

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

**RSA No.83 of 2017 (O&M)
Date of Decision.07.02.2019**

Avtar Singh (D) through LRs

...Appellant

Vs

Shamsher Singh

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashish Gupta, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-defendant has not been successful in defending the appeal preferred by the respondent-plaintiff, who was not successful in trial Court claiming specific performance of agreement to sell dated 29.02.2008 whereby suit property was agreed to be sold for total consideration of ₹11 lakhs against the receipt and payment of ₹6 lakhs as earnest money. The stipulated date was 4.9.2008.

The defendant admitted the agreement to sell but denied that plaintiff did not have ready cash on the stipulated date and therefore, not performed his part of agreement.

Mr. Ashish Gupta, learned counsel appearing on behalf of the appellant-defendant submitted that since both parties were present before the Registrar on 4.9.2008, plaintiff did not have ready cash and in this background of the matter, sale deed could not be registered as stamp papers were not purchased. Plaintiff miserably failed to prove readiness and willingness and therefore, discretionary relief was liable to be rejected.

I am afraid aforementioned is not sustainable. If at all, it was so, nothing prevented the defendant to send notice of cancellation of agreement or forfeiture of earnest money. On the other hand, plaintiff vide Ex.P5 and P6 dated 7.10.2009 and 4.11.2008 called upon the defendant to execute the sale deed and that readiness and willingness is sufficient, as the suit was filed in November, 2008.

All these points determined by the lower Appellate Court being the last court of fact and law cannot be said to be suffering from any illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 07, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No