

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

**RSA- 644-2021 (O&M)
Date of decision: 28.10.2021**

Raj Singh	Vs.	...Appellant
Surender Sharma		...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Jai Parkash Dhull, Advocate,
for the appellant.
(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

For convenience, parties herein are described as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, the defendant is in second appeal before this Court assailing the trial Court judgment and decree dated 21.11.2018, as upheld by the learned First Appellate Court vide its judgment and decree dated 20.02.2020.

3. Briefly stated, facts as noticed by Courts below are that as per the plaintiff, defendant had agreed to sell his property by way of agreement to sell dated 22.05.2012 for sale consideration of Rs.15 lakh and plaintiff paid Rs.3,60,000/- as earnest money. As per terms of the agreement to sell dated 22.05.2012, the plaintiff paid another sum of Rs.1,00,000/- on 20.12.2012 and the target date for execution and registration of the sale deed was fixed as 05.06.2013. Another sum of Rs.3,00,000/- was paid on that date to extend the time for execution and registration of the sale deed. Time was extended till 20.10.2013. Since 20.10.2013 was a holiday, the plaintiff

requested the defendant to come in the office of Sub Registrar on the following day i.e. 21.10.2013. Though the plaintiff remained present on 21.10.2013 but the defendant did not turn up. Thereafter, defendant postponed the matter on one pretext or the other and did not execute and register the sale deed in favour of the plaintiff. On 14.10.2014, Rs.1.5 lakh and on 22.10.2014, Rs.50,000/- were paid in the presence of witnesses by the plaintiff to the defendant on his demand. In this way, the defendant received a sum of Rs.9,60,000/- in total from the plaintiff till 22.10.2014. Thereafter, the defendant again received a sum of Rs.40,000/- from the plaintiff. As such, the plaintiff paid total amount of Rs.10 lakh. Thereafter, plaintiff approached the defendant time and again and requested him to get the sale deed executed and registered in favour of the plaintiff but the defendant refused to do so. Plaintiff served a legal notice but the defendant did not specifically perform his part of contract. The cause of action arose when the defendant flatly refused to perform his obligation and threatened the plaintiff to alienate the suit land.

4. The stand of the defendant is that he had a full payment agreement from the previous owner in his favour. He entered into agreement with the plaintiff and received Rs.3,60,000/- as earnest money. The plaintiff, however, failed to pay Rs.1 Lakh on 20.12.2012, the date fixed for that purpose and even on 05.06.2013, the target date, he did not have the requisite amount, therefore, he paid Rs.3 Lakh and on his request, the date was extended to 20.10.2013. On that day, the defendant and the original owner of the property were ready and willing to get the sale deed executed but the plaintiff did not have the balance sale consideration. Therefore, the sale deed could not be executed and the amount already paid by the plaintiff

stood forfeited. It was denied that on 14.10.2014, a sum of Rs.1,50,000/- and on 22.10.2014 another sum of Rs.50,000/- was paid by the plaintiff to the defendant. Receipt of Rs.40,000/- was also denied.

5. Based on the rival pleadings, following issues were framed:

1. *Whether the plaintiff is entitled to a decree for specific performance of contract dated 22.05.2012 directing the defendant to execute the sale deed in favour of the plaintiff regarding the land in question as detailed in para no.1 of the plaint and to get the same registered and to do all acts to make the plaintiff full owner in possession of the land in question with a consequential relief of permanent injunction restraining the defendant from alienating the suit land as detailed in para no.1 of the plaint? OPP*
2. *Whether the suit of the plaintiff is not maintainable? OPD*
3. *Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD*
4. *Whether the plaintiff has not come with clean hands and has concealed the true and material facts from the Court? OPD*
5. *Whether there is no cause of action against the defendant? OPD*
6. *Whether this Court has no territorial jurisdiction to entertain and try the present suit? OPD*
7. *Whether the present suit is estopped from filing the present suit by own act and conduct? OPD*
8. *Relief.*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-a-vis pleadings, issue No.1 was decided in favour of the plaintiff to the extent of holding the defendant liable to pay Rs.9,60,000/- along with 9% interest from the date of filing the present suit till its realization to the plaintiff. Issues No.2 to 7 were held rendered redundant in view of findings returned on Issue No.1.

8. First Appellate Court dismissed the appeal, hence Regular Second Appeal before this Court.

9. I have heard the learned counsel and perused the judgments of both the Courts below. To my mind, judgments under challenge have been rendered after due and correct appreciation of evidence adduced by the respective parties. Relevant part of First Appellate Court judgment, with which, inter alia, I am in agreement, is as below:

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“12. Let us accept the argument of the defendant that the condition of payment of Rs.1,00,000/- on 20.12.2012 was *sine qua non* for proceeding further. That being so, learned Civil Judge committed no error in holding that the mere fact that vide writing/acknowledgment Ex.P-2, the defendant, after receiving Rs.3,00,000/-, extended the target date from 05.06.2013 to 20.12.2013 proves that the first hurdle of payment of Rs.1,00,000/- must have been cleared by the plaintiff. It is worth mention that 05.06.2013 was the target date originally fixed. Before that payment of Rs.1,00,000/- was to be made on 20.12.2012. If this payment was not made, the defendant could have refused to receive the further payment and to extend the target date. There could be equal possibility that payment of Rs.1,00,000/- was not made as per the agreement but still the defendant, after receiving Rs.3,00,000/- on 05.06.2013, agreed to extend the target date. In both eventualities, there could not be automatic cancellation of the agreement as is being tried to be projected by the defendant. His act of extending the target date implies that either he had received Rs.1,00,000/- on 20.12.2012 or he did not consider this condition as pre-requisite for further performance of the agreement. The first possibility looks more stronger. Merely because no writing is there to prove the payment of Rs.1,00,000/- whereas every other payment stands duly acknowledged in writing does not mean that no such payment

of Rs.1,00,000/- was made. It has to be understood that payment of Rs.1,00,000/- was to be made much before the target date. However, the remaining payments were made either on the target date or thereafter. Therefore, the parties may not have attached much importance to reduce the factum of payment of Rs.1,00,000/- into writing but since the target date was being extended on 05.06.2013, it had to be reduced into writing while acknowledging the receipt of Rs.3,00,000/-. The subsequent writings (Ex.P3 and Ex.P4) were also necessary for the reason that the payments were made after the extended target date. This distinction is of vital importance while considering the contention of the defendant that if payment of Rs.1,00,000/- even in the absence of written acknowledgment was considered proved, why the payment of Rs.40,000/- in the absence of written acknowledgement was not believed. It is reiterated that payment of Rs.1,00,000/- was to be made before the target date but the remaining payments were made after the target date/s. Therefore, it was important to have the payments acknowledged. The court, therefore, finds no error in the finding of the learned lower court that payment of Rs.1,00,000/- was made before 05.06.2013.

13. Time now to take up the question as to on whose instance the target date was postponed on more than one occasion. As discussed above, the plaintiff claims that the defendant was not having sufficient money, therefore, on his request the target date had to be extended. On the other hand, the case of the defendant is that it is the plaintiff who kept seeking more time for the execution and registration of the sale deed. To my mind, there are two reasons for accepting the plea of the plaintiff. He had already paid Rs.3,60,000/- as earnest money and he is proved to have paid another sum of Rs.1,00,000/- before the target date. Even on the target date i.e. 05.06.2013, he paid Rs.3,00,000/- thereby making total payment of Rs.7, 60,000/- against the agreed consideration of Rs.15,00,000/-. There was no reason for him to ask for extension of time. Secondly, the defendant was not the owner of the plot. He had, as claimed by him, a full payment agreement from the original owner in his favour. That agreement has not been placed on record. Therefore, the court has the reason to infer that either he had not made full payment to the previous owner and the latter was not willing to execute the sale deed in favour of the plaintiff or there was some other hitch on account of which the original owner was not coming forward. In all probabilities, this was the reason that the defendant kept asking for extension of time for the execution and registration of the sale deed. It is equally possible that the final 'No' from the defendant come because of non-cooperation by the original owner. Resultantly, there is no reason to doubt readiness and willingness on part of the plaintiff to perform his part of agreement. The Civil Judge has, therefore, committed no error in passing money decree in his favour which appears to be the

best possible solution. The findings of the learned Civil Judge on Issue No.1 are thus affirmed.

14. Issues No.2 to 7 were pressed neither before the lower Court nor in appeal.

15. As a consequence to the above resume, the appeal is dismissed with costs.”

10. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

11. Furthermore, no question of law, much less substantial one, a sine qua non for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

12. In view of my discussion above and the reasons aforesaid, this appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

13. Pending application/s, if any, shall also stand disposed of.

14. No order as to costs.

28.10.2021
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No