

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

RSA No.6090 of 2017 (O&M)

Date of Order: 22.11.2018

Gurmail Singh alias Gurmej Singh

....Appellant

Versus

Kamal Kumar and Anr.

....Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Varun Katyal, Advocate for the appellant.

Mr. J.S. Brar, Advocate for the Caveator-respondent No.1.

AMIT RAWAL, J (ORAL)

CM No.15920-C of 2017

For the reasons stated in the application, which is supported by an affidavit, the same is allowed. Delay of 25 days in re-filing the appeal is condoned.

RSA No.6090 of 2017

Appellant-defendant No.1 Gurmail Singh has not been successful in defending the suit for possession by way of specific performance of agreement to sell dated 10.6.2008 in respect of suit land, which was agreed to be sold for a total sale consideration of Rs.17 lacs against the receipt of earnest money of Rs.12 lacs. The stipulated date for execution and registration of sale deed was fixed as 10.6.2009. On non-appearance of the defendant, the suit was instituted on 11.6.2009.

Upon notice, appellant-defendant opposed the suit by alleging the agreement to be result of fraud and a fabrication by the plaintiff. The receipt of the earnest money was denied. He also came out with a plea that he had already entered into an agreement dated 30.4.2008 with defendant No.2-Kashmir Singh, who is none else but his brother.

On preponderance of evidence, the trial Court decreed the suit and the appeal preferred by the appellant-defendant was dismissed by the

learned lower Appellate Court.

Learned counsel for the appellant submitted the findings recorded by both the courts below in decreeing the suit are patently illegal and the same are liable to be set aside. The learned courts below have proceeded on wholly misconceived and perverse approach, while passing the impugned judgments. He submitted that the plaintiff had failed to prove his readiness and willingness to perform his part of contract. Neither any statement of bank account nor any income tax return were ever brought on record by the plaintiff. In support of his pleadings, he relied upon a judgment of Delhi High Court in **A.K Narula vs. Iqbal Ahmed 2013 (1) ILR (Delhi) 315**.

On the other hand, learned counsel for the respondent fully supported the judgments and decrees passed by both the courts below.

I am afraid that the aforesaid argument raised by learned counsel for the appellant is not sustainable in the light of law laid down by Hon'ble Supreme Court in **Azhar Sultana vs. B. Rajamani and Ors 2009 (2) RCR (Civil) 123** wherein it has been held that the ready cash/money at the time of the execution and registration of the sale deed is not required. Apart from this, the readiness and willingness was not only pleaded but was proved as the suit was immediately filed on non-execution of the agreement to sell. It is also not in dispute that the plaintiff had always been ready and willing to perform his part of contract from the date of execution of agreement to sell till the passing of the decree. The law on this point is further elaborated by Hon'ble Apex Court that it was not necessary that the entire amount of consideration should be kept ready and the plaintiff must file proof in respect thereof. Furthermore, grant of decree for specific

performance of contract is discretionary, thus, in my view, no fault could be found with the impugned judgment and decrees passed by both the courts below.

As a sequel to the aforesaid discussion, no infirmity could be found with the judgments of both the courts below warranting any interference by this court.

No other relevant document has been placed on record enabling this Court to form a different opinion than the one adopted by both the courts below.

Dismissed.

November 22, 2018
manoj

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No