

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

RSA No.781 of 2018

Date of Decision.05.02.2018

Subhash Goyal

.....Appellant

Vs

Om Parkash Garg

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Mohit Jaggi, Advocate
for the appellant.

-. -

AMIT RAWAL J.(ORAL)

The appellant-defendant is aggrieved of the concurrent finding of fact whereby the suit for specific performance of the agreement to sell dated 03.01.2007 executed by him in favour of the plaintiff in respect of a house bearing No.1293 measuring 13'x9' x 10'x10' situated within red line, Village Burial, U.T., Chandigarh against total consideration of ₹4,80,000/- on payment of ₹2 lacs as earnest money, has been decreed by both the Courts below.

Mr. Jaggi, learned counsel appearing on behalf of the appellant-defendant submitted that the agreement to sell was admitted but the fact is that the earlier ex parte judgment and decree was set aside, which was contested by the plaintiff to the hilt but the order setting aside the ex parte judgment and decree was maintained. He further submitted that the appellant has four children and it would cause great hardship in case specific relief under Section 20 of the Specific Relief Act as ordered by the Courts below is maintained. In fact, the stand of the appellant-defendant was that the plaintiff was not ready and willing to perform his part of the agreement. The factum of payment of earnest money of ₹2 lacs was not

denied. He is willing to compensate the plaintiff over and above the amount of earnest money.

I have heard learned counsel for the appellant-defendant and appraised the paper book. The execution of agreement to sell is admitted, much less, payment of earnest money. It was incumbent upon the appellant-defendant to ponder upon the situation of hardship at the time of execution of the agreement to sell instead of proceeding with the trial. The ex parte decree was passed in the year 2000 and the application for setting aside the aforementioned ex parte judgment and decree was allowed vide order dated 19.03.2015. However, the appellant-defendant again contested the suit which was decreed on 04.12.2015 and the appeal preferred against the same was dismissed on 17.01.2018. The Courts below have also looked into the aspect of hardship. The thought of hardship should have come in the mind of the appellant-defendant at the time of non-performance of the agreement to sell. There is admission, much less, readiness and willingness on the part of the respondent-plaintiff. It is a clear case where the Courts below have exercised the discretion under Section 20 of the Specific Relief Act.

In view of the aforementioned, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the same are based upon correct appreciation of fact and law, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 05, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No