

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

RSA No.4290 of 2018 (O&M)

Date of decision : 26.09.2018

Avinash Jain

...Appellant

Versus

Vinod Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Baldev Kapoor, Advocate for the appellant.

ANIL KSHETARPAL, J.

CM No.11427-C of 2018

For the reasons stated in the application, which is duly supported by an affidavit, delay of 8 days in filing the present appeal is condoned.

Application is allowed.

Main case

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing the suit filed by the plaintiff for recovery of ₹3,71,925/- alongwith interest at the rate of 12% p.a. whereas declining the relief of specific performance of agreement to sell.

The dispute in the present case is with regard to a house situated at Modern House Colony, Chandigarh. Defendant Nos.1 and 2 are

joint allottees of the house. The plaintiff claims that he entered into two separate agreements to sell with defendant Nos.1 and 2 on 14.12.2003 and 26.12.2003. As per agreement to sell dated 14.12.2003, last date for completion of deal was 31.03.2004 whereas with respect to agreement to sell dated 26.12.2003, the last date was 10.02.2004. It is further alleged that the plaintiff paid additional payment of ₹1,50,000/- each to defendant Nos.1 and 2 on 30.12.2003 and 29.01.2004, respectively. The execution of the agreement to sell and receipts of earnest money as well as additional payment is not in dispute in the present appeal.

Both the Courts below on appreciation of the evidence have found that the plaintiff was not ready and willing as he was not having sufficient resources to pay the balance sale consideration. It may be noted here that as per agreement to sell, it was plaintiff-purchaser who had undertaken to complete all the formalities. Clause 3 of the agreement to sell, is extracted as under:-

“That the said purchaser will clear all the outstanding dues against the said dwelling unit of seller's share and will get the No Due Certificate (NOC), get conversion of the above said dwelling unit from lease hold to free hold from Municipal Corporation, Chandigarh and conveyance deed on seller's name from the Chandigarh Housing Board, Chandigarh. For getting NDC, NOC, Lease hold to freehold & conveyance deed, all payments/expenses will be made by the purchaser but all necessary documents shall be signed by the seller as and when required by the purchaser of the Chandigarh Housing Board, Chandigarh. The last date for completion of this bargain that is for final payment and execution of final papers i.e. registry, etc. has been fixed on

or before 31.3.2004.”

Plaintiff filed the suit on 27.03.2006. Before filing the suit, plaintiff got served a notice on the defendants on 22.08.2005.

It has been noticed that in his evidence, he initially stated that he had arranged cash amount from his relatives. However, in cross-examination, he stated that he had arranged the balance amount payable in the form of gold and cash borrowed from his relatives. It may be noted that in the plaint, plaintiff did not disclose that he had borrowed the amount in cash and gold. The Courts have noticed that the assertions made by the plaintiff with regard to availability of funds is not supported by any documentary evidence.

Learned counsel for the appellant submitted that the defendants were to appear before the Chandigarh Housing Board for execution of the conveyance deed in their favour. He submitted that the defendants did not come forward to execute the conveyance deed which resulted in delay. He further submitted that the plaintiff has pleaded his readiness and willingness and has also led evidence to this effect, hence, the Courts have wrongly refused to grant the relief of specific performance of the agreement to sell.

It may be noted at the cost of repetition that last date for completion of deal with respect to both the agreements was 31.03.2004 and 10.02.2004 respectively. The plaintiff has failed to prove that he made any effort to complete the deal on 31.03.2004 and 10.02.2004. It has come in evidence that the plaintiff is a Property Dealer working under the name of Avin Property Dealer, Manimajra. After the last date for completion of deal was over, the plaintiff for the first time served a notice on the defendants on

22.08.2005 i.e. after a period of 1 year and 5 months calling upon the defendants to complete the deals. Even after service of notice, the plaintiff still waited for almost a period of 7 months before filing the suit. Further, the plaintiff was required to pay huge amount but plaintiff failed to prove that he had sufficient resources.

Both the Courts while recording a finding that the plaintiff was not ready and willing, have ordered the refund of the additional amount paid which was not part of the earnest money but was towards the payment of the balance sale consideration alongwith other expenses borne by the plaintiff. However, the Courts have ordered that the earnest money as per the terms of the agreements to sells shall stand forfeited.

In these circumstances, this Court does not find any substance in the argument of learned counsel for the appellant-plaintiff. Hence, the Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

26.09.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No