

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2474 of 2018 (O&M)

Date of Decision: May 21, 2018

Om Parkash Kalia (since deceased) through L.Rs

...Appellants

Versus

Sushil Bansal

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Aashish Chopra, Advocate &
Mr.Prateek Sodhi, Advocate,
for the appellant.

AMIT RAWAL, J.

Appellant-defendant is in Regular Second Appeal against the concurrent findings of fact and law, whereby the suit instituted by the respondent-plaintiff seeking possession by way of specific performance of the agreement to sell dated 15.10.2005 in respect of sale of part of House No.117, The Mall Road, Amritsar measuring 445 sq.yards, has been decreed by the trial Court and affirmed by the Lower Appellate Court in appeal.

The aforementioned suit was filed by the respondent-plaintiff on the premise that the defendants had entered into an agreement to sell the aforementioned property for a total sale consideration of ₹2,66,47,000/- against the payment of earnest money of ₹27,00,000/-. The stipulated date for registration and execution of the sale deed was fixed as 30.6.2006. As per the pleadings, the plaintiff remained ready and present in the office of Sub Registrar to perform his part of the contract, but the defendants failed to turn up and thereafter served a legal notice dated 1.7.2006 calling upon

the defendants to execute the sale deed on 7.7.2006. Plaintiff received a telegram from the defendants informing him to get the sale deed executed and send sufficient amount for purchase of the stamp papers. Accordingly, ₹24,00,000/- for purchase of stamp papers was paid vide Pay Order No.001414 drawn on IndusInd Bank, Platinum Plaza, 39, Mall Road, Amritsar in favour of the defendants and along with the same, notice dated 3.7.2006 was also sent. The plaintiff remained present in the office of Sub Registrar on 7.7.2006.

The aforementioned suit was contested by the defendants by admitting agreement to sell, but denied the readiness and willingness. It was alleged that the defendants had been ready and willing to perform their part of the agreement as they appeared before the Sub Registrar on 30.6.2006, but the plaintiff put up the matter because he did not have the requisite amount to purchase the property as the balance sale consideration which was required to be paid was almost ₹2.40 crores odd amount. The Bank statement was a manipulated document. The plaintiff could not fix the date as per his own suitability and, thus, 7.7.2006 was never agreed to be stipulated date between the parties for execution and registration of the sale deed.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiff has always remain ready and willing and is still ready and willing to perform his part of the contract? OPP*
- 2. Whether the plaintiff is entitled to the possession by way of specific performance of the contract? OPP*
- 3. Whether the plaintiff is entitled to the permanent injunction as prayed for? OPP*

4. *Whether the suit is not maintainable? OPD*
5. *Whether the plaintiff has no locus standi to file the suit? OPD*
6. *Whether the plaintiff is estopped by his own act and conduct from filing the suit? OPD*
7. *Whether the suit is bad for non joinder of necessary parties? OPD*
8. *Whether the plaintiff has concealed the material facts from this court. If so its effect? OPD*
9. *Relief.*

Respondent-plaintiff examined as many as five witnesses, whereas the appellant-defendants examined two witnesses and closed the evidence.

On the basis of the evidence brought on record, the trial Court negated the plea of the appellant-defendants with regard to the closure of the bank account in the year 2009 where respondent-plaintiff had the balance of ₹2.5 crores and decreed the suit. The appeal laid before the Lower Appellate Court also met with the same fate.

Mr.Aashish Chopra, Advocate along with Mr.Prateek Sodhi, learned counsel representing the appellant-defendants, in support of the memorandum of appeal, has raised the following submissions:-

- a) No explanation has come on record on behalf of the respondent- plaintiff of sending the pay order on 1.7.2006 when the stipulated date was 30.6.2006;
- b) Closing of the bank account in the year 2009 itself is a clincher that the respondent-plaintiff was not ready and willing throughout, for, it is the essential requirement of law that the readiness and willingness has to be throughout from the date of execution of the agreement to sell, during its subsistence, till

filing of the suit, during the pendency of the suit and passing of the decree. The defendants had never agreed to get the sale deed executed on 7.7.2006, therefore, there was no occasion for the plaintiff to call upon the defendants to appear before the office of Sub Registrar. If at all, the plaintiff had sufficient amount, he could have purchased the stamp papers by preparing the pay order on 30.6.2006 and not on 1.7.2006;

c) Telegram dated 30.6.2006 was sent at 3.15 PM calling upon the respondent-plaintiff to send the money for the purchase of the stamp papers for execution of the sale deed. The alleged notice was never received by the appellant-defendants. The conduct of the plaintiff proved to the hilt that he did not have the sufficient balance for performance of his part of the agreement for the purpose of execution and registration of the sale deed;

d) The Courts below ought to have appreciated the aforementioned fact instead erroneously granted the relief as per Section 20 of the Specific Relief Act. Great hardship has been caused as it is the only house of the appellant-defendants and, thus, urged this Court for setting-aside the findings under challenge.

I have heard the learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Chopra for the following reasons:-

i) It would be apt to reproduce the contents of the telegram, which read as under:-

To

Sushil Bansal

R/o Maqbool Road

Amritsar.

Several times told you to get the sale deed executed from us ready for the registration of the sale deed of the Kothi No.Min 117 at mall road, Amritsar. Send us money for the purchase of stamp paper of the sale deed. Otherwise your earnest money shall be forfeited.

From:

Om Parkash Kalia

Vijay, Rajesh and

Rakesh Kalia,

117, Mall Road, Amritsar.”

ii) There was no occasion for the appellant-defendant to send the telegram on 30.6.2006, for, it has come in the evidence of the plaintiff that the relations between the parties were very cordial. They had a trust with each other and both of them were honouring their commitment/obligations as per the terms and conditions of the agreement to sell, for, the pay order was sent to the defendants on 1.7.2006, but the same was not honoured and plaintiff has no other choice but to cancel it on 8.7.2006 as 7.7.2006 was the date fixed for execution and registration of the sale deed;

iii) The appellant-defendant has also attempted to prove on record the readiness and willingness of having marked his presence before the Sub Registrar. Great emphasis laid on the affidavit Ex.DJ. It is unusual that on one side the defendants were marking their presence and on the same breath, writing letter to the plaintiff for sending the money for the purchase of

the stamp papers, particularly when they had cordial relations.

All these factors leave to an irresistible conclusion that readiness and willingness on the part of the respondent-plaintiff was not wanting;

iv) Conduct of the parties was focussed on the execution and registration of the sale deed. It is not necessary for the purchaser to prove the liquid cash in hand for declining the discretionary relief. The aforementioned view of mine is derived from the ratio decidendi culled out by the Hon'ble Supreme Court in **Azhar Sultana Versus B.Rajamani & Ors., 2009 (17) SCC 27;**

v) No explanation has come forth on behalf of the defendants of not approaching the Registrar on 7.7.2006 as requested in the legal notice which was sent by registered post. Non receipt of the registered legal notice cannot be controverted, for, it carries a presumption of service as per the provisions of Section 27 of the General Clauses Act;

vi) Closing of the bank account in the year 2009 when the suit was filed on 12.9.2006 cannot be said to be fatal. It has come on record that the said amount was deposited in the FDR. A person cannot be prevented from taking the financial decision in the manner and mode as projected;

vii) Respondent-plaintiff has proved his readiness and willingness by marking his presence through PW3/D and PW3/7, i.e., the application and the affidavit;

viii) The argument of Mr.Chopra is not able to bring the case

within the realm of perversity wanting interference in the well
reasoned findings of fact and law.

For the reasons stated above, no ground for interference is
made out, much less any substantial question of law. Resultantly, the appeal
is dismissed.

May 21, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No