

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

**RSA No.1181 of 2017 (O&M)
Date of decision:11.02.2019**

Niranjan Sharma

... Appellant

Vs.

Sanjay Sharma

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sanjiv Kumar Aggarwal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff has not been successful in claiming the discretionary relief for specific performance of the agreement to sell dated 07.11.2001 against the payment of earnest money of Rs.2.50 lakhs stipulating the date for execution and registration of the sale deed as 06.01.2004.

It was alleged that defendant did not come present on the aforementioned fixed date necessitating the plaintiff to serve a legal notice dated 18.8.2005. The defendant denied the existence or intention to enter into agreement to sell and came out with a plea of having obtained the blank papers converted into the same as brother of defendant repaid the loan amount to the plaintiff alongwith interest on 15.12.1999.

Mr. Sanjiv Kumar Aggarwal, learned counsel appearing on behalf of the appellant-plaintiff submitted that initially the trial court dismissed the suit on the ground that original agreement to sell has not seen

the light of the day but the Lower Appellate Court did not uphold the aforementioned finding as when the photocopy of the agreement to sell was tendered, the original was in the custody of the plaintiff with no objection from other side but non-suited the appellant on the ground that no alternative relief or to seek the assistance of the Court for specific performance was sought.

In support of the aforementioned contention, relied upon the ratio decidendi culled out by the Hon'ble Supreme Court in **P.D. Souza Vs. Shondrilo Naidu 2004(6) SCC 649**. There cannot be any objection qua readiness and willingness in the absence of denial of relief.

I am afraid the aforementioned arguments are not sustainable as the date derived from the aforementioned facts revealed that no steps were taken by the plaintiff for almost approximately more than one year in sending the legal notice and thereafter, he remained in slumber, chose to file the suit a day before expiry of limitation. The law on readiness and willingness is no longer *res integra* in view of the law laid down by the Hon'ble Supreme Court in **B.Vijaya Bharathi Versus P.Savitiri & Ors., 2017 (4) Civil Court Cases 291 (S.C.)**

The Court cannot shut its eyes even if the defendant has not denied the agreement to sell. There would have been some force, for, the defendant was ex parte and payment of earnest money of Rs.2.50 lakhs was allegedly paid by the plaintiff, remained un-controverted but no such relief had been sought.

As an upshot of my findings, arguments of Mr. Aggarwal, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

	(AMIT RAWAL)
	JUDGE
February 11, 2019	
savita	
Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No