

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

RSA No.4910 of 2018(O&M)

Date of decision: 5.3.2019

Anu Dhindaw

.....Appellant

VERSUS

Ram Mehar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

REKHA MITTAL, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for possession by way of specific performance on the basis of agreement dated 26.06.2009 in respect of plot No.1058, Sector 23/23A measuring 83.60 square meters i.e. 99.98 square yards situated in the Urban Estate, Gurgaon was decreed by the trial Court vide judgment and decree dated 09.07.2015 and appeal preferred by unsuccessful defendant (appellant herein) was dismissed by the Additional District Judge, Gurugram.

The case set up by respondent/plaintiff is that the appellant agreed to sell the suit property for a total sale consideration of Rs.28,50,000/- and a sum of Rs.3,00,000/- was paid towards earnest money/advance money and the balance amount was agreed to be paid at the time of execution of sale deed on or before 10.08.2009. It was also agreed that appellant shall obtain No Dues Certificate from HUDA and after execution of sale deed if there would be any charges levied by

HUDA, same shall be paid by the respondent. It is averred by the respondent that after few days of agreement of sale i.e. on 05.07.2009, the appellant approached the respondent and informed that there was outstanding loan of Rs.9,00,000/- on the property in question. In order to complete the deal, the respondent agreed to pay the said amount of Rs.9,00,000/- and issued cheque bearing No.268610 dated 06.07.2009 drawn on Gurgaon Gramin Bank and the said fact was mentioned in the original agreement, in handwriting of the appellant. The appellant encashed the cheque and hence total advance amount/earnest money paid by the respondent to the appellant is Rs.12,00,000/-. It is further averred that the respondent always remained ready and willing to perform his part of the contract but the appellant intentionally did not perform her part of the contract. On the stipulated date i.e. 10.08.2009, he remained present in the office of Sub Registrar, Gurgaon along with balance sale consideration but the appellant did not come present. He got his presence marked before the Sub Registrar, Gurgaon.

The respondent went to the head office, searched the records of the plot in question and was shocked to know that the suit plot is not rectangular in shape as informed by the appellant but is of triangular shape. The respondent came in touch with the appellant after knowing her residential address and when he confronted the appellant about shape and value of the plot, after due deliberation, the appellant agreed that cost of the plot will now be Rs.25,25,000/- and fresh date of execution and registration of sale deed will be 30 days after obtaining transfer permission on 16.12.2009. In this regard, appellant executed an affidavit. On 16.12.2009, respondent remained present in the office of Sub Registrar,

Gurgaon along with balance sale consideration etc. but the appellant did not come present. Respondent requested the appellant to apply for transfer permission with HUDA and as per clause 4 of the agreement to sell, respondent proposed the names of his nominees namely Ramphal and Manohar Singh, sons of Ram Mehar (respondent herein) and the appellant applied for transfer permission vide application dated 20.08.2009 and necessary permission was granted by Estate Officer, HUDA vide memo dated 15.01.2010 in favour of nominees of respondent. A legal notice dated 17.02.2010 requesting the appellant to get the sale deed executed and registered was issued through counsel but to no use. Hence, the suit.

The appellant filed the written statement and seriously contested entitlement of the respondent to seek specific performance of agreement of sale. However, she has denied the allegations that the respondent remained ready and willing to perform his part of the agreement. The appellant paid all dues to HUDA and obtained 'No Dues Certificate' on 15.07.2009. The plot was rectangular in shape but later during demarcation, HUDA admitted it to be irregular but agreed to provide an alternative plot as compensation. The respondent tried to use this situation not only to delay payment but started threatening to reduce the price. He made the appellant to seek alternative plot from HUDA and as such she applied for an alternative plot on 02.09.2009. She always remained ready and willing to perform her part of the agreement but the respondent was neither ready nor willing to perform his part of the agreement with regard to payment of balance sale consideration. Ramphal and Manohar Singh, sons of respondent entered her house on 16.11.2009 and convinced her to sign an affidavit already typed through their

threatening body language reducing the price to Rs. 25,25,000/- causing a loss of Rs.3,25,000/- to the appellant. All other material averments of the plaint have been denied with a prayer for dismissal of suit.

The trial Court framed issues reproduced in para 5 of the judgment. The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial Court accepted claim of the respondent with regard to his entitlement to seek specific performance of agreement dated 26.06.2009 and accordingly passed the decree of specific performance of agreement to sell aforesaid with a direction to appellant to execute the sale deed on receipt of balance sale consideration as per settlement Ex.D4 arrived at between the parties before the police, within two months from the date of judgment failing which the respondent was left at liberty to get the sale deed executed through Court. As has been noticed hereinbefore, the appeal preferred by Mrs. Anu Dhindaw was dismissed by the first Appellate Court on 19.04.2018.

Counsel for the appellant has assailed concurrent findings of fact by raising few submissions. It is argued that indisputably the agreement of sale is dated 26.06.2009 and affidavit purported to be executed by the appellant is dated 16.11.2009 whereby the sale consideration was reduced to Rs.25,25,000/- in place of Rs.28,50,000/-. It is argued that Ram Mehar in his cross examination dated 21.01.2014 had stated that the second transaction was done simultaneously to cancel the first transaction. It is argued with vehemence that since the first transaction i.e. agreement to sell dated 26.06.2009 stood cancelled, there was no occasion for the Courts to allow specific performance of that

agreement that stands cancelled at the time of second transaction i.e. affidavit dated 16.11.2009.

Another submission made by counsel is that as per case of the respondent, during pendency of suit, a settlement was arrived at between the parties on 12.08.2011 Ex.D4. It is argued that as the parties did not complete the transaction in view of terms and conditions contained in the settlement Ex.D4, the said settlement came to an end and the suit was required to be decided ignoring the document Ex.D4. It is argued that the trial Court has allowed specific performance of agreement to sell dated 26.06.2009 but balance sale consideration is ordered to be paid as per settlement Ex.D4 arrived at between the parties before the police. It is further argued that balance sale consideration as per settlement Ex.D4 in respect of area agreed to be sold vide agreement dated 26.06.2009 would be less than the price agreed vide agreement dated 26.06.2009.

Counsel would argue that the respondent did not have sufficient funds to discharge his liability under the agreement of sale, therefore, the Courts have committed a serious error by holding that the respondent always remained ready and willing to perform his part of the agreement. To bring home his contention, he has pointed out towards statement of account of respondent produced on record which shows that there were few thousands of rupees in the account of respondent on 10.08.2009, the date stipulated in the agreement as well as on 16.12.2009, the date on which respondent allegedly appeared in the office of Sub Registrar 30 days after affidavit dated 16.11.2009 was executed by the appellant.

I have heard counsel for the appellant, perused the paper-book and records.

Counsel for the appellant has tried to derive advantage from one sentence in cross examination of Ram Mehar as he stated that the second transaction was done simultaneously to cancel the first transaction. On due consideration of facts elicited in cross examination of Ram Mehar aged about 83 years, it is apparent that he is rustic and positively illiterate and has faced the cross examination at the hands of an experienced legal hand. It is never the case of the respondent nor of the appellant that agreement to sell was ever cancelled between the parties or the same was superseded by agreement dated 16.11.2009 executed by the appellant. Even otherwise, perusal of the affidavit dated 16.11.2009 does not give an inkling that the original agreement dated 26.06.2009 was cancelled by way of affidavit dated 16.11.2009 marked as Ex.P4. On the contrary, affidavit Ex.P4 makes reference to the agreement dated 26.06.2009 and the price was agreed to be reduced to Rs.25,25,000/- as the plot at the spot has been found to be triangular but the agreement was executed as per size of the plot according to possession letter. This affidavit does not make reference to cancellation of the original agreement dated 26.06.2009. In the given scenario, the appellant cannot derive any advantage to her contention from the aforesaid statement in cross examination of respondent, highlighted by her counsel.

Perusal of documents brought on record by the appellant makes it evident that the plot in question was rectangular on the basis of allotment/possession letter issued by HUDA in favour of the appellant but later it was found to be triangular at the spot. The appellant communicated

with HUDA in this regard and even made a request for providing alternative plot in lieu of the plot agreed to be sold. The affidavit dated 16.11.2009 Ex.P4 also clearly records this fact and for that reason, the appellant agreed to reduce the price to Rs.25,25,000/- in place of Rs.28,50,000/- agreed initially. During pendency of the suit, parties arrived at a settlement dated 12.08.2011 Ex.D4 (it may be marked as DY) whereby it was agreed to sell a plot measuring 119 square yards approximately (100.168 square meters) at the rate of Rs.31,50,000/- and amount of Rs.12,00,000/- already received by the appellant was acknowledged. It was also agreed that in case any of the parties does *hera pheri* then the case will continue and the compromise will not be acceptable.

Indisputably, the sale deed on the basis of settlement dated 12.08.2011 was not executed. As per terms and conditions of settlement, the same are of no consequence and the pending Court case was to proceed further. The alternative plot offered to the appellant on the basis of a request made to HUDA authorities was later surrendered on the basis of request made by the appellant. The Court has allowed specific performance of agreement to sell dated 26.06.2009 but balance sale consideration is to be paid in view of document Ex.D4 dated 12.08.2011. If we work out the price of plot measuring 83.60 square meters i.e. 99.98 square yards in view of the price settled vide Ex.D4, the same would be more than the price agreed to be paid as per affidavit dated 16.11.2009 executed by the appellant. The affidavit dated 16.11.2009 modified the terms and conditions of agreement dated 26.06.2009 only in respect of price of the plot agreed to be sold on 26.06.2009. As price of the property

in question when calculated on the basis of price agreed as per Ex.D4 would be more than what was agreed to be paid vide affidavit dated 16.11.2009, it is difficult to accept contention of the appellant that a prejudice has been caused to her because of the Court having directed payment of balance sale consideration as per settlement Ex.D4 viz-a-viz affidavit dated 16.11.2009. As the appellant had agreed to reduce the price because of the plot being triangular in place of its shape/size shown in the letter of possession, the appellant cannot assert her right to seek balance sale consideration on the basis of agreement dated 26.06.2009.

This brings the Court to plea of the appellant that the respondent was not ready with balance sale consideration, thus, he is not entitle to specific performance of agreement of sale. It has been proved on record by way of oral and documentary evidence that Sh. Ram Mehar appeared in the office of Sub Registrar on 10.08.2009 (target date) for getting the sale deed executed. He again went to the office of Sub Registrar, Gurgaon on 16.12.2009 in view of what was agreed as per the affidavit dated 16.11.2009. Counsel for the appellant has failed to point out any such facts elicited in cross examination of Ram Mehar that he did not possess sufficient funds to meet his obligation to pay balance sale consideration and expenses of registration etc. on 10.08.2009 and 16.12.2009 when he had gone to the office of Sub Registrar and got his presence marked there. On the contrary, there is no evidence adduced by the appellant that she was present in the office of Sub Registrar either on 10.08.2009 or on 16.12.2009. The mere fact that outstanding balance in the bank account of Ram Mehar of which statement of account was got produced by him for some other purpose was not sufficient to meet

obligation of Ram Mehar to pay balance sale consideration and incur expenses of registration *ipso facto* is not sufficient to record a finding that he was not possessed of sufficient funds for meeting his obligation on the stipulated date i.e. 10.08.2009 or the date when he caused appearance in the office of Sub Registrar on 16.12.2009. It has been proved on record that after settlement Ex.D4 whereby area of the plot was increased to 119 square yards and sale consideration Rs.31,50,000/-, Ram Mehar got prepared two pay orders bearing No.269269 and 269270 dated 29.08.2011 from Gurgaon Gramin Bank Carterpuri qua balance sale consideration of Rs.19,50,000/- as an amount of Rs.12,00,000/- out of Rs.31,50,000/- already stood paid and this fact is duly reflected in the statement of account produced on record.

It has also been proved that these pay orders were got cancelled by the plaintiff/respondent after about two months in November 2011. Both the Courts have noticed that the fixed deposit receipts Ex.P8 and P9 corroborate the fact that respondent had approximately Rs.25,00,000/- on 05.11.2013 and Rs.28,59,180/- on 05.11.2014. The Courts, on a detailed consideration of the materials on record, have rightly arrived at a conclusion that the respondent/plaintiff always remained ready and willing to perform his part of the agreement, thus entitle to seek specific performance of agreement of sale. I would hasten to add that the agreement was entered into on 26.06.2009. The respondent paid additional amount Rs.9,00,000/- vide cheque dated 06.07.2009. He appeared in the office of Sub Registrar, Gurgaon and got his presence marked on the stipulated date i.e. 10.08.2009. The term of agreement in respect of sale consideration was modified vide affidavit dated 16.11.2009. On

16.12.2009, the respondent again caused appearance in the office of Sub Registrar and got his presence marked. A legal notice dated 17.02.2010 was issued calling upon the appellant to get the sale deed executed and registered and the suit was instituted on 31.03.2010. Taking into consideration the aforesaid materials, it is difficult to accept contention of the appellant that consistent findings recorded by the Courts on the aspect of readiness and willingness are perverse/absurd or warrant intervention.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

MARCH 5, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no