

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

RSA No.686 of 2017 (O&M)

Date of decision:07.05.2018

Jai Pal

... Appellant

Vs.

Ram Kishan and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sunil Garg, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.1480-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 5 days in filing the appeal is condoned.

C.M. stands disposed of.

RSA No.686 of 2017 (O&M)

Appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit seeking specific performance of the agreement to sell dated 09.12.2003 has been dismissed by the trial Court and affirmed by the Lower Appellate Court.

The appellant-plaintiff instituted the suit on 09.08.2007 seeking specific performance of the agreement to sell dated 09.12.2003 in respect of land measuring 3 biswas as detailed in head note of the plaint against payment of ₹70,000/- which in entirety was paid. The time was not essence

of the agreement. Legal notice dated 28.4.2006 was sent to defendant No.1 to execute and register the sale deed in favour of plaintiff on 12.05.2006 but he did not appear necessitating the plaintiff to file the suit, as possession of the suit land was handed over, for, total price had been paid. It was alleged that defendant no.1, vide registered sale deed dated 18.11.2005 sold the suit property to defendant no.2 which was subject matter of agreement to sell.

Defendant No.1 and 2 in the written statement denied the agreement to sell, much less possession. The appellant-plaintiff instituted the suit for injunction on 09.05.2006 which was withdrawn on 04.08.2006. Both the parties in support of their case led the evidence.

On the preponderance of evidence, the trial Court dismissed the suit holding it to be barred by law of limitation and the Lower Appellate Court reversed the findings vis-a-vis limitation but held that appellant-plaintiff was not ready and willing to execute and register the sale deed.

Mr. Sunil Garg, learned counsel appearing on behalf of the appellant-plaintiff submits that terms and conditions of the agreement clearly specified that time was not essence and therefore, limitation would not have come against the plaintiff which had rightly been set aside by the Lower Appellate Court but fact of the matter is that readiness and willingness continued, for, on acquiring the knowledge of the sale deed dated 18.11.2005, the plaintiff instituted the suit on 09.05.2006, though it should have been suit for specific performance, realizing the aforementioned error, it was immediately withdrawn on 04.08.2006, for, legal notice had already been sent on 28.04.2006. Filing of the suit on

09.08.2007 would not render the suit into dismissal for want of compliance of provisions of Section 16(c) of Specific Relief Act, 1963 (hereinafter referred to as “1963 Act”), for, plaint specifically contained pleading to that effect, particularly when the entire amount of Rs.70,000/- had been paid, in other words, it was left open to the party to seek execution and registration of the sale deed at any time. The aforementioned fact coupled with legal submission has not been appreciated by the trial Court, much less by the Lower Appellate Court and therefore, there is abdication and perversity.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees of both the Courts below and of the view that there is no illegality and perversity in the findings under challenge, whereby, the appellant-plaintiff has been non-suited for want of readiness and willingness. Section 16(c) of 1963 and Article 54 of Limitation Act, read as under:-

“16 (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant. Explanation.—For the purposes of clause (c),—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.”

Article 54 of Limitation Act

For spec	For specific performance of agreement	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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In the instant case, the alleged breach had occurred on 18.11.2005 but instead of seeking specific relief, after six months, i.e. on 09.05.2006 suit for injunction was filed which was withdrawn on 04.08.2006 and thereafter, there was again pause, suit claiming main relief, i.e., for specific performance was instituted on 09.08.2007. The law on the point of readiness and willingness is no longer res integra. The aforementioned proposition has been reiterated by the Hon'ble Supreme Court in **B. Vijaya Bharathi Vs. P. Savitri and others 2017 AIR (SC) 3934**, wherein, it has been categorically held that there has to be specific and categoric pleading with regard to readiness and willingness. It has to be from the date of agreement to sell, during all the period, till filing of the suit, much less passing of the decree. For the sake of brevity, paragraphs 12, 15 and 17 of aforementioned judgment read as under:-

12) One crucial fact that stares us in the face is that on

13.03.1992 the first defendant ran away from the Registering Authority making it clear that she did not want to act in furtherance of the Agreement in executing a General Power of Attorney in favour of the plaintiff's husband. The High Court was right in stating that no prudent person would stay quiet for a period of one year and eleven months after such an unequivocal repudiation of the agreement if they were really interested in going ahead with the sale transaction. The only inference, therefore, from this is that the plaintiff cannot possibly be said to be ready and willing throughout to perform their part of the agreement.

15) Ram Awadh (supra) is a judgment by three Judges of this Court overruling [Jugraj Singh vs. Labh Singh](#), (1995) 2 SCC 31, in which it was held that the plea that the plaintiff is not ready and willing to perform the contract is personal only to the seller-defendant. Subsequent purchasers cannot take this plea. This was stated to be an erroneous view of the law by the three Judge Bench, and the judgment in Jugraj Singh was set aside as follows:-

“6. The obligation imposed by Section 16 is upon the Court not to grant specific performance to a plaintiff who has not met the requirements of clauses (a),(b) and (c) thereof. A court may not, therefore, grant to a plaintiff who has failed to aver and to prove that he has performed or has always been ready and

willing to perform his part of the agreement the specific performance whereof he seeks. There is, therefore, no question of the plea being available to one defendant and not to another.

It is open to any defendant to contend and establish that the mandatory requirement of [Section 16\(c\)](#) has not been complied with and it is for the Court to determine whether it has or has not been complied with and, depending upon its conclusion, decree or decline to decree the suit. We are of the view that the decision in Jugraj Singh Case is erroneous.”

17) It must also be noted that though aware of two conveyances of the same property, the plaintiff did not ask for their cancellation. This again, would stand in the way of a decree of specific performance for unless the sale made by Defendant No. 1 to Defendant No.2, and thereafter by Defendant No.2 to Defendant No.3 are set aside, no decree for specific performance could possibly follow. While Mr. Rao may be right in stating that mere delay without more would not disentitle his client to the relief of specific performance, for the reasons stated above, we find that this is not such a case. The High Court was clearly right in finding that the bar of [Section 16\(c\)](#) was squarely attracted on the facts of the present case, and that therefore, the fact that Defendant Nos. 2 and 3 may not be bona fide purchasers would not come in the way of

stating that such suit must be dismissed at the threshold because of lack of readiness and willingness, which is a basic condition for the grant of specific performance.”

From the cumulative reading of the dates referred to above, it leaves to irresistible conclusion that plaintiff had not been able to bring the case within the parameters of Section 16(c) of 1963 Act. There had been pauses from the date of filing of suit for injunction and withdrawal and main suit.

Dehor of the fact that the plaintiff had passed on the entire consideration of Rs.70,000/- in respect of land measuring 3 biswas but he cannot remain oblivious of the fact that vendor had parted with the suit land, vide sale deed dated 18.11.2005. The findings of the Lower Appellate Court, in my view, are correct appreciation of law and do not fall within the realm of perversity.

No ground for interference is made out.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 07, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No