

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.6048 of 2017 (O&M)

Date of decision: 08.08.2018

Sanjeev Aggarwal

..... Appellants

Versus

Sharad Nagpal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Puneet Jindal, Sr. Advocate with
Ms. Neha Anand Jain, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the concurrent judgments passed by the Courts below refusing specific performance of the agreement to sell with respect to the suit property i.e. an industrial plot.

The plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 06.12.2007 for sale of a plot against a total sale consideration of Rs.4,00,00,000/- (rupees four crores) out of which Rs.25,00,000/- was paid as an earnest money. Further, payment of Rs.15,00,000/- is alleged to have been made on 31.12.2007. As per the agreement to sell, the target date for completion of the deal was fixed as 05.03.2008. The plaintiff has pleaded that he was always ready and willing but the defendants did not come forward to perform their part of the contract.

The defendants contested the suit and pleaded that there was an

agreement to sell and amount as alleged in the plaint has been received. However, the plaintiff did not had the balance sale consideration i.e. Rs.3,60,00,000/- (rupees three crores and sixty lacs) and therefore, the plaintiff cannot said to be ready and willing to perform his part of the contract. The defendants further pleaded that as a grace, a notice was got issued to the plaintiff on 24.03.2008 calling upon him to come and perform his part of the contract by 30.03.2008 failing which the amount paid shall stand forfeited. However, the plaintiff did not perform his part of the contract even upto 30.03.2008 and therefore, the amount stands forfeited.

Learned trial Court after appreciating the evidence dismissed the suit after returning a finding that the plaintiff was not ready and willing as he was not having sufficient amount for making payment to the defendants as per agreement to sell. Before the learned First Appellate Court, the plaintiff moved an application for amendment of the plaint and sought refund of the amount paid. Learned First Appellate Court allowed the application. The learned First Appellate Court affirmed the finding of the learned trial Court that the plaintiff was not ready and willing to perform his part of the contract, however, the learned First Appellate Court ordered that only earnest money would stand forfeited whereas additional payment of Rs.15,00,000/- shall be refunded along with interest @ 6% per annum.

This Court has heard learned senior counsel for the appellant at length and with his able assistance gone through the judgments passed by the Courts below and the record of the Courts.

Learned senior counsel while drawing attention of the Court to clause 5 of the agreement to sell dated 06.12.2007 has submitted that the

defendants were required to get no due certificate and no objection certificate from the authority which had allotted the plot. He submitted that the defendants did not perform their part of the contract. He further submitted that the plot was sought to be purchased on behalf of the company and as per cash credit limit sufficient amount was available which could be withdrawn at any time from the bank to pay the defendants. He further submitted that there were dues pending against the plot which have not been paid. He further submitted that there was no requirement as per explanation added to Section 16 of the Specific Relief Act to tender the amount.

This Court has considered the submissions, however, find no substance therein. In the present case, the target date for completion of the deed was 05.03.2008. The plaintiff is to prove that the amount was available with him on that day. Counsel for the plaintiff in one hand is trying to project and argue that the defendants have defaulted in securing no objection certificate and no dues certificate from the allotting authority and on the other hand, the counsel tries to impress upon the Court that he was having sufficient resources. It will be noted that the defendants admittedly had served a notice on the plaintiff dated 24.03.2008 which according to the plaintiff had replied on 27.03.2008. However, it is admitted position on the record that the plaintiff failed to prove that this reply was ever sent (put in post) to the defendants. Neither any postal receipt was produced nor any other evidence was produced. Still further, both the Courts below after examining the evidence of PW-5 Karam Singh, Deputy Manager of the bank has found that the aforesaid cash credit limit sanctioned in favour of a company in which the plaintiff was Director, was only for purchase of raw-

material for the company and not for the purchase of the property. In fact, the plaintiff had applied for a separate loan for purchase of the property which was sanctioned only on 31.03.2008. It has also come in evidence that the plaintiff although claimed that he was carrying cheque of the amount payable, however, no cheque has been produced before the Court.

In the present case, the plaintiff has to stand on his own legs. He is to prove that he was ready and willing on 05.03.2008. In the present case, the plaintiff has failed to prove that. Even after service of notice dated 24.03.2008, the plaintiff did not take any step. He visited the office of the allotting authority on 31.03.2008 but that itself does not prove that he was possessing the balance payable. He filed the suit after waiting for more than 8 months which clearly proves that it was the plaintiff who was at fault. If the stand of the plaintiff is that in absence of no due certificate and no objection certificate, the deal could not be completed, then the plaintiff should have struck to the aforesaid stand. However, the plaintiff is trying to take two contradictory pleas.

Let us now examine the case from another angle. Even if it is assumed that the plaintiff was able to secure loan on 31.03.2008 amounting to Rs.2,70,00,000/- (rupees two crores and seventy lacs), still there was balance payment of Rs.90,00,000/- (rupees ninety lacs). If the plaintiff had any money, he would have immediately called upon the defendants to come and complete the deal. However, the plaintiff did not take any step. No communication has been proved on file which the plaintiff may have addressed to the defendants calling upon them to come and complete the deal before filing of the suit. The reply dated 27.03.2008 which was allegedly sent by the plaintiff is not proved on file to have been sent or

posted to the defendants.

Learned counsel has submitted that the evidence of Karam Singh, Deputy Manager who has appeared as PW-2, has been misread. He submitted that the entire amount which was lying in the cash credit limit i.e. more than Rs.4 crore in the account of a company was available with the plaintiff.

Learned counsel is trying to read one line in isolation which cannot be permitted. On complete reading of the evidence of Karam Singh, it is apparent that Karam Singh who was Deputy Manager in the bank, has specifically stated that the cash credit limit is only for purchasing of the raw-material for the company and not for purchase of the property. It is for this reason only the plaintiff had applied for sanction of a separate loan for purchase of the property which was sanctioned on 31.03.2008.

No doubt, as per explanation to Section 16, it is not essential for the plaintiff to actually tender to the defendants or to deposit in Court any money except when so directed by the Court. However, the plaintiff in order to prove his readiness and willingness is required to prove that he was having sufficient resources to pay the balance sale consideration. As discussed in detail, both the Courts below as well as this Court has found that the plaintiff was not having sufficient resources to pay the amount and therefore, he is not entitled to specific performance of the agreement to sell. Learned counsel time and again submitted that the defendants did not perform their part of the contract. It is well settled that the plaintiff has to stand on his own legs. The plaintiff has to prove before succeeding in a suit for specific performance that he was ready and willing to perform his part of the contract.

Keeping in view the aforesaid facts, this Court does not find any good ground to interfere with the judgment passed by the learned First Appellate Court under which the plaintiff has been held entitled to refund of the additional payment.

Appeal is dismissed.

08.08.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

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