

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 5074 of 2017(O&M)

Date of Decision:6.9.2018

Prem Chand

---Appellant

vs.

M/s Satluj Construction Limited and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Mahavir Sandhu, Advocate and
Mr. Veneet Chaudhary, Advocate
for the appellant

Rekha Mittal, J.

The present appeal directs challenge against the judgments and decrees dated 14.11.2014 passed by the Additional Civil Judge (Senior Division), Naraingarh and dated 4.7.2016 by the District Judge, Ambala whereby suit for possession by way of specific performance of agreement to sell dated 13.5.2008 was dismissed by the trial court but judgment and decree passed by the trial court were modified in appeal to the extent that the appellant has been held entitled to refund of Rs. 10 lakhs with interest @ 6% per annum from the date of suit till realization.

Indisputably, agreement Ex. P1 was executed whereby M/s Satluj Construction Limited and M/s Satluj Projects Limited through their Director Sh. O.P.Mahajan agreed to sell two parcels of land i.e. 15 kanal 3 marlas, situated in village Fatehgarh, Tehsil Naraingarh, District Ambala at

the rate of Rs. 6 lakhs per acre and 210 bigha 9 biswas, situated at village Sadapur, Tehsil Naraingarh at the rate of Rs. 1,50,000/- per bigha in favour of Smt. Shakuntla Devi and others including the appellant-plaintiff Prem Chand. On the date of agreement, an amount of Rs. 85 lakhs was paid towards earnest money and the sale deed was agreed to be executed on 20.8.2008 with a stipulation that if purchaser failed to make payment in time, date for execution of the sale deed can be extended upto 20.11.2008 by mutual consent of the parties. In respect of land measuring 210 bigha 9 biswas situated in village Sadapur, sale deed was executed in favour of appellant and others on 22.8.2008 for sale consideration of Rs. 1,55,00,000/-. The amount of earnest money of Rs. 85 lakhs was adjusted qua sale deed dated 22.8.2008. An amount of Rs. 10 lakhs was paid to the defendants by way of pay order No. 142060 dated 18.8.2008 of Centurion Bank of Punjab Limited regarding which a receipt was issued by the defendants.

The appellant-plaintiff filed the suit for possession by way of specific performance of agreement to sell dated 13.5.2008 in respect of land measuring 15 kanal 3 marlas situated in village Fatehgarh by raising averment that sale deed of this land was not executed by the defendants on the pretext that there were outstanding dues over the suit land. To clear the same, on the request of defendants, plaintiff paid a sum of Rs. 10 lakhs vide pay order dated 18.8.2008 and a receipt dated 18.8.2008 was issued by the defendants in favour of the plaintiff as full and final sale consideration. It is further averred that the plaintiff always remained ready and willing to perform his part of the agreement. On 20.8.2008, plaintiff and others

alongwith necessary expenses remained present in the office of Sub Registrar, Naraingarh for execution of sale deed but defendants did not turn up.

The defendants contested the suit by stating that they were always ready and willing to perform their part of the agreement. Shakuntla Devi and others were not having requisite sale consideration to get the sale deed executed. Plaintiff alongwith Shakultla etc. promised to pay an amount of Rs. 1,62,03,750/- within two months after execution of the sale deed dated 22.8.2008 qua 210 bigha 9 biswas of land but the same was not paid. Agreement to sell has become infructuous and not legally enforceable.

The trial court framed issues, reproduced in para 4 of the judgment. The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial court dismissed the suit filed by the appellant whereas the counter claim of defendants for permanent injunction restraining the appellant from interfering in their peaceful possession over the suit land was decreed.

The appellant filed the appeal but he remained unsuccessful in his venture to get a decree for specific performance of the agreement but the Appellate court allowed a decree for recovery of Rs. 10 lakhs alongwith interest, noticed hereinbefore.

The sole submission made by counsel for the appellant is that plea of the appellant-plaintiff is that as sum of Rs. 10 lakhs was paid towards sale consideration of land measuring 15 kanal 3 marlas, there was only a small amount of about Rs. 1,36,000/- left to be paid out of total sale

consideration, therefore, findings of the courts that the appellant has failed to prove his readiness and willingness to perform his part of the agreement are erroneous and liable to be set aside. It is further argued that plea of the defendants-respondents that Shakuntla Devi and others had only paid a sum of Rs. 1,55,00,000/- out of Rs. 3,15,67,500/- qua sale consideration of 210 bigha 9 biswas of land situated in village Sadapur has been negated in civil Suit No. 332 of 2011 for recovery filed by the respondents. It is vehemently argued that if Shakuntla and others including the present appellant could pay an amount more than Rs. 3 crores in respect of land measuring 210 bigha 9 biswas of land of village Sadapur and a sum of Rs. 10 lakhs qua disputed land measuring 15 kanal 3 marals, there was no reason for the courts to reject plea of the appellant that he was both ready and willing to perform his part of the agreement.

I have heard counsel for the appellant and perused the paper book particularly the judgments impugned.

The plea of the appellant that amount of Rs. 10 lakhs paid vide pay order dated 18.8.2008 was the total sale consideration in respect of land measuring 15 kanal 3 marlas situated in village Fatehgarh get falsified and belied in view of testimony of Rakesh Kumar PW1, who is none else but one of the proposed vendees under Agreement Ex. P1. He admitted it correct that approximately Rs. 1,36,250/- was unpaid balance sale consideration out of total sale consideration of land measuring 15 kanal 3 marlas. The Court in Appeal has noticed that out of 10 persons who had agreed to purchase the suit land as per agreement Ex. P1, only one of them i.e. Prem Chand filed the suit for specific performance in respect of suit

land. Prem Chand did not enter the witness box to prove his readiness and willingness to perform his part of the contract despite the case being adjourned more than 25 times, after framing of issues on 6.9.2010 out of which as many as 15 effective including several last opportunities to produce evidence were provided. The order passed by the trial court closing evidence of the appellant was challenged in Civil Revision No. 6018 of 2014 dismissed by this Court on 6.9.2014. The Special Leave to Appeal (Civil) filed before Hon'ble the Supreme Court was also dismissed on 7.11.2014. The application filed by the appellant to appear in the witness box by seeking permission to adduce additional evidence under Order 41 Rule 27 of the Code of Civil Procedure was dismissed by the Appellate Court.

Counsel has not made any submission to challenge correctness of the order passed by the Appellate Court dismissing the application for additional evidence. This apart, in the face of orders passed by this Court and Hon'ble the Supreme Court rejecting plea of the appellant to challenge order closing evidence of the appellant, there was no option with the Appellate Court except to dismiss the application. Even otherwise, the appellant does not satisfy the conditions envisaged under Rule 27 of Order 41 of the Code of Civil Procedure. As Sh. Prem Chand did not appear in the witness box to substantiate his plea that he always remained ready and willing to perform his part of the agreement, no error much less perversity can be found in the consistent findings recorded by the courts that the appellant is not entitled to discretionary and equitable relief of specific performance of agreement. I would hasten to add that the Court is not

bound to allow specific performance of agreement merely because it is lawful to do so. Taking into consideration the facts and circumstances noticed by the Court in Appeal, it is difficult to accept that discretion exercised by the Courts refusing to allow specific performance and allowing relief of recovery of Rs. 10 lakhs with interest by the Appellate Court is either faulty much less perverse, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay of 349 days in refiling the appeal is of academic relevance only.

(Rekha Mittal)
Judge

6.9.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No