

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

**RSA-1380 of 2016 (O&M)
and other connected case
Date of decision: 09.09.2022**

Mukhtiar Singh

..Appellant

Versus

Kuldeep Singh (since deceased) through his LRs

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.P.Soi, Advocate and
Mr. Sahil Soi, Advocate
for the appellant.

Mr. Rajinder Kumar Singla, Advocate
for the respondent(s)

ANIL KSHETARPAL, J(Oral)

While assailing the concurrent findings of fact arrived at by the courts below, the plaintiff in a suit for possession by way of specific performance of the agreement to sell has filed two connected appeals.

The appellant was the plaintiff, whereas Sh. Kuldeep and others were defendants in a suit for possession filed by Sh. Kuldeep Singh. The original agreement to sell between the plaintiff and late Sh. Nirmal Singh with regard to the same property was executed on 30.09.1992. At that time, the property was mortgaged with the bank. Subsequently, Late Sh. Nirmal Singh died. During that time, there was some dispute between the parties and later on the parties arrived at a consensus. A fresh agreement to sell was executed by Sh. Kuldeep Singh son of late Sh. Nirmal Singh in favour of the plaintiff (Sh. Mukhtiar Singh). In the agreement, it was recited that the defendant shall be liable to clear the debt and get the property released

from attachment.

The defendant sent a notice to the plaintiff on 11.03.2003 with a request that Sh. Mukhtiar Singh, the plaintiff, should come forward and honour his agreement. It may be noted here that the plaintiff was put in possession of the property pursuant to the agreement to sell executed on 30.09.1992. Sh. Mukhtiar Singh never responded to the aforesaid notice sent by the defendant. Sh. Kuldeep Singh filed a suit for possession with the assertions that the debt has been cleared and despite notice Sh. Mukhtiar Singh did not come forward to honour his part of the agreement. In the year 2005 itself, Sh. Mukhtiar Singh filed written statement in a suit for grant of decree of possession filed by Sh. Kuldeep Singh. In fact, Sh. Mukhtiar Singh had filed a suit for grant of decree of permanent injunction on 02.05.2003. Thus, Sh. Mukhtiar Singh was already before the Court. Still, Sh. Mukhtiar Singh filed the suit for specific performance only on 06.11.2007.

Keeping in view the aforesaid facts, both the courts have granted alternative relief of refund of the earnest money along with the interest. The correctness of decision given by the courts below is being questioned in these two appeals.

This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the judgments passed by the Courts below as well as the record which was requisitioned.

The learned counsel representing Sh. Mukhtiar Singh contends that the notice dated 11.03.2003, allegedly sent by Sh. Kuldeep Singh was never received by him. He submits that in absence of evidence of the receipt

of the aforesaid notice, Sh. Mukhtiar Singh was waiting for the removal of attachment of the suit property before filing the suit. He further submits that the suit filed by Sh. Kuldeep Singh for grant of decree of possession was pre-mature. In support of his argument, he relies upon the judgment passed in **R. Lakshmikantham vs. Devaraji, 2019(3) Law Herald (SC) 1948.**

Per contra, the learned counsel representing Sh. Kuldeep Singh contends that Sh. Mukhtiar Singh filed a suit on 06.11.2007, though, as per his stand, the land was still under attachment. Hence, he submits that the delay in filing the suit is only an excuse which does not have any substance. He further submits that in the year 2005, Sh. Mukhtiar Singh came to know of the stand of Sh. Kuldeep Singh when he was served with a notice of the suit filed by Sh. Kuldeep Singh. Thereafter, Sh. Mukhtiar Singh had no reason not to file the suit.

This case pertains to the period when the relief of specific performance of the agreement to sell used to be the discretionary relief. In the present case, it is proved that Sh. Mukhtiar Singh after having entered into an agreement to sell evidencing delivery of possession on 30.09.1992, kept enjoying the possession. In 2001, Sh. Kuldeep Singh after the death of his father, once again, entered into an agreement to sell. Even at that time, the property was already mortgaged with the bank and was under a charge. Still, Sh. Mukhtiar Singh with open eyes entered into another agreement. Moreover, the defendant Sh. Kuldeep Singh sent a notice through registered post to the plaintiff on 11.03.2003. The postal address of the plaintiff on the registered post was correct. It is the same as is disclosed by the plaintiff in the suit. In such circumstances, there is presumption of the delivery of

notice. Sh. Mukhtiar Singh never replied to the aforesaid notice. In any case, once Sh. Kuldeep Singh had filed a suit for possession in April, 2005 and Sh. Mukhtiar Singh was served with a summons of the aforesaid suit. Hence, there was no reason for Sh. Mukhtiar Singh to wait further.

Keeping in view the aforesaid facts, the discretion exercised by the courts below is not wrong.

As regards the argument of the learned counsel that the suit filed by Sh. Kuldep Singh was pre-mature, it may be noticed that Sh. Kuldeep Singh being the owner was entitled to possession. Such suit cannot be said to be a pre-mature suit.

This Court has carefully read the judgment in **R. Lakshmikantham**(supra). In the facts of the case, the Supreme Court held that unless the property is redeemed on the payment of the mortgaged amount, the plaintiff cannot be said to be not ready and willing to perform his part of the contract. In the present case, the Courts below have not found that the plaintiff was ready and willing to perform his part of the contract. In fact, in this case, the courts have refused to exercise discretion in the facts of the present case.

Keeping in view the aforesaid facts, both the appeals are dismissed.

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

September 09, 2022

(ANIL KSHETARPAL)
JUDGE

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