

Mr. Nandan Jindal, Advocate for the respondent.

ANIL KSHETARPAL, J (ORAL)

Plaintiff-appellant is in the regular second appeal against the concurrent findings of facts arrived at by both the courts below while granting alternative relief for refund of earnest money in place of decree for possession by way of specific performance of agreement to sell dated 20.2.2004. Both the courts below have exercised discretion after noticing following facts:

- i) There is no evidence that the plaintiff attended the office of the Sub Registrar on the target date fixed in the agreement to sell dated 20.2.2004.*
- ii) There is no explanation why the suit was filed after a gap of one year and four months from the target date.*

Learned counsel for the appellant submitted that the defendant had denied execution of the agreement to sell and therefore, the plaintiff was not required to prove his readiness and willingness.

This Court has considered the submissions. Arguments of learned counsel is against Section 16 of the Specific Relief Act, 1963 (for short “the Act”), which requires the plaintiff to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract, which are required to be performed by him. Section 16 of the Act is extracted as under:

“ 16. **Personal bars to relief.**—Specific performance of a contract cannot be enforced in favour of a person—

(a) who would not be entitled to recover compensation for its breach; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c),—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

In view of the specific statutory provision before decreeing a suit for specific performance of agreement to sell, the Court is required to record a finding that the plaintiff was always ready and willing to perform his part of the contract. Still further, in the present case the denial of the

defendant is not absolute. The defendant has stated that he was in need of money and contacted Gurnam Singh son of Kapoor Singh, brother-in-law of the plaintiff from whom he borrowed a sum of Rs.50,000/- and his signatures were obtained on blank non-judicial stamp papers worth Rs.300/- on which agreement to sell had been got typed later on.

In such circumstances, the plaintiff cannot claim that there was total denial of execution of the agreement to sell.

In view of aforesaid, no infirmity could be found with the well reasoned judgments of both the courts below warranting any interference by this court.

Dismissed.

December 10, 2018
manoj

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No