

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

RSA No.402 of 2018 (O&M)

Date of Decision: February 28, 2018

Gauri Shankar

...Appellant

Versus

Harmesh Singh and another

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Shiv Kumar, Advocate for
the appellant.

HARINDER SINGH SIDHU, J.

This regular second appeal has been filed against the judgment and decree of the learned lower appellate court, whereby, the appellant has been directed to return a sum of Rs.3 lac along with interest @ 6% per annum to the plaintiff – respondents.

The respondents had filed a suit for possession by way of specific performance of agreement to sell with consequential relief of permanent injunction. The case set up in the plaint was that the defendant – appellant was allotted a flat by Housing Board, Faridabad bearing No.1220A, Ground Floor LIG, Sector-2, Housing Board Colony, Faridabad measuring 27.54 sq. meters vide higher-purchase tenancy agreement dated 19.10.2007. On 9.12.2009 the defendant entered into an oral agreement to sell with the plaintiff – respondents to sell the suit property. Initially on 9.12.2009, the plaintiffs paid a token money of Rs.1 lac as advance payment. The

As per the initial terms and conditions of the agreement it was agreed that the sale deed would be executed on or before 15.04.2010. It was presumed that the plaintiffs would obtain a loan from the Bank by then. However, the plaintiffs were not able to get a loan from the bank as the defendant could not sell the property till April, 2018, the period of full hire purchase tenancy agreement. On 2.1.2010, the oral agreement dated 9.12.2009 was reduced into writing by the plaintiffs and defendant in the presence of witnesses. The total sale consideration of the property was settled at Rs.12,99,000/-. 1.6.2010 was mutually agreed upon as the date for execution of the sale-deed. Before that date, the plaintiffs had paid earnest money of Rs.3,00,000/- on various dates and defendants had executed separate receipts dated 9.12.2009, 4.1.2010 and 3.5.2010 in the presence of witnesses. On 1.6.2010, the plaintiffs went to the office of the sub-Registrar, Ballabgarh along with balance sale consideration and stamp duty, but the defendant did not turn up for execution of the sale-deed. The plaintiffs waited till 5.00 pm and got their presence marked in the office of the sub-Registrar, Ballabgarh along with an affidavit, duly attested by the Executive Magistrate, Ballabgarh. On failure of the defendant – appellant to execute the sale-deed despite a legal notice dated 3.6.2010, the suit was instituted with the reliefs aforesaid.

The case of the defendant was that in the agreement to sell, no date of execution was written. The plaintiffs had retained the original copy of the agreement. The defendant was handed over a photocopy of the said agreement, in which the last date for execution of sale-deed was mentioned

the defendant reached the office of sub-Registrar, Ballabhgarh and waited for the plaintiffs, but they did not reach. The defendant got his presence marked before the office of sub-Registrar, Ballabhgarh. On 27.4.2010, the defendant was called to the Police Station, City Ballabhgarh, where plaintiff No.1 Harmesh along with some others and an Advocate were present. The Sub Inspector showed them the original agreement to sell, in which the date of execution and registration of sale-deed was blank. The defendant was told that the plaintiffs would fill another date for execution and registration of sale-deed and get executed the sale-deed in respect of the suit property. Plaintiff No.1 filled up the date for execution as 1.6.2010 in the original agreement to sell in his own hand-writing and handed over a photocopy thereof to the defendant with the date of execution as 1.6.2010. Plaintiff No.1 wrote out a compromise dated 27.4.2010 in his own handwriting and obtained signatures of the defendant on that compromise forcibly and under duress.

The learned Trial Court dismissed the suit holding that the plaintiffs had not been able to substantiate the basic requirement of readiness and willingness to perform the contract. The learned Trial Court held that as per the plaintiffs' own admission, on 15.4.2010, they did not have sufficient amount for executing the sale-deed as their loan had not been sanctioned. Accordingly, they were not present for execution of the sale-deed, whereas, defendant-appellant was present and also got his presence marked before the sub-Registrar, Ballabhgarh. Regarding the presence of the plaintiffs on 1.6.2010, the learned Court relied on the plaintiffs' own statement in cross-examination, wherein, he has admitted that on 1.6.2010,

he had met the defendant-appellant outside the compound of the Tehsil office and that he had not made any DD or cheque in favour of the defendant on 1.6.2010 and brought the cash memo in the Tehsil office for Registry. The Trial Court noted that as per the compromise deed Ex.D2, which was admitted both by the plaintiffs and the defendant, the initial date of execution and registration of the sale-deed was 15.4.2010, which was later on fixed as 1.6.2010. But as the plaintiffs had failed to prove their willingness to perform their part of the contract on 15.4.2010, the learned Court held that the basic requirement of being ready and willing to perform their part of contract with the required amount had not been fulfilled by them. Accordingly, the suit was dismissed.

The Learned Lower Appellate Court partly allowed the appeal of the plaintiffs by holding that in the original sale agreement dated 2.1.2010 the last date of payment and execution of sale-deed was 1.6.2010. This date is handwritten. It was only in the copy of the sale agreement that the date of execution has been mentioned as 'on or before 15.4.2010' . As the original agreement mentioned '1.6.2010' as the date for execution of the sale-deed, the Court held that even though, it may be possible that the plaintiffs may have filled this date later, but that did not absolve the appellant – defendant from the duty of having been careful and to ensure that all entries in the agreement were properly filled up before signing the agreement and delivering the original to the plaintiffs. Accordingly, the lower Appellate Court accepted that as per the agreement to sell, 1.6.2010 was the date fixed for execution for the sale-deed. Relying on the affidavit Ex.P9 pertaining to the presence of the plaintiffs before the Tehsildar on 1.6.2010, the Court

concluded that they were ready and willing to execute the sale-deed as per the agreement. However, considering that the plaintiffs had not specifically pleaded in their plaint that they were still ready and willing to perform the contract and ready to tender the balance sale consideration in Court, the relief of specific performance was declined and they were only held entitled to refund of the part payment of Rs.3 lacs along with interest, regarding which the Court recorded that three receipts of Rs.1 lacs each were available to show part payment of Rs.3 lacs by the plaintiffs to the respondents.

There does not appear to be any legal infirmity in the finding of the Ld. Lower Appellate Court which is as per the evidence on record.

No question of law arises for consideration in this appeal.

Dismissed.

February 28, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No