

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

**RSA No.3248-2014 (O&M) and
XOBS-20-C-2016 (O&M)
Date of Order:17.02.2020**

Surinder Singh

..Appellant

Versus

Pitamber Nath (since deceased) through his LRs.

..Cross-objector/Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Mr. J.S.Mehndiratta, Advocate,
for the cross-objector/respondents.

ANIL KSHETARPAL, J(Oral)

By this judgment, appeal filed by the plaintiff and cross objections filed by the defendant shall stand disposed of.

Plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 13.11.2006. As per the agreement to sell, 26 kanals 8 marlas land was agreed to be sold @ Rs.5,50,000/- per acre (8 kanals) and Rs.2,00,000/- was paid as earnest money. It is pleaded case of the plaintiff that previously there was another agreement to sell executed by the defendant in favour of the plaintiff on 21.04.2006, on receipt of Rs.4,00,000/-. Plaintiff claims that, thus, total amount of Rs.6,00,000/- stood paid. Plaintiff further asserts that on the

target date agreed to between the parties for execution of the sale deed, the plaintiff visited the office of Sub-Registrar and got attested his affidavit Ex.P/2 to prove his readiness and willingness, whereas defendant did not come forward.

Defendant contested the suit. Execution of the agreement to sell and receipt of earnest money was admitted. It was pleaded that the plaintiff was not having remaining payment to complete the transaction and on mutual understanding, time was orally extended by three months as per first agreement to sell dated 21.04.2006. Further with the intervention of respectables, second agreement to sell was executed i.e. 13.11.2006. It may be noted here that the defendant before execution of the agreement to sell dated 13.11.2006, had got a notice served on the plaintiff cancelling agreement to sell dated 21.04.2006. Defendant further asserted that he visited the office of Sub-Registrar and was ready and willing to perform his part of the contract.

On appreciation of evidence, learned trial court decreed the suit. Whereas learned first appellate court interfered with the discretion exercised and granted alternative relief of recovery of the amount while recording a finding that the plaintiff has failed to prove that he was possessed of sufficient means to pay balance sale consideration of more than Rs.18,00,000/-. Learned court has found that the plaintiff has stated that he has bank accounts in 4-5 banks. However, he admitted that on 30.07.2006, he did not deposit any amount in the bank. He had taken a plea that he borrowed amount from Dena Bank. However, no document in support thereof was produced. He further stated that the plaintiff had borrowed amount from the commission agent. However, neither the

aforesaid commission agent was examined nor any document in support thereof was produced. Plaintiff has also admitted in evidence that the defendant was also present on 30.11.2006 in the office of Sub-Registrar.

With these observations, learned first appellate court has recorded a finding of fact that the plaintiff is not proved to be always ready and willing to perform his part of the contract as is required under Section 16(c) of the Specific Relief Act which provides that the plaintiff is required to aver and prove that he was always ready and willing to perform his part of the contract.

This court has heard learned counsels for the parties at length and with their able assistance gone through the judgments passed by the courts below.

Learned counsel for the appellant while relying upon judgment passed by the Hon'ble Supreme court in **Madhukar Nivrutti Jagtap and others vs. Smt. Pramilabai Chandulal Parandekar and others, 2019(4) RCR(Civil), 114** submits that the plaintiff was not required to flash cash while visiting the office of Sub-Registrar. He further submitted that once the plaintiff has stated in his evidence that he was ready and willing and was possessed of means to pay the balance amount, hence no further evidence was required to be produced to prove that the plaintiff was ready and willing.

On the other hand, learned counsel for the respondent-defendant while referring to the evidence of the plaintiff has stated that the plaintiff is not proved to be ready and willing to perform his part of the contract.

On analysis of the arguments of learned counsel for the parties,

this court has come to a conclusion that there is no error in the judgment passed by learned first appellate court. The judgment passed in *Madhukar's* case (supra) is in a fact situation. The aforesaid judgment does not as a ratio decidendi lay down that merely because the plaintiff claims that he is in possession of sufficient means to pay the balance amount is enough to decree the suit after returning a finding that the plaintiff was always ready and willing. One has to keep in mind that the balance amount payable is Rs.18,00,000/-. Plaintiff has taken different stand. In one hand he claims that he has withdrawn the amount from the bank but no evidence is produced. On the other hand, he says that he had taken loan from a commission agent. Neither aforesaid commission agent has been examined nor any document to corroborate the aforesaid plea of loan has been produced.

Still further, plaintiff in his suit claims that the defendant did not visit the office of sub-registrar on the target date i.e. 30.11.2006, however, in cross-examination he admitted that the defendant was also present in the office of the Sub-Registrar. Still further, defendant served 2 notices on the plaintiff. First notice was served on 03.11.2006. Whereas second was on 01.12.2006 i.e. the very next day from the target date. Still, the plaintiff did not either come forward to get the sale deed registered nor took any action for a period of 6 months.

Keeping in view the aforesaid facts, this court does not find any good ground to interfere.

Learned counsel for the respondent, although, submitted that the plaintiff is not entitled to even refund of the amount, however, since receipt of Rs.6,00,000/- has been proved, therefore, it would not be

appropriate for this court to interfere in the aforesaid order of refund.

Hence, dismissed.

C.M.No.5527-C-2016

Since, the appeal has been dismissed, therefore, there is no need
to pass any order in the application.

February 17, 2020
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No