

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

RSA No.3225 of 2011 (O&M)

Date of decision: 09.07.2019

Inder Pal Singh

.....Appellant

Versus

Bankey Bihari

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Naresh Kaushal, Advocate,
for the appellant.

Mr. R.L. Sharma, Advocate,
for the respondent.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 15.03.2010 passed by the District Judge, Ropar, dismissing an appeal filed by defendant-appellant (hereinafter referred to as 'the defendant') against the judgment and decree dated 01.09.2008 passed by the Additional Civil Judge (Senior Division), Anandpur Sahib, whereby suit filed by plaintiff-respondent (hereinafter referred to as 'the plaintiff') for specific performance of agreement to sell, has been decreed.

Bankey Bihari-plaintiff (respondent herein) (hereinafter referred to as 'the plaintiff') filed the above said suit with the averments that vide agreement to sell dated 06.02.1997, defendant-Inder Pal Singh had agreed to sell his house, situated in Chak Bagh Colony, Anandpur Sahib, to him (plaintiff) for a sale consideration of Rs.5,00,000/- and had received Rs.1,80,000/- as earnest money in the presence of attesting witnesses. The stipulated date for execution and registration of the sale deed was on or

before 14.05.1997. However, date for execution of the sale deed was extended from time to time vide separate endorsements. But, defendant failed to execute the sale deed. Thereafter, a fresh/subsequent registered agreement to sell dated 29.01.1998 was executed between the parties in the presence of attesting witnesses, as per which, sale deed was to be executed on or before 25.03.1998 after receiving the balance sale consideration as per terms and conditions of the earlier agreement to sell dated 06.02.1997. However, the defendant again expressed his inability to execute the sale deed and got the date of execution extended upto 20.04.1998, 20.06.1998 and 20.08.1998 respectively vide different endorsements. On 29.01.1998, plaintiff had gone to the office of Sub Registrar, Anandpur Sahib for getting the sale deed executed, but defendant again expressed his inability to execute the sale deed and by demanding advance of Rs.80,000/- from the plaintiff, he requested to extend the date of execution of the sale deed. Ultimately, on 11.01.2000, plaintiff again visited the office of Sub Registrar, Anandpur Sahib along with the balance sale consideration, but defendant did not come present there. Plaintiff got his presence marked before the Sub Registrar. As per plaintiff, he was always ready and willing to perform his part, but defendant failed to do so. Hence, the suit.

Upon notice, defendant filed written, wherein allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following preliminary issues were framed by the trial Court:-

1. Whether the defendant executed an agreement to sell dated 06.02.1997 for the sale of the disputed property and received Rs.1,80,000/- as advance money? OPP
2. Whether the plaintiff is still ready and willing to perform his

part of the agreement? OPP

3. Whether the plaintiff is entitled to the recovery of damages as prayed as alternative relief? OPP

4. Relief.

Trial Court, after hearing learned counsel for the parties, decreed the suit. Appeal against the said judgment also met the same fate.

Both the Courts have given a concurrent finding of fact that the plaintiff had proved on record agreements dated 06.02.1997, 29.01.1998 & 30.12.1998 Ex.P1, Ex.P2 & Ex.P3 respectively. A total payment of Rs.2,60,000/- (Rs.1,80,000 + Rs.80,000) was paid to the defendant. After examining the aforesaid agreements, both the Courts came to a conclusion that on the request of defendant, date for execution of the sale deed was extended. As per documents Ex.P1 to Ex.P3, it is nowhere stated that the date was being extended on the request made by the plaintiff. The oral testimony of defendant Inder Pal Singh (DW-1) that the date for execution of the contract was extended on the request of the plaintiff, was not corroborated by any substantial evidence on record. With these averments, finding on issue No.1 was given in favour of the plaintiff and his suit was decreed.

Learned counsel for the appellant (defendant) has vehemently argued that as per agreement to sell Ex.P1, subsequent extensions were granted on the request made by the plaintiff. A perusal of documents Ex.P1 to Ex.P3 shows that while defendant had put his signatures on the endorsement for extension of time, but it is nowhere stated that the plaintiff was not ready and willing to perform his part of the contract. Hence, finding recorded by both the Courts that extension was given with the consent of the defendant, does not require any interference.

Another question, which has been considered by the lower appellate Court was that the onus to prove that the time was the essence of the contract was on the defendant-appellant. It has been observed that during his cross-examination, DW-1 had stated that he was still ready and willing to execute the sale deed. Once, he was ready to execute the sale deed, then time was never made the essence of the contract. It was further observed that the last extension of time was granted vide Ex.P3. Limitation to file the suit would start from January, 2000. The legal notice was sent on 09.02.2000 and the suit was filed on 21.07.2000. Hence, it was held to be within limitation.

After going through the impugned judgments, this Court is of the view that defendant-appellant has failed to lead any evidence to show that the plaintiff was never ready and willing to perform his part of the contract. Moreover, on stipulated date, the plaintiff had visited the office of Sub Registrar along with balance sale consideration to get the sale deed executed. The agreements to sell Ex.P1 to Ex.P3 have been duly proved on record. In this backdrop, suit filed by the plaintiff (respondent) has been rightly decreed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

09.07.2019
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No