

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

125

RSA No.5505 of 2018 (O&M)

Date of decision: 14.02.2019

Ram Kumar

..... Appellant

Versus

Prem Chand

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vivek Goyal, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM-15195-96-C-2018

Both the applications are allowed and the delay in filing/re-filing the appeal are condoned.

Main Case

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

The plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 02.07.2007 through which 8 kanals of land was allegedly agreed to be sold for a sum of Rs.7,20,000/-, out of which, earnest money amounting to Rs.1,80,000/- was paid. The sale deed was agreed to be executed on 02.06.2008. However, vide writing dated 29.04.2008, the time was extended by 10 months and additional payment of Rs.20,000/- was shown to have been paid. As per the extended date, the sale deed was to be executed on 28.04.2009. The defendant

contested the suit by pleading that the plaintiff is a money lender and it was a loan transaction and the agreement to sell was only a security document. It was further pleaded that the price of the land agreed to be sold is much higher and the plaintiff has filed many suits as well as complaints for recovery on account of dishonour of cheques under Section 138 of the Negotiable Instruments Act.

Both the Courts have recorded a concurrent finding that the plaintiff has failed to prove his readiness and willingness. The Courts have further found that the document was in fact a loan security document and never intended to be agreement to sell.

This Court has heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by the Courts below.

In the present case, it is undisputed that on the target date for execution and registration of the sale deed dated 28.04.2009, the plaintiff did not visit the office of the Sub-Registrar where the sale deed was to be executed and registered. Learned counsel for the appellant tried to explain that the appellant got a notice issued to the defendant on 31.05.2010 calling upon the defendant to come present on 17.06.2010 on which date he visited the office of the Sub-Registrar and marked his presence. The question which arises for consideration is “whether in absence of readiness and willingness on the target date (extended target date) which was fixed in the agreement to sell, can the plaintiff be granted specific performance.” The answer in the considered view of this Court would be no. The readiness and willingness is required to be proved on the date fixed in the agreement to sell which is the important date agreed to between the parties. Still

further, the appellant did not take any step for a continuous period of one year and one month.

Learned counsel for the appellant while drawing attention of the Court to the statement of DW-3 has submitted that re-payment of the amount as alleged has not been proved. In the present case, the question is of specific performance of the agreement to sell. Still further, DW-3, a commission agent has been examined to prove the repayment. Merely because he did not depict the amount in the income tax return, would not make any difference. Had the amount not been paid, the plaintiff would have come to the office of Sub-Registrar on 28.04.2009.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

14.02.2019

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No