IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4031 of 2019(O&M)

Date of decision: 2.9.2019

Sukhram Yadav …..Appellant

VERSUS

Suchita Vij .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Govind Goel, Advocate and
Mr. Sourabh Goel, Advocate for the appellant.

Mr. Lokesh Sinhal, Advocate for the caveator/respondent.

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REKHA MITTAL, J.

CM No.11029-C of 2019

Prayer in this application is for condoning delay of 96 days in re-filing the appeal.

Heard.

In view of averments made in the application, the same is allowed. Delay of 96 days in re-filing the appeal stands condoned.

Disposed of accordingly.

RSA No.4031 of 2019

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for specific performance of agreement to sell dated 31.07.2007 in respect of plot No.1257 Sector 37, Faridabad measuring 293.34 square yards filed by the respondent/plaintiff was decreed by the trial Court vide judgment and decree dated 08.08.2017 that came to be affirmed in appeal by the District Judge, Faridabad.

The respondent/plaintiff has claimed that the appellant/defendant was owner of the suit property vide sale deed dated 31.03.1998. He agreed to sell the suit property to the plaintiff vide agreement dated 31.07.2007 for sale consideration of Rs.80 lakhs. The appellant received Rs.10 lakhs towards earnest money i.e. Rs.1,50,000/- paid vide cheque and Rs.8,50,000/- in cash. It was agreed that the appellant will get construction over 25% area of plot and obtain completion certification from concerned authority and last date for making payment of balance sale consideration was kept open. On demand of the appellant, the respondent started making part payments to him even before he could obtain completion certification as per agreement. The entire sale consideration was paid. The respondent also paid cost of construction spent by the defendant apart from paying Rs.80 lakhs. Even after receiving entire sale consideration, the appellant kept on delaying the matter on one or other pretext. On 26.08.2012, the appellant admitted of having received the entire sale consideration as well as expenses of construction in presence of his son and witness Joginder Singh and made an endorsement in this regard on the back of agreement in question. The appellant undertook to execute the sale deed within two months by admitting delay on his part. The appellant did not come forward to execute the sale deed. The respondent served legal notice on 16.10.2012 asking the appellant to be present in the office of Sub Registrar on 25.10.2012. The respondent came present in the office of Sub Registrar on 25.10.2012 but the appellant did not turn up. The respondent always remained ready and willing to perform her part of the agreement. She was present in the office of Sub Registrar along with stamp and registration charges but the appellant breached to perform his part of the agreement. Due to escalation of price of the land, the appellant has backed out of the agreement. Hence the suit.

The appellant/defendant filed the written statement raising preliminary objections with regard to maintainability and the agreement being forged and fabricated. It is pleaded that the defendant never executed any agreement with the respondent. Due to acquaintance with the respondent, appellant had taken a friendly loan of Rs.5,50,000/- from her out of which Rs.1,50,000/- was taken on 31.07.2007 and Rs.4,00,000/- on 05.08.2007 for a period of one year. In lieu of the loan amount, respondent had taken his signatures on blank stamp paper at various places with understanding that suit property was mortgaged till the loan was cleared. In the year 2008, the appellant repaid the suit amount and asked the respondent to return the stamp papers with his signatures but she did not return the same. Under legal advice, she converted the stamp paper into agreement in question which is false and forged. The suit is stated to be time-barred. The plaintiff has concealed material facts and is estopped from filing the suit by her own act and conduct. He denied execution of agreement and recitals contained therein.

The trial Court framed issues reproduced in para 4 of the judgment. The evidence led by the parties has been referred to in paras 5 to 7 of the judgment of said Court.

As has been noticed hereinbefore, suit filed by the respondent/plaintiff was decreed by the trial Court and penultimate para of the judgment reads as follows:-

> "…On the basis of agreement to sell dated 31.07.2007, it is held that the plaintiff is entitled to get decree of possession by way of specific performance of contract in her favour. The defendant is directed to execute the sale deed of suit property in the favour of plaintiff within three months otherwise the plaintiff company shall have right to get the sale deed executed through Court. Furthermore the defendant is restrained from transferring, selling or alienating the suit property or its any part thereof or from creating any charge or encumbrance over the suit property and from changing its nature…."

The unsuccessful appellant/defendant failed to get any relief from the first Appellate Court as the Court in appeal rejected contentions of the appellant and affirmed findings of the trial Court without any variance.

Still feeling dis-satisfied, the present appeal has been preferred by the appellant/defendant.

Counsel for the appellant has assailed concurrent findings of the Courts primarily by making three-fold submissions. It is argued that agreement of sale does not bear attestation by the buyer or an authorized representative on her behalf, therefore, the so-called agreement is not an agreement in the eye of law, thus, cannot form the basis for grant of discretionary relief of specific performance thereof.

Counsel for the appellant has also assailed findings of the Courts accepting plea of the respondent/plaintiff that she always remained ready and willing to perform her part of the agreement. It is argued that plea of readiness and willingness is required to be decided in view of the peculiar facts and circumstances of a case coupled with attending circumstances that have bearing on the question of readiness or/and willingness. It is argued that as per case set up by the respondent, agreement to sell was executed on 31.07.2007 and she made the entire payment upto October 2007 but suit seeking specific performance of the agreement has been instituted in the year 2012. It is further argued that in-between October 2007 till October 2012, the respondent did not take any steps nor served any notice upon the appellant calling upon him to execute the sale deed, therefore, long silence on the part of respondent goes a long way to negate her plea in respect of her willingness to get the sale deed executed and registered.

Another submission made by counsel is that the relief of specific performance is a discretionary relief and the same cannot be allowed even if a litigant has proved the agreement of sale coupled with readiness and willingness to perform his part of the agreement. It is further argued that this power needs to be exercised reasonably, not arbitrarily and in accordance with sound judicial principles and on meticulous consideration of facts and circumstances so that grant of decree may not be used as instrument of oppression or to have unfair advantage to parties. Counsel would argue that in the instant case there are many reasons which would stand in the way of respondent/plaintiff to seek indulgence of the Court for grant of discretionary relief of specific performance of agreement propounded by her. To bring home his contention, counsel has pressed into service his aforesaid contention of delay in filing the suit seeking specific performance of agreement. In addition, it is argued that Suchita Vij has expressed her ignorance with regard to various endorsements made on backside of the agreement relied upon by her either with regard to part-payments or undertaking by the appellant to execute the sale deed within two months of 26.08.2012. It is further argued that Suchita Vij has failed to explain the source of various payments purportedly made to the appellant either as per the agreement or in view of endorsements on the back of agreement or the document marked as Ex.P3, therefore, an inference can be drawn that this money is unaccounted money. It is further argued that as per provision of Income Tax Act, 1961, no payment beyond Rs.20,000/- can be made in cash, therefore, the alleged payments in cash made by the respondent are in violation of a statutory provision. According to counsel, retaining black money also violates various statutory provisions, therefore, the Courts have wrongly exercised their discretionary power by allowing specific performance of agreement in question.

Counsel representing the respondent/plaintiff has supported concurrent findings recorded by the Courts with the submission that the same do not suffer from legal flaw much less perversity that would call for intervention in second appeal. It is further argued that appellant who has been found to be telling blatant lies by denying the agreement of sale on a false plea of taking loan and further denying various payments made from time to time, in no circumstances, can seek indulgence of this Court to deny relief of specific performance. It is further argued that it is none of the requirements in law that obligates a plaintiff to explain if the money paid by him towards earnest money or sale consideration is accounted or otherwise particularly in the circumstances that no such plea was raised by the appellant in the written statement. It is further argued that respondent/plaintiff has categorically stated that she obtained money from her grand-parents for discharging her liability under the agreement of sale whereby she paid earnest money of Rs.10 lakhs at the time of agreement and remaining amount on different dates which were duly acknowledged by the appellant in his cross examination. He would further argue that the respondent not only paid the sale consideration agreed between the parties but also paid cost of construction which was to be incurred by the appellant and the said fact has been duly recorded in the endorsement dated 26.08.2012, admitted to be in the writing of appellant and attested by one of his sons namely Gajender and marked as an exhibit. The last submission made by counsel is that vide endorsement dated 26.08.2012, he even admitted that delay for transaction having not fructified into a sale deed is attributable to him and undertook to execute sale deed within two months but still failed, compelling the respondent to indulge in litigation involving wastage of time, energy, money, agony and hardship.

I have heard counsel for the parties, perused the paper-book particularly the judgments impugned and copies of documents supplied during course of hearing, correctness whereof has been vouched by counsel for the parties.

The first contention raised by counsel for the appellant, on detailed consideration by the Court in appeal has been negated by relying upon judgment of Hon'ble the Supreme Court in **Alka Bose Vs. Parmatma Devi and others, 2009(1) Civil Court Cases 412**. I have gone through factual findings recorded by the first Appellate Court and ratio of law laid down in **Alka Bose's case** (supra) but find myself unable to differ with findings of the first Appellate Court or to accept contention of the appellant that agreement of sale cannot form basis for seeking specific performance merely because the same has not been signed by the purchaser or an authorized representative on her behalf. As has been rightly held by the Court in appeal that the agreement is signed by the seller and the same was accepted by the purchaser who made payments to the seller from time to time which were duly acknowledged by the appellant by making endorsements in his own handwriting on the back of agreement and a separate piece of paper. In this view of the matter, first contention raised by the appellant is patently misconceived and liable to be rejected.

This brings the Court to plea of the appellant that the respondent has failed to prove ingredients of Section 16 (c) of the Specific Relief Act, 1963 with regard to readiness and willingness to perform her part of the agreement. As per the agreement, the property was agreed to be sold for a sum of Rs.80 lakhs out of which Rs.10 lakhs were paid as earnest money and part payments were made in view of endorsements Ex.P2 and receipt Ex.P3. The appellant, in his own hand made an endorsement dated 26.08.2012 admitting receipt of sale consideration as well as cost of construction and the said endorsement has been attested by one of the sons of appellant/defendant. Not only this, by way of this endorsement, the appellant even admitted that delay for non-execution of sale deed is attributable to him and he undertook to execute the sale deed within two months from 26.08.2012. Since the respondent has already discharged her obligation to pay the entire sale consideration and had even gone to the extent of paying cost of construction which was beyond the scope of agreement coupled with the appellant having admitted that he was responsible for delay in the transaction to fructify, submissions made by counsel for the appellant to challenge findings of the Courts that the respondent always remained ready and willing to perform her part of the agreement are contrary to records and is the result of misreading of evidence adduced by the respondent and admission made by the appellant/defendant in cross examination. The appellant neither specifically denied averments in the plaint that entire sale consideration already stood paid nor responded to legal notice issued by the respondent and proved on record containing this fact nor raised any such issue before the Courts or while making endorsement dated 26.08.2012, therefore, he cannot be allowed to raise a factual controversy in second appeal that in view of aggregate of payments made as earnest money, vide endorsements on the back of agreement and document Ex.P3, the respondent still had to pay more than Rs.4 lakhs towards balance sale consideration. In this view of the matter, I find it difficult to differ with findings of the Courts that the respondent/plaintiff always remained ready and willing to perform her part of the agreement.

One of the arguments raised by counsel for the appellant against specific performance of agreement is the issue of delay in filing the suit which was also made a ground for attacking findings of readiness and willingness. In view of discussion made hereinbefore, this contention is not meritorious and accordingly rejected.

As has been rightly argued by counsel for the respondent, there is no such requirement in law that in civil proceedings, plaintiff must explain that money which was paid under the agreement or balance sale consideration, if any, to be paid by the vendee has an accounted source. No such plea was raised by the appellant that even if it is accepted that respondent made all those payments recorded in the documents Ex.P1 to P3, the same do not have a legal source, thus, cannot be taken into consideration for exercise of discretion in favour of the respondent. On the other hand, if money spent by a buyer for purchasing property is unaccounted, it is for the competent authority to initiate appropriate action against him/her. Counsel for the appellant has failed to cite any judgment that lays a ratio that in a suit for specific performance of agreement, the plaintiff has an obligation not only to explain his capacity to pay balance sale consideration but also to explain that money paid/to be paid is accounted one. In this view of the matter, contention raised by counsel for the appellant, in this regard, does not carry weight. Similarly, payment in cash beyond Rs.20,000/- cannot be ignored merely because there is a provision in Income Tax Act that obligates to pay money more than Rs.20000/- by way of cheque. This apart, once the appellant had accepted payment beyond Rs.20000/- in cash, he cannot be allowed to take advantage of his own wrong nor can wriggle out of his liability to execute the sale deed by contending that the vendee could not pay money beyond Rs.20000/- in cash. It further appears to the Court that these contentions have been raised by the appellant with a clear intent to wriggle out of his obligation under the agreement, may be, because of price of the property had increased.

For exercising discretion whether to allow specific performance or alternative relief of recovery would serve ends of justice, conduct of both the parties assume significance. In the case at hand, conduct of the appellant is not at all fair and bona fide. In the written statement, he has denied execution of agreement and raised a plea of having taken loan of Rs.5,50,000/- as payment of Rs.5,50,000/- was made by way of cheque, thus, could not be denied. His plea of loan was ripped apart during his cross examination. He also raised a plea that he returned Rs.5,50,000/- but the respondent did not return the stamp paper having blank signatures. It is unacceptable that a prudent man would return money without insisting for return of document with alleged blank signature or at least a receipt acknowledging payment. The entire defence set up by the appellant to deny execution of agreement, payment as earnest money and subsequent payments get falsified and belied in view of the appellant having admitted of the endorsements on back of agreement and document Ex.P3 to be in his hand and under his sign/initials. A litigant who is caught telling blatant lies neither can seek indulgence for grant of relief in discretion nor can get set aside the relief allowed to the contesting party in exercise of discretionary jurisdiction. I would hasten to add that in the instant case, the appellant has not raised any such defence plea available under Section 20 of the Specific Relief Act, 1963. Analyzed from any angle, challenge to the impugned judgments is not well-founded either factually or legally, therefore, liable to be rejected and ordered accordingly.

To be fair to the appellant, counsel has relied upon judgments of Hon'ble the Supreme Court **K. Nanjappa (dead) by LRs Vs. R.A.**

<u>Hameed @ Ameersab (dead) by LRs and another, (2016) 1 SCC 762, Manjunath Anandappa Urf. Shivappa Hanasi Vs. Tammanasa and others, 2003(2) RCR (Civil) 713</u> and **<u>Abdullakoya Haji and others Vs. Rubis Tharayil and another, 2019 Latest Case Law 738 SC</u>**. None of the judgments cited at bar has bearing on the facts of the case at hand nor any such ratio has been laid down which can be used in favour of the appellant to interfere in the consistent findings recorded by the Courts. That being so, the appellant cannot derive any advantage from the referred authorities.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

SEPTEMBER 2, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no