

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

RSA-410-2022 (O&M)

Date of decision: 02.05.2022

Roop Ram

....Appellant

Versus

Onkar Dutt and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.S.Khurana, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

The appellant has filed an application under Order 41 Rule 27 CPC for permission to lead additional evidence in order to produce notification no.2652 dated 08.11.2016. There is another application filed by the appellant for permission to lead additional evidence in order to produce notification dated 08.11.2016, the Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016 and Act No.2 dated 27.02.2017 and the Specified Bank Notes (Cessation of Liabilities) Act, 2017. All these documents shall be considered while deciding the main appeal.

While assailing the findings of fact arrived at by the First Appellate Court, the defendant has filed this Regular Second Appeal. The trial court, after recording findings of fact to the effect that the defendant entered into an agreement to sell with respect to 12 kanals 16 marlas on receipt of Rs.19,31,000/-, dismissed the suit on the ground that the amount tendered on 09.11.2016 in the denomination of notes of 500

and 1000 was illegal. Learned First Appellate Court has reversed the aforesaid findings of trial court and decreed the suit. As per the case of the plaintiff, the defendant entered into an agreement to sell on 09.11.2016 for sale of 12 kanals 16 marlas of land for a total sale consideration of Rs.22,00,000/-. At the time of execution of the agreement, the plaintiff paid a sum of Rs.19,31,000/-. The defendant did not honour the agreement whereas the plaintiff was always ready and willing to perform his part of the contract. He visited the office of the Sub-Registrar on the agreed date i.e 15.02.2017. The defendant contested the suit while asserting that there was no agreement to sell. It was also asserted that the property is mortgaged. The plaintiff examined himself as PW1, Raj Kumar as PW2, Gurnam Singh, Registration Clerk, as PW3, Rai Singh Jhinja, Advocate, Notary Public, as PW4, Tarsem Singh, Stamp Vendor as PW5, to prove his case.

As already noticed, the trial court as well as the First Appellate Court have concurrently found that the plaintiff successfully proved his case. Both the courts have recorded a concurrent finding of fact that the plaintiff on payment of Rs.19,31,000/- to the defendant entered into an agreement to sell and he was always ready and willing to perform his part of the contract.

Heard learned counsel representing the appellant and with his able assistance perused the paper book. Learned counsel representing the appellant contends that in view of the Specified Bank (Cessation of Liability) Act, 2017, the tender of the amount of Rs.19,31,000/- in the currency notes of denomination of 500 and 1000 was illegal. He submits

that demonetization was announced by the Government of India on 08.11.2016 whereas the amount was paid on 09.11.2016. He contends that the agreement to sell, being a contract was without consideration, therefore, the decree of specific performance of the agreement to sell could not be granted.

This Court has considered the submission and examined the provisions of the Act as well as the scheme notified. From the reading of the related provisions of the Act and the notified scheme, it is evident that demonetization was announced in order to control the circulation of fake currency notes in the market, which was being used for financing subversive activities such as drug trafficking, terrorism which caused damage to the economy of the country. It was permissible for the holders of those currency notes to tender the same in the Bank. It was also permissible for the persons to get the amount exchanged by tendering those notes in the Bank. It was also permissible to tender the amount at fuel stations etc. Hence, the tender of the notes with denomination of 500 and 1000 did not absolutely become illegal. These were permitted for limited usage till 30.12.2016. It was only thereafter the possession or usage of the notes was absolutely prohibited. In the present case, the contract was entered into in a remote area of State of Punjab. It has been proved that the amount was duly paid to the defendant. He never raised any grievance that he has been paid the amount in the currency which was no longer in use. He never offered to return the currency notes which were received by him from the plaintiff. In such circumstances, the defendants who has already received the

amount cannot be permitted to resile from the contract on the ground that the amount so paid was not a legal tender. The provisions of the Act are required to be interpreted in a manner which advances the cause of justice. In no circumstances, such contract can be said to be without consideration. It is not the case of the defendant that he could not use the aforesaid currency notes upto 30.12.2016. In fact, the defendant denied the execution of the agreement to sell itself. Both the courts have found that the stand of the defendant is not correct. In view thereof, no ground to interfere is made out.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

02.05.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE