

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

**RSA No.5537 of 2014 (O&M)
Date of Decision.20.02.2019**

Sabra ...Appellant
Vs
Sada Ram ...Respondent

2. RSA No.5538 of 2014

Sabra ...Appellant
Vs
Sada Ram ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Kotla, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.13145-C of 2014 in RSA No.5537 of 2014

For the reasons stated in the application, delay of 5 days
in re-filing of the appeal is condoned.

Application is allowed.

C.M. No.13146-C of 2014 in RSA No.5538 of 2014

For the reasons stated in the application, delay of 7 days
in re-filing of the appeal is condoned.

Application is allowed.

Main cases

This order of mine shall dispose of two appeals bearing
Nos.5537 and 5538 of 2014 arising out of Civil Suit bearing Nos.175
of 2011 and 176 of 2011 respectively.

In both suits, the appellant-plaintiff has not been
successful in defending the appeal filed before the lower Appellate
Court by the defendants, who were not successful in trial Court. The

suit for possession by way of specific performance of agreement to sell dated 29.09.2008 in respect of two parcels of land was decreed by the trial Court, which has been reversed by the lower Appellate Court.

The plaintiff sought specific performance of agreement to sell aforementioned with the defendant by receiving earnest money stipulating 29.12.2008 as date for registration and execution of the sale deed. The plaintiff stated to have paid a sum of ₹1 lakh more as earnest money on 13.10.2008 and alleged that he had been ready and willing to perform the agreement and suit was filed on 28.12.2011.

Defendant opposed the suit and came out with the plea that plaintiff was not ready and willing to perform his part of contract. He did not appear on the agreed date and was served with legal notice dated 2.1.2009 but did not come present and in such circumstances, earnest money was forfeited.

Mr. Kotla, learned counsel appearing on behalf of the appellant submitted that readiness and willingness cannot be a ground for non-suiting the plaintiff, as even otherwise, defendant was not able to prove on record the cancellation of the agreement or forfeiture and therefore, relied upon ratio culled out by Hon'ble Supreme Court in **I.S. Sikandar through LRs Vs. K. Subramani and others 2014(1) RCR (Civil) 236** to contend that in the absence of relief of declaration, not laying challenge to the cancellation of agreement cannot be a ground to non-suit the plaintiff. The suit was within limitation and could not have been thrown out in the manner and mode as has been done. His client is ready to compensate the defendant on any terms and condition including costs which this

Court deems appropriate.

I am afraid aforementioned argument is not sustainable, as the readiness and willingness has to be proved from the date of agreement to sell, during its subsistence, at the time of filing of suit, during the pendency of suit, much less, decretal of the suit. This view of mine is derived from ratio decidendi culled out by this Court in *Sita Ram and others Vs. Radhey Shyam 2007 (4) RCR (Civil) 533* and Hon'ble Supreme Court in *B. Vijaya Bharathi Vs. P Savitri and others 2017 (4) CCC 291 SC.*

The assertion in the plaint would not suffice the circumstances which rendered plaintiff incapable of seeking specific performance after the stipulated date. Filing of the suit on the last date of limitation is basically a half-hearted approach to seek discretionary relief. Even if the plaintiff was successful and deposited the amount in terms of judgment and decree, objection of readiness and willingness till the decretal of the suit would not efface ingredients of Section 16(c) of the Specific relief Act.

In view of the such circumstances, arguments of Mr. Kotla have not been able to cut ice to bring the case within the realm of illegality and perversity, much less, no substantial question of law arises for determination. No ground of interference is made out. Resultantly, both the second appeals are dismissed.

(AMIT RAWAL)
JUDGE

February 20, 2019

Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No