IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5374 of 2015 (O&M)
Date of Decision: May 08, 2019

Maninder Bir Singh Kochhar

...Appellant

Versus

Major Rajinder Kumar Bali

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Ashish Aggarwal, Senior Advocate with
Ms. Shemona Sabharwal, Advocate,
for the appellant.

Mr. Shailendra Sharma, Advocate,
for the caveator/respondent.

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AMIT RAWAL, J.

The present Regular Second Appeal is directed against the judgment and decree of the Lower Appellate Court, whereby the suit of the appellant-plaintiff for specific performance of the agreement to sell dated 07.03.2005 decreed by the trial Court, has been dismissed.

Appellant-plaintiff sought the discretionary relief on the basis of the agreement aforementioned in respect of land measuring 25 kanals 13 marlas, i.e., 3 acres 01 kanal 13 marlas being 1/3rd share out of total land measuring 77 kanals agreed to be sold @ ₹ 25,00,000/- per acre against payment of ₹ 1,00,000/- as earnest money. As per the terms and conditions of the agreement, plaintiff was required to pay a sum of ₹15,00,000/- after deducting ₹ 1,00,000/- by 31.03.2005 and another sum of ₹ 5,00,000/- by 10.04.2005 and sale deed was agreed to be executed at the end of March,

2006. As per the averments, plaintiff stated to have prepared two drafts amounting to ₹ 8,00,000/- and ₹ 6,00,000/-, totalling ₹ 14,00,000/- and had sent the same to the defendant by registered post, but the same was returned with the endorsement "Not Met". Plaintiff was flabbergasted to receive a letter dated 14.06.2005 on 16.06.2005, whereby the defendant cancelled the agreement by enclosing the cheque of ₹ 1,00,000/-. The aforementioned suit was instituted on 24.07.2008.

The respondent-defendant contested the suit by raising preliminary objections qua limitation, court fees etc. and on merits it was alleged that the agreement was false and did not contain the particulars of the khasra numbers. Plaintiff did not have any financial capacity to perform the agreement. The readiness and willingness was also wanting as the plaintiff did not make any effort by personally handing over the bank drafts instead sending by registered post.

Since the parties were at variance, the trial Court framed the following issues:-

> "1. *Whether the plaintiff is entitled to a decree for possession by way of specific performance of the suit land detailed in the head note of the plaint in furtherance of agreement to sell dated 7.3.2005 as prayed for? OPP*
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> *2. Whether the suit of the plaintiff is time barred? OPD*
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> *3. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
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> *4. Relief."*

Plaintiff, in support of the evidence, brought on record documents Ex.P1 to Ex.P14, i.e., jamabandi, agreement to sell, copies of cheques, letter dated 30.03.2005, post envelope, letter dated 09.04.2005, letter dated 14.06.2005, cheque dated 14.06.2005 and examined two witnesses, whereas the defendant examined himself as DW-1, but did not tender any document.

The trial Court, on the basis of the evidence aforementioned, decreed the suit, but the Lower Appellate Court accepted the appeal of the defendant and dismissed the suit on the ground of limitation and for want of readiness and willingness.

Mr. Ashish Aggarwal, learned Senior Counsel assisted by Ms. Shemona Sabharwal, Advocate representing the appellant-plaintiff submitted that the court below has taken the cause of action/alleged breach from 14.06.2005 for the purpose of computing the limitation and dismissed the suit filed in July, 2008 being barred, whereas it was to be start from the end of March, 2006, i.e., target date. It was an unilateral act of defendant in cancelling the agreement and there was no such circumstances alleging breach on the part of the plaintiff.

On the contrary, the appellant vide registered letter dated 30.03.2005 Ex.P5, had sent the drafts aforementioned, but the same was received back with the report "Not Met", which amounted to refusal. Even a letter Ex.P9 dated 09.04.2005 requesting the defendant for giving his signatures to the authority for the purpose of obtaining No Objection Certificate was not responded. Agreement to sell was not denied and in such circumstances, Lower Appellate Court could not have non-suited the plaintiff as the ingredients of Section 16(1)(c) of the Specific Relief Act have been proved on record.

Another ground for non-suiting was in not challenging the cancellation of 14.06.2005 in view of the ratio decidendi culled out in **I.S.Sikandar (Dead) by L.Rs. Versus K.Subramani and others, 2014(1)**

R.C.R. (Civil) 236. It was a case where the time was not essence of the agreement to sell. However, in the instant case time was essence. The cancellation was prior to the date and, therefore, the ratio in the aforementioned judgment would not apply. In support of the aforementioned contention, relied upon an unreported judgment of the coordinate bench of this Court rendered in **Bal Vir Sehgal Versus Sanjay Bansal and others, Regular Second Appeal No.2311 of 2015,** decided on 11.01.2016, wherein in Paras 54 and 56 held as under:-

> "*[54]. Perusal of **I.S. Sikandar (Dead) by LRs'** case (supra) reveals that after expiry of the contract date for registration of the sale deed, the seller waited quietly and even extended time for execution of the instrument and for that plaintiff was called upon to get the sale deed executed and registered by paying the balance sale consideration, but the plaintiff avoided the execution of the sale deed on one reason or the other, leading to the conclusion that he was not ready and willing to perform his part of obligation. In view of that defendants rescinded the contract and executed the sale deed in favour of subsequent vendee by alleging that time was the essence of the contract as the vendors were in dire need of money due to death of husband of the defendant No.1, who was the only breadwinner, therefore, in view of that it was pleaded that time was the essence of the contract and plaintiff failed to perform his part of obligation, despite extension in time granted by the defendants.*
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> *[56]. On the other hand learned Senior counsel for the respondents argued that when time is not the essence of the contract there is no need for seeking declaratory relief qua termination of contract and suit for specific performance is maintainable. Since time was not the essence of contract in the present case, therefore, suit is maintainable. He relied upon G. Sekar vs. K. Masilamani (Madras), S.A. No.1224 of 2004 &*

> *CMP No.324 of 2015 decided on 09.06.2005, Abdul Sami vs. Smt. Neelu Dhandiya (Rajasthan), 2014 SCC Online Raj 5888, and Mandhir Singh & Ors. vs. Gurjant Singh & Anr.,2014(3) RCR (Civil) 728 (P&H) (Punjab)."*

Once the agreement to sell was denied, respondent- defendant is not entitled to take the plea of readiness and willingness. Relied upon **Sant Singh Versus Amarjit Singh, 2015(9) R.C.R. (Civil) 185.**

I have heard the learned counsel for the appellant-plaintiff, appraised the paper book, judgments cited at bar and of the view that there is no force and merit in the submissions of the learned Senior Counsel for the simple reason that tenor and mode of the written statement do not reveal the emphatical denial of the agreement, but its construal reveals that the agreement to sell was cancelled on 14.06.2005 as plaintiff did not take any steps to hand over the amount personally.

No evidence has come on record explaining the reason for sending the drafts by registered post, particularly when both the parties to the lis are residents of the same city. If at all, as per the report the defendant was not met, but no person from the postal and telegraph departments has been examined. Presumption of manipulation of the report cannot be ruled out. The readiness and willingness has to be proved from the last date as to whether any steps were taken by the plaintiff for handing over the amount as per the terms and conditions of the agreement personally. Accepting the argument for the time being to be unilateral act of the defendant in cancelling the agreement, though do not agree with the contention of unilateral cancellation, the reasons explained were in compliance. No explanation has come either in the pleadings or the evidence how and in what manner the plaintiff was ready and willing to perform the agreement in filing the suit in July, 2008, though the Lower Appellate Court has taken the date as 14.06.2005 for the purpose of computation of the limitation on account of alleged breach. No explanation has come forth in assailing the remedy nor any legal notice or any effort till July, 2008 when the suit was filed. The law with regard to the readiness and willingness is no longer *res integra*. The relevant para No.15 of the judgment rendered in **B.Vijaya Bharathi Versus P.Savitri & others, 2017 AIR (SC) 3934** read 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 Jugrag Singh was set aside as follows:-*
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> > *"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."*

It is not an emphatical denial and, therefore, the ratio in **Sant**

Singh's case (supra), imposing an estoppel upon the defendant to take the plea of readiness and willingness would not apply.

Whether the Lower Appellate Court had fallen in error in non-suiting the plaintiff on the ground of limitation by referring to the provisions of clause (2) of Article 54 of the Limitation Act, the law on such proposition is no longer res integra, for, the cause of action to a vendee arises only on account of the breach. No doubt, the defendant had cancelled the agreement prior to the target date, i.e., end of March, 2006. It cannot be construed that plaintiff was required to wait for the target date to assuage cause as late as in July, 2008. The intention was clear. Remedy should have been taken with promptitude. All these factors have been weight in the mind of the Lower Appellate Court extensively being the last court of fact and law.

Unreported judgment of the learned Single Judge would not apply, for, the facts as enumerated therefrom vis-a-vis of I.S.Sikandar's case (supra), are totally different, for, in I.S.Sikandar the seller waited quietly and even extended time for execution of the instrument, but no steps were taken for specific performance and in such circumstances, defendant rescinded the contract. The explanation of not having made any effort to hand over the drafts in person, cancellation of the agreement was a necessary corollary.

For the reasons aforementioned, I do not find any illegality or perversity in the findings under challenge. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

At this stage, learned counsel for the appellant-plaintiff made a request that the earnest money of ₹ 1,00,000/- may be ordered to be refunded. Mr. Shalendra Sharma, learned counsel for the respondent/ caveator submitted that his client is not averse to issue the fresh cheque of ₹ 1,00,000/- provided that the plaintiff/appellant is directed to return the old cheque.

Learned Senior Counsel for the appellant-plaintiff, on instructions from his client, submitted that the old cheque would be returned in view of the consensus arrived at between the parties.

In view of the above, in case the old cheque is returned to the respondent-defendant, new cheque of ₹ 1,00,000/- will be sent by registered post to the appellant-plaintiff within a period of fifteen days.

May 08, 2019 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No