IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-2532-2019(O&M)
Date of Order: 20.04.2022

GURDEEP SINGH AND OTHERS **..Appellants**

Versus

SUCHA SINGH (SINCE DECEASED) THROUGH HIS LRS.
..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Manuj Nagrath, Advocate
for the appellants.

Mr. Inderjit Singh, Advocate
for legal representatives No.ii, iii and iv
of respondent-Sucha Singh.

ANIL KSHETARPAL, J(Oral)

While assailing the correctness of concurrent findings of the facts arrived at the Courts below, defendants No.1 to 5 have filed this Regular Second Appeal. The plaintiff's suit for possession by way of specific performance of the agreement to sell, has been decreed by both the Courts below.

Some facts are required to be noticed.

The execution of agreement to sell dated 29.10.2009, on receipt of the earnest money of Rs.5,00,000/-, is not disputed between the parties. Through an agreement to sell, agricultural land at the rate of Rs.15,00,000/- per acre and a residential house at the rate of Rs.2,00,000/- was agreed to be sold. The property was under a charge of the bank on account of loan obtained by the defendants. It was agreed that the sale deed would be executed and registered on 20.04.2010 and before that date, the defendant will clear the bank dues.

The plaintiff claims that the defendants did not deposit the amount in the bank and obtained clearance certificate. After serving notice to the defendant on 21.07.2010, the plaintiff filed the suit on 11.08.2010, while asserting that he was always ready and willing to perform his part of the contract. The defendants contested the suit and claimed that the payment in the Oriental Bank of Commerce was deposited and they remained ready and willing to perform their part of the contract on 20.04.2010.

It was asserted that they had instructed the Bank Manager to give a no objection certificate.

In evidence, the truth came out. The defendants cleared the loan only on 26.08.2010 i.e. after a period of four months from the date agreed for execution and registration of the sale deed. Thus, the defendants were found to be on the wrong side and the Court decreed the suit.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook as well as the record of the Courts below, which was requisitioned.

The learned counsel representing the appellants submit that in the agreement to sell it has been provided that in case the defendants failed to clear their dues towards the bank then the plaintiff shall be entitled to a compensation of Rs.10,00,000/- along with refund of the earnest money. He submits that once there is a special contract then the plaintiff is not entitled to the relief of specific performance. He further submits that the plaintiff was never ready and willing to perform his part of the contract as he did not visit the office of the Sub-Registrar on 20.04.2010, whereas, the defendants remained present. He further submits that the plaintiff has failed to prove that he had wherewithal to pay, as he was carrying Rs.70,000/- cash on 04.08.2010, the date fixed as per the notice dated 21.07.2010.

Per contra, the learned counsel representing the plaintiff has submitted that the relief of specific performance is available to the plaintiff irrespective of condition of payment of Rs.10,00,000/-. He submits that in the agreement to sell, it was nowhere provided that the plaintiff shall not be entitled to claim enforcement of the contract by filing a suit for specific performance of the agreement to sell. He further submits that the plaintiff had earnest money for the balance amount in his bank account and was also having Fixed Deposit Receipts. He submits that the plaintiff was not required to flash his cash before the Sub-Registrar.

After having heard the learned counsel representing the parties, this Court now proceeds to decide the matter.

As regards the first argument, it may be noted here that such condition does not debar the plaintiff to seek relief of specific performance of the agreement to sell unless it is provided in the agreement itself that the plaintiff shall not be entitled to file a suit for specific performance. Such condition of payment of penalty is incorporated only to ensure the performance by the parties. Even, as per the provisions of Specific Relief Act, 1963, the relief of damages is not in derogation of the right to specifically enforce the contract particularly when it is with respect to the immovable property.

With respect to the second arguments, it may be noted here that the agreement to sell specifically provided that the defendants will repay the loan and get clearance from the bank before the agreed date i.e. 20.04.2010. Admittedly, the defendants failed to perform their part of the contract. In those circumstances, merely because the plaintiff did not visit the office of the Sub-Registrar on 20.04.2010, is not sufficient to non-suit him particularly when the default has been committed by the defendants. The plaintiff was well within his rights to insist for repayment of loan before going forward to execute the sale deed. The loan has been repaid only on 26.08.2010. In these circumstances, merely because the plaintiff did not come to the office of the Sub-Registrar on 20.04.2010, is not sufficient to non-suit him.

Moving further, the next contention of the plaintiff about him carrying Rs.70,000/- in cash, it may be noted here that the plaintiff's wife appearing in evidence has disclosed that he has wherewithal to pay the balance sale consideration. He has explained that there are Fixed Deposit Receipts in his name and he can pay the amount forthwith.

Furthermore, the readiness and willingness of the plaintiff is proved from the fact that he filed the suit within a period of less than four months from the agreed date.

The last argument of the learned counsel representing the appellant is that the First Appellate Court has not decided the appeal by giving issuewise findings. In the considered view of the Court, this is only a curable error. The judgment of the First Appellate Court cannot be set aside only on failing to follow the procedure.

The learned counsel representing the appellant further submits that the trial Court failed to decide issue No.3, which is with respect to the entitlement of the plaintiff to an alternative relief. The aforesaid aspect has already been discussed by this Court above.

With all these observations, the present Regular Second Appeal is dismissed.

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

April 20th, 2022 **(ANIL KSHETARPAL)**
Ay **JUDGE**

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