

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

RSA No. 3086 of 2018 (O&M)
Date of decision : May 17, 2018

Smt. Sarda and others

..... Appellants

v.

Ramesh Kumar

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. B.K Mehta, Advocate
for the appellants.

Ajay Tewari, J (Oral)

This appeal has been filed against the concurrent judgments of the Courts below whereby a suit filed by the appellants for specific performance was decreed in the alternative i.e for return of earnest money.

Brief facts are that the appellants had filed a suit claiming that they had entered into an agreement on 19.6.2006 with the respondent to purchase 544.44 sq. yards of land situated in village Mauja Pullanwal, Tehsil and District Ludhiana at the rate of ₹ 3800/- per sq. yard, and the sale deed was agreed to be executed on or before 27.7.2006. It was further averred that the appellants had approached the respondent various times but the respondent did not turn up to execute the sale deed and that is why the instant civil suit was filed. In the written statement, the respondent admitted the agreement to sell and the receipt of money but further pleaded that in fact the appellants were not ready and willing to purchase the property and

had never turned up with the balance sale consideration.

Both the Courts below found that the appellants did not appear before the registering Authority on the appointed date and noticed that even though it was not required to prove readiness and willingness yet it could not be held to be a non germane fact. It was further noticed that the appellants never even bothered to give a formal notice to the respondent informing him that they were ready and willing and calling upon the respondent to perform his part of the contract but satisfied themselves by filing the instant suit after two years.

Counsel for the appellants has vehemently argued that in the plaint the appellants had specifically pleaded that they went to the respondent even two days prior to the appointed date and this fact was not specifically denied in the written statement.

This fact has been considered by both the Courts below who have held that it was for the appellants to stand on their own legs and even if the respondent had been ex-parte it was incumbent upon them to have independently proved readiness and willingness which, as per the Courts below, could not be proved. I find myself in agreement with the findings arrived at by both the Courts below. It is correct that appearance before the Sub Registrar is not the only way to prove readiness and willingness but a person who appears before the Sub Registrar substantively proves that. Moreover, had the appellants been ready and willing, there was no reason why they could not have formally called upon the respondent to come and execute his part of the contract. These two omissions though did not completely erode the case of the appellants yet do justify the finding that in the circumstances of the case, discretion to award the return of earnest

money instead of decree for specific performance cannot be said to be exercised with perversity. Consequently, finding no merit this appeal is dismissed.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

May 17, 2018
'kk'

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No