

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

RSA No. 5856 of 2014 (O&M)
Date of decision: December 9, 2019

Balbir Singh and others

...Appellants

Versus

Billu

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Pritam Saini, Advocate,
for the appellants.

Mr. Mukesh Rao, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. The respondent herein (original plaintiff) filed a suit for specific performance against the defendants/appellants herein, which was dismissed on 24.2.2011 by the Additional Civil Judge (Senior Division), Rewari. On the appeal filed by the respondent herein, the first Appellate Court was allowed the same and decreed the suit on 28.10.2014. Aggrieved against the said judgment and decree, the instant appeal has been filed by the appellants.

2. The facts in brief are that the respondent herein filed a suit for specific performance of the agreement to sell dated 31.10.2005 with the averments that the appellants herein are owners in possession of the suit land detailed in para 1 of the plaint and they had agreed to sell the same to

the respondent. The respondent had paid ₹1,20,000/- as earnest money, out of total sale consideration of ₹1,84,000/-. It was averred that on 10.2.2006, the date fixed for registration of the sale deed, the respondent remained present in the office of Sub Registrar, Rewari with remaining sale consideration etc. but the appellants did not turn up. Consequently, the respondent served a notice dated 14.2.2006 on the appellants stating that he is ready and willing to perform his part of the contract, but to no avail. Having received no positive response from the appellants, the respondent filed the instant suit on 9.3.2006.

3. The suit was contested by the appellants by filing written statement, taking several preliminary objections. The agreement entered into between the parties and receipt of earnest money was admitted, but it was alleged that it was respondent himself, who committed the breach of contract and he has not performed his part of the contract. It was also pleaded that the respondent intentionally did not come on 10.2.2006 for getting the sale deed registered in his favour and thus he was not ready and willing to perform his part of contract.

4. After completion of the pleadings, the issues were framed. Thereafter, the parties led evidence in support of their respective claims. The trial court dismissed the civil suit filed by the respondent, while holding that the respondent failed to prove that he was ready and willing to perform his part of the contract. On appeal, as already noticed, the suit of the respondent was decreed, which has resulted in filing of the instant appeal.

5. Mr. Pritam Saini, learned counsel appearing on behalf of the

appellants, while challenging the impugned judgment and decree of the first Appellate Court, submits that the learned first Appellate Court has gone wrong in setting aside the well reasoned judgment and decree passed by the trial court. In fact, the respondent had never been ready and willing to perform his part of the contract, as he did not come present in the office of the Sub-Registrar on the date fixed for registration of the sale deed on 10.2.2006; nor did he purchase stamp paper for preparation of the sale deed. It is also argued that the presence of the appellant before the Sub-Registrar is established by the entry made in the register maintained by the Executive Magistrate. It is argued that the respondent has admitted of returning from the office of the Sub-Registrar at 2/2.30 p.m. The respondent himself admitted in his statement that he along with his witnesses returned from the office of the Sub-Registrar at 2/2.30 p.m. It is also submitted that the first Appellate Court should not have allowed the appeal in toto and at the most, a decree for refund of the earnest money could have been passed. In support of his arguments, he relies on the judgment rendered by the Delhi High Court in the case of **Sanjay Gupta Versus Ram Prasad 2012 (4) AD (Delhi) 727** and the Supreme Court judgment in the case of **Padmakumari and others Versus Dasayyan and others 2015 (3) Recent Apex Judgments (R.A.J.) 88**.

6. Per contra, Mr. Mukesh Rao, learned counsel appearing on behalf of the respondent, submits that the respondent has specifically averred in para 3 and 5 of the plaint regarding his readiness and willingness to perform his part of the contract. It is further submitted that the respondent

had already paid a sum of ₹1,20,000/- out of ₹1, 84,000/-, which is almost 70% of the total sale consideration. Not only this, when the appellants did not turn up for registration of the sale deed, the respondent sent a legal notice within 10-12 days showing his readiness and willingness to perform his part of the contract and when no response was received from the appellants, the respondent promptly filed the instant suit. The respondent has established his readiness and willingness to perform his part of the contract and therefore, the first Appellate Court has rightly decreed the suit of the respondent, which warrants no interference by this court in the instant appeal. In support of his contentions, he relies on **Jora Singh Versus Lakhwinder Kumar and others 2011 (1) R.C.R. (Civil) 130** and **Mrs. A.Kanthamani Versus Mrs. Nasreen Ahmed 2017 (2) R.C.R. (Civil) 267**.

7. Undisputedly, the appellants are the owners of the land in dispute; they entered into an agreement to sell the same in favour of the respondent on 31.10.2005 and also received ₹1,20,000/- as earnest money. It is also admitted fact that as per the terms and conditions of the agreement to sell, sale deed was to be executed on or before 10.2.2006. In view of the above admitted facts, the moot question that falls for consideration in the instant appeal is, whether the respondent was and is ready and willing to perform his part of the contract.

8. No doubt, the respondent remained present on the appointed date in the office of the Sub-Registrar, Rewari on 10.2.2006 upto 2 p.m. only and thereafter returned to his house, as borne out by his admission during his cross-examination. The reasoning given was that the appellant

had not turned up, which is justifiable a reason for the respondent to return at 2 p.m. It cannot be concluded that the respondent was not ready and willing to perform his part of the contract. He had got his presence marked before the Naib Tehsildar to establish his presence on the relevant date and in case the appellant had turned up, the stamp paper would have been purchased. The respondent, while appearing in the witness box as PW6, has deposed that he was ready and willing to get executed the sale deed as per terms and conditions of the agreement Ex. P.1. It cannot be lost sight of that the respondent had already made payment of ₹1,20,000/- out of the total sale consideration of ₹1,84,000/-. A major portion of the amount stood paid well before the sale deed was to be executed. Furthermore, the respondent acted with great promptness and sent a legal notice dated 14.2.2006 asking the appellant to get the sale deed executed within a period of 15 days and when he did not receive any positive response, then he promptly filed the present suit within a period of one month i.e. on 9.3.2006. The prompt action taken by the respondent is indicative of his readiness and willingness to perform his part of the contract.

9.. An argument has been raised by the learned counsel for the appellant that the appellant too was present on the appointed date and the respondent ought to have waited for him. This argument would not have much substance as the respondent had been able to prove on the record that the appellant had appeared much later during the day as would be evident from his presence being recorded in the register maintained by the Executive Magistrate and his entry is the last entry for the date. It can safely

be presumed that the appellant herein had appeared much later and probably manipulated the entry, since he did not summon anyone from the office of the Sub-Registrar to prove the entry. Moreover, the appellant would not be entitled to any discretionary relief since no equity lies in his favour. Apart from that he has enjoyed the benefit of more than 70% of the sale consideration and did not turn at the relevant time to have the sale deed executed. The judgment as relied by the learned counsel for the appellants are not applicable to the facts of the instant case and are distinguishable. In **Sanjay Gupta's case (Supra)**, the purchaser had not stepped into the witness box to depose that he had contacted the defendant (seller) on many occasions and offered to pay balance sale consideration, whereas in the present case, the respondent himself stepped into the witness as PW6 and tendered his evidence by way of affidavit Ex. PW6A in which (para 3), he had sworn that he was/is ready and willing to get executed the sale deed as per terms and conditions of the agreement Ex. P.1. Similarly, in **Padmakumari's case (supra)**, the plaintiff (purchaser) had not averred that he had always been ready and willing to perform his part of contract, whereas in the present case, the plaintiff/respondent herein has specifically averred in his plaint (para 3 and 5) that he is ready and willing to perform his part of the contract.

10. Apart from that, it may also be noted that the lower Appellate Court is the final court of fact. Finding of fact recorded by the lower Appellate Court that the plaintiff was always ready and willing to perform his part of the contract is based on appreciation of evidence and cannot be

said to be perverse or illegal in any manner so as to warrant interference in the second appeal.

11. For the reasons afore-stated, I find no merit in the instant second appeal. The same is dismissed.

December 9, 2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No