

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

**RSA No.3871 of 2016 (O&M)
Date of Decision.09.01.2019**

Roop Lal and another

...Appellants

Vs

Partap Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Namit Khurana, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

Learned counsel for the appellants undertakes to deposit costs of ₹2500/- imposed by this Court vide order dated 16.10.2018 within a period of three days.

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court, which reversed the finding of the trial Court dismissing the suit of the plaintiff, which was decreed by the trial Court. The plaintiff instituted the suit for specific performance of the agreement to sell dated 25.04.2002 in respect of the suit property, referred to in the plaint, for a total sale consideration of ₹14,25,000/- and alleged to have paid ₹2,40,000/- in cash and ₹3,00,000/- as earnest money. The cheque was to be encashed on 31.05.2002 but the same was dishonoured. Defendants were paid amount of ₹60,000/- on 11.05.2002 and another sum of ₹3 lakhs was paid in cash on 17.07.2002. The stipulated date for execution and performance of the sale deed was 24.10.2002. Defendants were served with legal notice dated 28.10.2002 but they did not approach nor obtained NOC from the concerned District

Town and Country Planning Department, which was mandatory requirement of law for execution and registration of the sale deed.

Defendants admitted agreement to sell but denied readiness and willingness and stated that plaintiffs failed to honour the terms and conditions of agreement. Even cheque of ₹3 lakhs was dishonoured.

The trial Court on preponderance of the evidence led by the parties decreed the suit but in appeal preferred by the defendants, the lower Appellate Court reversed the finding of trial court.

Mr. Namit Khurana, learned counsel appearing on behalf of the appellants submitted that the lower Appellate Court failed to advert to the evidence of PW4, Data Ram, who unequivocally stated that for registration of sale deed, NOC from the concerned Department was a *sine qua non*. Even if agreement to sell did not envisage any terms but the local law regulating the sale could not have been bye-passed. This fact has totally gone unnoticed by the lower Appellate Court, thus, there is abdication. Substantial amount of consideration had already been paid, even possession was also given.

I am afraid aforementioned argument of Mr. Khurana is not able to cut ice to bring the case within the realm of illegality and perversity, for, as per the pleadings in paragraph 4, 5 and 6 and reply to the paras mentioned above, which are extracted herein below, plaintiffs miserably failed to prove continuous readiness and willingness from 25.04.2002 till filing of the suit on 23.01.2004:-

“Plaint.

4. That the plaintiffs remained always ready and willing to perform their part of contract and on the stipulated date for execution and registration of sale deed i.e. on 24.10.2002 the plaintiffs alongwith balance sale consideration and necessary expenses for purchase of stamp paper and for execution and registration of sale deed, went to the office of Sub Registrar, Jagadhari and waited for defendants till evening in Tehsil premises Jagadhari but the defendants did not turn up and ultimately the plaintiff No.1 got his presence marked in the office of Sub Registrar, Jagadhari by getting an affidavit attested. It may be mentioned here that the defendants even could not arranged for the NOC as required for getting the sale deed executed and registered.

5. That the plaintiffs were always ready and willing to perform their part of agreement and are still ready and willing to perform their part of agreement. The plaintiffs always remained ready with the balance sale consideration and necessary expenses for purchase of stamp paper for execution and registration of the sale deed.

6. That on 28.10.2002 the plaintiffs served a registered A.D. legal notice upon the defendants requiring the defendants to get the sale deed executed and registered

in favour of plaintiffs as per terms and conditions of agreement to sell dated 25.4.2002. The said notice was duly received by the defendants but they gave an evasive reply and could not get the NOC, required for getting the sale deed executed and registered. Rather they failed a false and frivolous suit against the plaintiffs which clearly proves that the defendants have been resiling from the agreement.

Written statement.

4. That para No.4 of the plaint is correct to this extent that the last date for execution and registration of the sale deed was fixed as 24.10.2002 and the time was the essence of the contract, but it is wrong to allege that the plaintiffs ever remained ready to get the sale deed executed and registered. As already stated, the defendants had throughout been ready and willing to execute the sale deed against balance sale consideration, but the plaintiffs refused to perform their part of the contract even on 24.10.2002, on which date all the defendants came present in the office of Sub Registrar, Jagadhari to execute the sale deed, only plaintiff No.1 was present. It may be mentioned here that the plaintiffs were not ready with the funds nor to get the sale-deed executed, but had come to play a fraud and when confronted by the defendants to pay balance sale consideration and get the sale deed executed, they

refused to do so and went away. The defendants got their presence marked with the Sub Registrar (Tehsildar/Executive Magistrate) Jagadhari by getting affidavit attested.

5. That para No.5 of the plaint is incorrect, wrong, against facts and hence denied. As already mentioned above, the plaintiffs are guilty of breach of contract, whereas the defendants had throughout been ready and willing to execute the sale deed in terms of the agreement in question.

6. That para No.6 of the plaint is wrong and hence denied. Notice dt. 28.10.2002 was repudiated through a reply-cum-notice dt. 31.10.2002 by the defendants. The plaintiffs were required and requested through reply-cum-notice dt. 31.10.2002 to get the sale deed executed by making the balance sale consideration on or before 15.11.2002, otherwise agreement of sale would stand cancelled and earnest money forfeited. The plaintiffs did not give any response not to speak of offering to get the sale-deed executed and performing their part of the contract. So the agreement stood cancelled and earnest money forfeited.”

Readiness and willingness has to be proved from the date of the execution of the agreement to sell, during its subsistence, till the filing of suit, during pendency of suit and till passing of the decree. The aforementioned view of mine is derived from the ratio

decidendi culled out by the Hon'ble Supreme Court in **B.Vijaya Bharathi Vs. P.Savitri and others 2018(1) RCR (Civil) 4**. For the sake of brevity, paragraph 15 of the judgment reads thus:-

“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."

No explanation has come forward except the bald pleadings, which were emphatically denied. In other words, plaintiffs miserably failed to discharge the onus qua readiness and willingness and therefore, the lower Appellate Court being the last court of fact and law rightly declined the discretionary relief under Section 20 of the Specific Relief Act.

In such situation, I do not intend to subscribe to the arguments of learned counsel for the appellant to form a different opinion than the one already arrived at by the lower Appellate Court, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 09, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable Yes