

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

**RSA-3209-2017 (O&M)
Date of Decision: 25.07.2018**

Ashok Kumar Jain & another

... Appellants

Versus

Vishal Bansal & another

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Ravi K. Mattoo, Advocate for the appellants.

...

TEJINDER SINGH DHINDSA, J. (ORAL)

Plaintiffs filed a suit for recovery of Rs.23,98,000/- (inclusive of interest). Trial Court dismissed the suit on 25.08.2012. A civil appeal preferred by the plaintiffs/appellants has met the same fate vide judgment dated 30.09.2016 passed by the learned Additional District Judge, Sangrur.

2. Having remained unsuccessful in both the Courts below, plaintiffs/appellants are in second appeal before this Court.

3. Briefly noticed, the case set up on behalf of the appellants was that defendant No.2, namely, Nachhattar Singh was the owner of land measuring 30 bighas and 6 biswas as per details furnished in the plaint situated in the revenue estate of Village Ghanauri Kalan, Tehsil Dhuri and who had entered into an agreement to sell dated 19.01.2006 with defendant No.1, Vishal Bansal at the rate of Rs.2,15,000/- per bigha. Sale deed was to be executed by defendant No.2 in favour of defendant No.1 or any other person of the choice of defendant No.1 on or before 31.10.2006. It was further averred that in pursuance to the plaintiffs' agreement, defendant No.1

entered into an agreement to sell qua the suit property with the plaintiffs on 09.02.2006 at the rate of Rs.2,56,000/- per bigha and a sum of Rs.13 lakh towards earnest money was entrusted. Sale deed was to be executed on or before 25.10.2006. As per agreement, if defendant No.1 failed to execute the sale deed by the stipulated date, the plaintiffs i.e. vendees were at liberty to recover double the amount or to get the sale deed registered through Court of law by depositing the remaining sale consideration. Plaintiffs' case was that as per agreement, defendant No.1 was to obtain a 5 BHP electric motor connection prior to execution of the sale deed and failing which, the vendees had a right to deduct Rs.5 lakhs out of the remaining sale consideration. As per plaintiffs, a further sum of Rs.4 lakhs had been given to defendant No.1 on 25.06.2006 and an endorsement to that effect was made on the backside of the original agreement to sell dated 09.02.2006. As such, a total amount of Rs.17 lakhs had been entrusted by the plaintiffs/ appellants to defendant No.2. Precise case set up by the plaintiffs/appellants was that it was a holiday on the target date for registration of the sale deed i.e. on 25.10.2006 and accordingly, on the following date i.e. on 26.10.2006, they came present in the office of the Sub Registrar, Sherpur along with the balance sale consideration but defendant No.1 did not come present. Even the electric motor connection had not been obtained. Plaintiff/appellants became aware that suit property had been sold to a 3rd party and accordingly, a suit for recovery of Rs.17 lakhs along with interest had been instituted i.e. for grant of alternate relief instead of specific performance of the agreement to sell.

4. Upon notice, defendant No.1 contested the suit and filed the written statement. Stand taken on behalf of defendant No.1 is that it is the plaintiffs themselves, who are the defaulting party as they could not arrange

the balance sale consideration and inspite of repeated notices/telegrams having been sent, the plaintiffs failed to get the sale deed executed and accordingly, the earnest money stood forfeited. Insofar as the electric motor connection is concerned, stand taken was that even as per agreement, the plaintiffs were entitled to deduct an amount of Rs.5 lakhs from the balance sale consideration. Defendant No.1 denied the factum of having not remained present in the office of Sub Registrar, Sherpur and rather adduced evidence on record in the shape of affidavit attested by the Executive Magistrate, Sherpur and entered at Serial No.508 dated 26.10.2006 in token of their presence on the date in question for performing their part of the contract.

5. The Courts below have primarily non-suited the plaintiffs on the ground that they were not ready and willing to perform their part of the contract as at the relevant point of time and as such, are not entitled to the decree for recovery of the amount in question.

6. Learned counsel representing the plaintiffs/appellants would contend that the factual aspect as regards agreement to sell dated 09.02.2006 having been entered into stands admitted. Even receiving of earnest money had been admitted by the defendants/respondents and under such circumstances, the plaintiffs/appellants were entitled to the alternate relief of recovery of earnest money along with interest.

7. Having heard counsel for the appellants at length, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

8. The readiness and willingness of a party to a contract has to be collated from the facts and attendant circumstances.

9. In the present case, concurrent view has been taken by the Courts below that as on the relevant date for execution of the sale deed i.e. 26.10.2006, plaintiffs/appellants did not have the balance sale consideration amount. Even though the plaintiffs had set up a case that they had collected a total sum of Rs.70 lakhs and brought along with them to the office of Sub Registrar on 26.10.2006, yet no document/evidence had come forth where from the Court could even remotely infer that they had collected such amount. It may be noticed that cross examination of the plaintiffs/appellants had been deferred to adduce the income tax returns as also the rent deeds of his brother from whom it was stated that an amount of Rs.15 lakhs had been taken from rental income. In spite of opportunity having been granted, no such document was placed on record. Rather an admission was made that income of the plaintiffs/ appellants was below the slab where income tax become leviable. Plaintiffs/appellants had not even adduced any evidence to indicate the other sources from where the balance sale consideration amount of Rs.70 lakhs had been collected. Even though, it may be correct that to demonstrate readiness and willingness, it would not be necessary for a vendee to furnish detailed sources and accounts towards each and every penny of the balance sale consideration amount but other attendant circumstances would also have to be taken into reckoning. In this regard, it may be noticed that even though the target date for execution of the sale deed was fixed as 25.10.2006, the suit had been instituted only on 28.08.2009 i.e. after a period of almost 2 years and 10 months. Even though, plaintiffs/appellants' claimed that the defendant/respondents had been called upon repeatedly to get the sale deed executed but no evidence had come forth to substantiate such contention. Per contra,

defendant/respondents had adduced evidence in the shape of registered legal notices sent to the plaintiffs/appellants immediately after 26.10.2006 calling upon him to make good the balance sale consideration and to get the sale deed executed.

10. In the totality of circumstances, this Court does not find any error in the concurrent finding recorded by the Courts below as regards the plaintiffs/appellants being not ready and willing to perform their part of the agreement. Under such circumstances, the defendant/respondents were well within their rights to have forfeited the earnest money.

11. For the reasons stated above, no interference in the matter is warranted. The appeal does not raise any question of law much less substantial question of law.

12. Appeal is dismissed.

13. Pending applications, if any, shall also stand disposed of.

25.07.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |