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HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.863 of 2019 (O&M)
Date of decision:02.09.2021

Krishan Kumar ...Appellant

Versus

Smt. Alka Yadav ...Respondent

CORAM : Hon'ble Mr. Justice G.S.Sandhawalia

Present: Dr. Surya Parkash, Advocate,
for the appellant.

(The proceedings were conducted through video conferencing, as per instructions.)

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G.S. Sandhawalia, J. (Oral)

CM No.1994-C of 2019

The present application, filed for making up the deficiency in Court fee, is allowed since the same has been made good.

CM stands disposed of.

RSA No.863 of 2019 (O&M)

The plaintiff-appellant is in appeal against the concurrent findings of the Courts below at Narnaul dated 04.01.2016 and 06.09.2018, whereby the suit for specific performance of the contract dated 29.03.2011 has been dismissed regarding the residential plot No.415-P, measuring 250 sq. yards, situated in Sector-1, Phase-I, Urban Estate, HUDA, Narnaul. Initially, the agreement, as such, to sell *inter se* the parties was for Rs.32,00,000/- and the same was executed on 29.03.2011 and out of the total sale consideration, an amount of Rs.4,50,000/- was paid in advance as earnest money. The last date for execution of the sale deed was fixed as 29.06.2011 and the suit was filed on 14.07.2011.

In defence, the respondent-defendant denied the alleged payment of another installment of Rs.1,00,000/- and also the delivery of possession. It was pleaded that the respondent-defendant had remained present before the Sub Registrar on 29.06.2011 but the plaintiff-appellant had not appeared and, therefore, the agreement stood terminated and the amount of earnest money was forfeited on account of non-performance of his part of contract by the plaintiff-appellant.

During the pendency of the suit, a settlement was arrived at *inter se* the parties on 21.09.2011 in mediation proceedings, which has now been placed on record as Annexure A-1, vide which an additional sum of Rs.25,59,200/- was to be paid to the respondent-defendant as full and final settlement and the sale deed was to be executed on 07.10.2011. The amount was to be paid in cash or by way of demand draft.

Counsel for the plaintiff-appellant has, thus, argued that as per the settlement also, 20 days' time have been left to pay the amount from the said date and, therefore, the findings, as such, regarding the fact that he was not ready and willing to perform his part of contract was not justified. Reference is also made to the deposit of Rs.23,67,200/- in his bank account on 08.10.2011 to show that he had the capacity to generate funds to that extent and also ready and willing to pay the balance sale consideration in order to overcome the findings, which have been recorded by the Courts below. It is also stated that besides two demand drafts of Rs.22,59,200/- and Rs.50,000/-, he had got prepared a demand draft of Rs.2,00,000/- on the said date and the remaining amount of Rs.50,000/- was to be given in cash.

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The Courts below noticed that it is the plaintiff who is to be blamed for non-performance of his part of contract as per the terms of the settlement. It has been noticed that as per the terms of mediation, the parties had appeared before the Sub Registrar but the sale deed could not be executed on 07.10.2011. The stand of the respondent-defendant was that the plaintiff-appellant was not having the requisite money on the said date and for getting over the said lapse on his part, the plaintiff-appellant had placed on record agreement Ex.PW3/B, pronotes Ex.PW4/B and Ex.PW5/C as well as statements of account Ex.PW6/A, Ex.PW8/A, Ex.PW9/A, Ex.PW10/A, Ex.PW10/B, Ex.PW11/A and Ex.PW14/B to show his capacity to generate the funds which were allegedly with him.

The trial Court has also noticed that vide Ex.PW3/B, another agreement was executed on 07.10.2011 with third person Vikram Singh, whereby a sum of Rs.6,50,000/- was to be arranged from him by entering into an agreement to sell a plot of 43.5 sq. yards by the plaintiff. However, it is noticed by the trial Court that the factum of Vikram Singh having the financial capacity to pay the aforesaid amount of Rs.6,50,000/- was not proved. The source of income of the persons, with whom pronotes had been executed, had also not been proved and resultantly, the finding had been recorded that the plaintiff was not having the requisite money for having the sale deed executed in compliance of the aforesaid settlement. In such circumstances, it was recorded by the trial Court that it was the plaintiff who is to be blamed for non-compliance of the terms and conditions of the settlement arrived at in the mediation proceedings as he was not having the requisite amount for performance of his part of the contract and, thus, could not be said to be a ready and willing purchaser.

Resultantly, the trial Court had concluded that time was the essence of the settlement as a penal clause was put in it and though the previous conduct of the plaintiff-appellant and its importance had become redundant on coming into existence the settlement dated 21.09.2011, but the Courts below could not loose sight of the fact that on previous juncture also, the plaintiff did not have the money which had led to the failure of the agreement, to be taken to the logical end.

The lower Appellate Court also noticed that the appellant had withdrawn a sum of Rs.1,50,000/- and similarly a sum of Rs.1,43,000/- on 05.10.2011. However, it came to the conclusion that the witnesses, at whose instance the documents had been exhibited, had not brought the relevant record and, therefore, held that Ex.PW16/G, Ex.PW12/B, Ex.PW9/A, Ex.PW6/A and Ex.PW8/6, the demand drafts, are not genuine documents. It was also noticed that the agreement to sell with Vikram was executed between 1200-1300 hours on 07.10.2011 and Vikram had paid an amount of Rs.6,50,000/-, out of total sale consideration of Rs.7,20,000/-, for which possession of the property was not delivered to him. Therefore, even such agreement was held to be doubtful and rather had been prepared only to show the source from where the appellant had to arrange the money and, thus, it fortified the case of the respondent-defendant that the plaintiff-appellant was not having sufficient money at the relevant time for execution and registration of the sale deed. Borrowing of the money by the appellant, while executing pronote Ex.PW4/A and receipt Ex.PW4/B on 02.10.2011, from PW4 Sardar Singh and vide pronote Ex.PW5/B and receipt Ex.PW5/C on

05.10.2011, from PW5 Rajender Kumar were also held to be doubtful while noticing that PW4 Sardar Singh had stated that he had lent a sum of Rs.5,00,000/- to the appellant, which was against the amount mentioned in the pronote Ex.PW4/A and receipt Ex.PW4/B. PW18 Dharamvir, who is none else but father-in-law of the appellant, had stated that he had lent a sum of Rs.3,00,000/- to the appellant after withdrawing an amount of Rs.1,50,000/- from his own account and another amount of Rs.1,55,000/- from the account of his wife. Similarly, PW14 Jaswant, who is none else but brother-in-law of the appellant, had stated that he had lent a sum of Rs.1,95,000/- to the appellant on 03.10.2011 after withdrawing the same from his account. However, the said withdrawals were not accepted by the Courts below on account of the fact that they were not proved by summoning the bank records and the Courts below could not lost sight of the fact that they are close relatives of the appellant and, therefore, have deposed in order to help him.

It is, thus, apparent that the plaintiff-appellant was struggling to arrange the funds for 07.10.2011, the designated date of execution of sale deed, and, thus, the Courts below have rightly recorded the findings that the appellant had defaulted on a second time in getting the sale deed executed and the respondent-defendant cannot be said to be at fault.

In such circumstances, finding recorded by the Courts below, in the considered opinion of this Court, do not suffer from any infirmity.

The lower Appellate Court has also noticed that two Demand Drafts of Rs.22,59,200/- and Rs.2,00,000/-, which were got prepared by the appellant on 10.10.2011, would go on to show that he was not ready with the requisite amount of Rs.25,59,200/- on 10.10.2011 what to talk of 07.10.2011. It was also noticed that there was a penalty clause of Rs.10,00,000/- fixed upon the respondent-defendant if she had failed to do the needful and had the respondent-defendant been at fault, then the said amount would become payable by the respondent, but the appellant had never pressed for recovery of the said amount. Therefore, in these circumstances, the findings recorded by the trial Court have been upheld by the lower Appellate Court.

In the case of **Ritu Saxena vs. J.S.Grover & Anr.,** 2019(4) R.C.R. (Civil) 540, it is held that the self-serving statements, without any proof of financial resources, cannot be relied upon to return a finding that the appellant was ready and willing to perform his or her part of the contract. The said principle had been kept in mind by the Apex Court and has been reiterated in the case of **Sukhwinder Singh vs. Jagroop Singh & anr.,** 2020(1) R.C.R. (Civil) 951.

The Apex Court, in the case of **C.S.Venkatesh vs. A.S.C. Murthy (D) by Lrs. & Ors.,** 2020(2) RCR (Civil) 71, has held in no uncertain terms that the readiness and willingness would also mean that the amount of consideration is available with the plaintiff and it has to be necessarily proved as the mere plea that he is ready to pay the consideration, without any material to substantiate this plea, is not liable to be accepted. It has to be proved that the plaintiff has the means to generate the consideration amount and the conduct of the plaintiff has to be judged keeping in view this aspect, which, in the present case, has rightly been doubted by the Courts below.

The factum of deposit on 08.10.2011 of Rs.23,67,200/-, which

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has now been alleged by way of Annexure A-2, is only an attempt by the plaintiff-appellant, as such, to show that he had the requisite amount, which he had collected at the last moment, once he was aware that he had failed to arrange the amount on 07.10.2011, the agreed date as per the settlement dated 21.09.2011.

The Courts below have rightly noticed that it is doubtful that on account of the agreement to sell dated 07.10.2011, the appellant had got a huge amount of Rs.6,50,000/-, which is unlikely for a person who paid 80% of the sale consideration without executing the sale deed and even without getting possession of the land in question. Rather the fact would go on to show that the plaintiff was still trying to scramble around and trying to collect the money on the last date fixed for the execution of the sale deed.

A cumulative discussion of the aforesaid facts and circumstances would go on to show that no substantial question of law would arise in this appeal for the purpose of interference by this Court in the well reasoned findings recorded by the Courts below on account of the fact that the plaintiff-appellant was never ready and willing and neither had the requisite financial capacity to perform his part of the contract by clearing the balance sale consideration of Rs.25,59,200/- on the target date, i.e. 07.10.2011.

Resultantly, the present appeal, being denuded of any merit, is hereby dismissed in limine.

September 02, 2021 **(G.S.Sandhawalia)**
vinod* **Judge**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No