

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

RSA No.1515 of 2018 (O&M)
Date of Decision: 23.05.2018

Parminder Singh Grewal

---Appellant

Versus

Darbara Singh through his LRs

---Respondent

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. Ishan Gupta, Advocate
for the appellant.

HARINDER SINGH SIDHU, J.

The plaintiff has filed this regular second appeal against the judgments of the Courts below whereby his suit for possession by way of specific performance to agreement to sell dated 29.12.2005 has been dismissed.

The present appeal has been filed with a delay of 557 days. An application under Section 5 for condoning the delay has been filed. In the application, it has been stated that the plaintiff-appellant had executed a Power of Attorney in favour of Mohinder Pal, who had been contesting the entire litigation qua the suit property. He had also appeared as the plaintiff's witness before the Ld. Trial Court in his capacity as such attorney. It is stated that after the dismissal of the appeal by the Ld. Lower Appellate Court, the plaintiff handed over the relevant documents as well as the amount required to engage counsel and for other necessary expenses so that the Regular Second Appeal could be filed. Mohinder Pal conveyed to the

plaintiff that he already engaged counsel to file the RSA. Thereafter Mohinder Pal was taken into custody in case FIR No.86 dated 13.10.2016 registered against him at Police Station Khanauri, District Sangrur for offences under Section 22 of NDPS Act. When the plaintiff contacted Mohinder Pal in custody to know about the status of the case, he learnt that no appeal had been filed. Thereafter, the applicant obtained certified copy of the judgment on 25.09.2017 and came to Chandigarh to engage counsel. The appeal was filed on 23.10.2017 after a delay of 467 days. However, due to inadvertent mistake the Power of Attorney remained unsigned and there was a further delay of 90 days making a total of 557 days.

The explanation for the delay does not inspire confidence. If the plaintiff-appellant had instructed his Attorney to file the appeal he ought to have confirmed with his attorney that the appeal had been filed within time. The justification based on the arrest of his Attorney in case FIR No.86 dated 13.10.2016 also cannot be accepted as satisfactory. The judgment of Ld. Lower Appellate Court is dated 02.04.2016. The FIR was registered about 6 months and 10 days thereafter. The limitation for filing the appeal thus had already expired before the registration of the FIR. It has not been mentioned as to when Mohinder Pal was arrested in the said case. At any rate, it was for the plaintiff to have taken care to ensure that the appeal was filed within time. He appears to have adopted a very casual approach in filing the appeal. There is no justification to condone the delay of 557 days in filing the appeal. Hence, the application is dismissed.

Notwithstanding the same, even on merits the appellant does not succeed.

The case of the plaintiff was that the defendant was the owner in possession of land measuring 8 Bighas, 2 Biswas Pukhta i.e. 24 Bighas, 6 Biswas Kham being $\frac{1}{3}^{\text{rd}}$ share of land measuring 24 Bighas, 6 Biswas Pukhta situated in the Revenue Estate of Village Bhindran, Tehsil and District Sangrur. He executed an agreement to sell dated 29.12.2005 whereby he agreed to sell the land in favour of the plaintiff @ Rs.2,00,000/- per Bigha Kham along with electric motor connection of 7.5 BHP, Motor Kotha and all other rights. Earnest money of Rs.5,00,000/- was received by the defendant. The agreement was scribed by Parveen Kumar Garg, Advocate at the instance of the defendant in the presence of witnesses Sandeep Kumar and Prem Singh and Darshan Singh and Harjit Singh sons of the defendant. The defendant appended his thumb impression on the agreement in the presence of witnesses. It was agreed that the plaintiff would make a further payment of Rs.5,00,000/- to the defendant on or before 05.05.2006. The sale deed was to be executed on or before 30.11.2006 after receiving the balance sale consideration and adjusting Rs.10,00,000/- already received in two installments. It was agreed that if the defendant failed to get the sale deed executed, the plaintiff would be at liberty to get it executed through Court. In case the plaintiff failed to get the sale deed executed on 30.11.2006, the earnest money would be forfeited.

It was the case of the plaintiff that as per the agreement the plaintiff offered a sum of Rs.5,00,000/- to the defendant on 5.05.2006 but the defendant did not receive the same. The plaintiff served a legal notice dated 06.05.2006 through his counsel but the defendant again refused to receive the amount of Rs.5,00,000/-. Instead he sent a reply stating that the

agreement to sell has been revoked. The plaintiff even requested the defendant many times thereafter to get the sale deed executed after receiving the balance sale consideration but the defendant kept putting off the matter on one pretext or the other.

On 30.11.2006, the plaintiff obtained a copy of the Jamabandi from the Halqa Patwari and came to know that there was a stay order of a Civil Court restraining the defendant from alienating the land in dispute. The plaintiff requested the defendant to get the stay order vacated but to no avail. Hence, the suit.

The case of the defendant was that the plaintiff was not the real and genuine purchaser. He was a property dealer. After entering into the agreement to sell with the defendant, the plaintiff entered into agreement to sell dated 21.01.2006 with Baljinder Singh for sale of the suit land @ Rs.2,40,000/- per Bigha Kham. Baljinder Singh filed a suit for permanent injunction against the plaintiff, the defendant and his brothers for restraining them from transferring the suit land to any other person except Baljinder Singh.

It was further pleaded that the plaintiff had defaulted in making the additional payment of Rs.5,00,000/- to the defendant, which as per the agreement to sell dated 29.12.2005 was to be paid on 05.05.2006. This was an essential condition of the agreement. The defendant got served a notice upon the plaintiff to pay the agreed amount of Rs.5,00,000/- to the defendant but the plaintiff failed to do so. Therefore, the agreement was cancelled and the earnest money forfeited.

In order to prove his case, the plaintiff examined Harbhajan

Singh as PW-1, Mohinder Pal his attorney as PW-2, Prem Singh attesting witness as PW-3. The defendant examined Jaswinder Singh as DW-1 and Darshan Singh as DW-2.

The learned Trial Court on the basis of evidence on record concluded that the plaintiff had failed to prove that he was ready and willing to perform his part of contract. The Court noted that the plaintiff did not step into the witness box. He only examined his attorney Mohinder Pal as PW-1, who reiterated all the facts mentioned in the plaint. Relying on various decisions of the Hon'ble Supreme Court and this Court in ***Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd. and others, 2005 (2) Civil Court Cases 324 (S.C.); Man Kaur (Dead) by Lrs Vs. Hartar Singh Sangha 2010 (4) Civil Court Cases 792 (S.C.)*** and ***Sukhraj Singh Vs. Harbans Kaur and another Vol. CLXVII 2012 PLR 690***, Ld. Trial Court held that it was only the plaintiff who could depose regarding his readiness and willingness to perform his contract.

It was further noted that in the Civil Suit filed by Baljinder Singh, the plaintiff has been impleaded as defendant No.4. He filed his written statement in that suit stating that Darbara Singh (defendant in the present suit) had been restrained from alienating the land vide order dated 13.03.2006 and hence, his appearance before the Sub Registrar was of no relevance as the owner of the land Darbara Singh could not execute the sale deed due to the stay order. But in this case, the plaintiff took the plea that he was always ready and willing to perform his part of the contract. In particular, in para 7 of the plaint he had stated that he was ready with the balance sale consideration and other charges for registration on 30.11.2006

in the office of Sub Registrar. The Ld. Court concluded that the plaintiff had taken contradictory pleas. Thus, his case regarding his readiness and willingness to perform the contract was falsified.

The Court noted that it had been admitted in the cross-examination of PW2 that earlier the plaintiff was not ready and willing to get the sale deed executed but now he was ready for the same. PW2 also admitted that the plaintiff had already sold the suit land to Baljinder Singh on the basis of agreement to sell (Ex. P-1) and that he had taken Rs.7,00,000/- from Baljinder Singh as part payment. These facts also belie the claim of the plaintiff that he was ready and willing to get the sale deed executed in his favour. Moreover, merely proving the notice dated 06.05.2006 to the defendant stating that he was ready to pay Rs.5,00,000/- as stipulated in the agreement does not prove that he was actually ready with Rs.5,00,000/- or that he had offered this amount to the defendant and the defendant had refused to accept the same.

For all these reasons, the Ld. Court concluded that the plaintiff had failed to establish that he was ready and willing to perform his part of contract. Accordingly, the suit was dismissed.

The Ld. Lower Appellate Court affirmed the findings of learned Trial Court.

The plaintiff filed an application under Order 41 Rule 27 CPC to permit him to appear as his witness. The application was dismissed by Ld. Additional District Judge vide a separate order. That order is not on record in the present appeal.

Findings of fact have been recorded by the courts below.

Learned counsel for the appellant has not been able to establish as to how these findings are perverse or against the record.

No question of law arises for decision in this appeal.

Dismissed.

April 25, 2018

(**HARINDER SINGH SIDHU**)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No