

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

**RSA No.3569 of 2017 (O&M)
Date of decision:09.01.2019**

Labh Singh

... Appellant

Vs.

Harnek Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.S.Sarwara, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.8605-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 10 days in filing the appeal, is condoned.

C.M. stands allowed.

C.M.No.8606-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 484 days in re-filing the appeal, is condoned.

C.M. stands allowed.

RSA No.3569 of 2017 (O&M)

The appellant-plaintiff has not been successful in seeking specific performance of the agreement to sell dated 10.05.2002 before the

trial Court and as well as in appeal.

The plaintiff claimed specific performance of the agreement to sell on the premise that defendant had agreed to sell the property at the rate of Rs.64,000/- and had received a sum of Rs.17,000/- as earnest money. The stipulated date for execution and registration of the sale deed was fixed as 29.02.2005 and the plaintiff was put into possession.

The defendant denied the execution of the agreement to sell and stated that he had borrowed a sum of Rs.17,000/- and executed the agreement to sell dated 26.07.1997 as security. The trial Court though found that agreement to sell has been proved and declined the discretionary relief as readiness and willingness was found to conspicuously wanting.

Mr. S.S.Sarwara, learned counsel appearing on behalf of the appellant-plaintiff submitted that once the suit was filed within limitation particularly when defendant denied the execution of the agreement to sell, an objection qua readiness and willingness could not have been taken by the Courts below.

I am afraid the aforementioned argument is not sustainable as plaintiff is bereft of the steps being taken by the plaintiff after expiry of the target date as the suit was filed on 01.11.2007. There is no averment as to what steps the plaintiff had been taking in tandem with the provisions of Section 16(c) of Specific Relief Act, 1963 (for short "1963 Act").

The plaintiff has to aver and plead the continuous readiness and willingness 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 Jugrag 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."

The plaintiff failed to prove his presence before the office of Sub-Registrar on the stipulated date. In such circumstances, despite the admission of the vendor with regard to the execution of the agreement to sell, not able to overcome the hurdle of statutory provisions of Section 16(c) of 1963 Act. This is what the import of the judgments and decrees of the Courts below.

No ground is made out for interference in the impugned judgments and decrees of the Courts below, much less no substantial question of law arises for adjudication of the present appeal.

The appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 09, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No