

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

**RSA No.5918 of 2017 (O&M)
Date of Decision.01.11.2018**

Bhai Ram and others

.....Appellants

Vs

Bhoon

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Munfaid Khan, Advocate for
Mr. Amit Kumar Jain, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

C.M. No.15540-C of 2017

The application for impleading the legal representatives of deceased-Sheo Narain is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record for the purpose of contesting the present appeal.

RSA No.5918 of 2017

The appellants-defendants assailed the judgment and decree of the lower Appellate Court, which has decreed suit of the respondent-plaintiff seeking specific performance of agreement to sell dated 14.05.2005 by setting aside the judgment and decree dated 21.11.2014 of the trial Court whereby suit aforementioned was dismissed.

The plaintiff filed the suit in the year 2009 seeking specific performance of the agreement to sell in respect of land

measuring 5 kanals 17 marlas with alternative relief of recovery of ₹94,062.50 along with interest as it was agreed to be sold at the rate of ₹1,30,000/- per acre and a sum of ₹30,000/- was paid to the appellants-defendants as earnest money. As per the endorsement dated 12.08.2005 in the original agreement to sell, defendant received a sum of ₹64,062/- in cash as additional earnest money and agreed to execute the sale deed as and when one month's prior notice is sent by the plaintiff. The aforementioned endorsement was also witnessed.

The appellants-defendants opposed the suit and claimed that rate was settled as ₹31,30,000/- per acre instead of ₹1,30,000/- and the balance consideration was stated to be ₹21,95,235/-. The defendants marked their presence through affidavit but the plaintiff did not come present and therefore, there was no readiness and willingness nor any legal notice dated 20.08.2008 was ever received.

The trial Court on the basis of evidence brought on record rendered a finding on issue No.2 against the plaintiff holding her not to be ready and willing to perform his part of agreement and dismissed the suit. In appeal, the lower Appellate Court reversed the aforementioned finding.

Mr. Munfaid Khan, Advocate for Mr. Amit Kumar Jain, learned counsel appearing on behalf of the appellants submitted that no plausible and cogent reasons have been assigned in setting aside the well reasoned judgment of the trial Court, as the suit was filed in the year 2009, therefore, readiness and willingness during all this period was conspicuously absent. No effort was made from 12.08.2005 to June, 2009 to file the suit. The suit was hopelessly

time barred, thus, the same was not maintainable as the endorsement dated 12.08.2005 witnessed by the parties clearly indicated that sale deed would be executed only after plaintiff sent a prior notice of one month, as the possession of the suit property was handed over to the plaintiff, thus, time was not essence of the agreement.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submission of Mr. Khan, for, Article 54 of the Limitation Act provides two types of limitation. For the sake of brevity, the same is extracted herein below:-

54	For specific performance of a contract.	Three years.	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
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It falls within the second clause. Execution of the document had not been denied by the appellant. The rate and the payment of balance sale consideration as propounded by the appellants-defendants has also not been proved through testimony of any independent witness.

The appeal is also accompanied by an application seeking condonation of delay of 141 days. Even delay has not been explained in the correct perspective.

As an upshot of my finding, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out.

The second appeal is dismissed both on the ground of delay as well as on merit.

(AMIT RAWAL)
JUDGE

November 01, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No