

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

**RSA No.6542 of 2018 (O&M)**  
**Date of Reserve: 01.12.2022**  
**Date of Pronouncement: 19.12.2022**

Balwinder Sarpal and Anr.

...Appellants.

Versus

Ram Kumar Bansal

...Respondent

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr.N.P.Bhardwaj, Advocate, for the appellants.

Mr. S. S. Sudan, Advocate, for the respondent.

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**HARKESH MANUJA, J.(ORAL)**

By way of present appeal, challenge has been made to the judgment and decree dated 11.10.2018 passed by the Court of learned District Judge, Ambala, reversing the judgment and decree 02.05.2016 passed by the Court of Civil Judge (Jr. Divn.), Ambala, thereby passing a decree for possession by way of specific performance in favour of respondent-plaintiff.

Facts leading to the present case are that based on an agreement to sell dated 05.04.2006 regarding suit property i.e. House No.56/8-C situated in Ram Nagar, Ambala Cantt, respondent filed a suit for possession by way of specific performance with the averments that the total sale consideration was Rs.7 Lakhs, out of which Rs. 1 lakh was paid as earnest money and the date for execution of the sale deed was fixed as 05.07.2006 along with payment of the balance sale consideration. It was also pleaded that on the target date, respondent No.1 appeared before the office of Sub-Registrar, Ambala Cantt., for the purpose of execution/registration of sale deed being ready with the sale consideration, however, the appellants herein

executed in favour of respondent, compelling him to file a suit for possession by way of specific performance besides praying for grant of decree for permanent injunction as well.

Upon notice, appellants appeared and filed their written statement admitting the factum of execution of the agreement in question besides even admitting the payment of a sum of Rs. 2 Lakhs. However, the prayer made in the suit was opposed on the ground that respondent/plaintiff was not ready and willing to perform his part of the agreement in question. It was also pleaded that by virtue of notice dated 10.07.2006, the agreement in question stood cancelled followed by forfeiture of earnest money.

The trial Court vide its judgment and decree dated 02.05.2016, dismissed the suit filed at the instance of respondent by holding that neither the plaintiff-respondent was ready and willing to perform his part of agreement nor even he had approached the Court with clean hands and accordingly, discretion under Section 20 of the Specific Relief Act, 1963 (herein after to referred as “the Act”) could not be exercised in his favour. Besides it, the trial Court also recorded that by virtue of notice dated 10.07.2006, the agreement in question stood terminated and the earnest money stood forfeited and in the absence of any declaration sought for in this regard, respondent-plaintiff had no locus standi to file the present suit.

Aggrieved against the judgment and decree dated 02.05.2016, respondent filed first appeal. Vide judgment & decree dated 11.10.2018, first appeal filed at the instance of respondent/plaintiff was allowed and the suit filed at the instance respondent seeking relief for possession by way of specific performance was decreed in his favour. It is the aforesaid judgment and decree dated 11.10.2018 passed by the learned first Appellate Court, which has been impugned by way of present appeal.

Relying upon the decision rendered by Hon'ble the Supreme Court in the case of **Mrs. A. Kanthamani Vs. Mrs. Nasreen Ahmed, 2017(2) R.C.R. (Civil) 267**, it has been contended on behalf of appellants that once by virtue of legal notice dated 10.07.2006 (Ex.P-5), the agreement in question dated 05.04.2006 stood terminated thereby resulting into forfeiture of the earnest money, in the absence of any relief for declaration being sought at the instance of respondent-plaintiff qua the termination of the agreement in question, suit for possession by way of specific performance, as prayed for, could not have been decreed. It has been further submitted that the respondent/plaintiff was not ready and willing to perform his part of the agreement in question as no valid proof of the balance sale consideration lying with the respondent-plaintiff was produced on record so as to show the readiness on his part. It has also been submitted that mere fact that on the target date, a sum of Rs.4,70,000/- was lying in the bank account of respondent/plaintiff, could not be taken to be as a proof of his readiness to perform his part of the agreement in question. Learned counsel for the appellants also submitted that in the present case, respondent/plaintiff did not approach the Court with clean hands and accordingly, discretion under Section 20 of the Act for the purpose of grant of relief for possession by way of specific performance could not have been exercised in his favour. In support, he relied upon the document Ex.P-4 i.e. application dated 05.07.2007 produced and proved on record at the instance of respondent/plaintiff alleging forgery in the shape of change of date for the purpose of making it a pre dated document for the purposes of alleging his willingness by respondent. In support, he also relied upon statement of PW-4 namely Ramesh Kumar, Registration Clerk from the office of Sub Registrar, Ambala Cantt., to contend that the stamps affixed on the application dated 05.07.2006 showed the date as

08.07.2006.

On the other hand, learned counsel for the respondent submits that in the present facts and circumstances, the judgment rendered by Hon'ble the Supreme Court in the case of **I. S. Sikander (Dead) by LRs v. K. Subramani, 2014(1) RCR (Civil) 236**, followed in case of **Mrs. A. Kanthamani (Supra)** was not applicable to the facts and circumstances of the present case as in this case, respondent immediately responded to the termination notice dated 10.07.2006 by way of filing detailed reply dated 08.07.2007 rebutting the factum of termination and thereafter filed the suit on 17.08.2006, within no time. Learned counsel for the respondent further submits that having proved a sum of Rs.4,70,000/- lying in the account of respondent/plaintiff, the finding of readiness was rightly recorded in his favour by the first Appellate Court. He also submits that the proof of carrying cash on the target date is not the requirement of establishing readiness for the purpose of seeking specific performance. Learned counsel for the respondent also submits that there was no forgery, committed at the instance of respondent/plaintiff while executing the application Ex.P-4. He also refers to the cross-examination of PW-4 Ramesh Kumar to point out that even he was not sure about the date mentioned on the stamps to be 08.07.2006.

I have heard learned counsel for the parties and gone through the paper book. I am unable to accept the contentions made on behalf of the appellant.

In the present facts and circumstances wherein, the agreement in question is dated 05.04.2006 with 05.07.2006 being the target date, notice dated 10.07.2006 regarding its termination and forfeiture of earnest money was issued on 10.07.2006 whereas the suit for possession by way of specific performance came to be filed at the instance of respondent-plaintiff on

17.08.2006 i.e. without causing any delay what so ever. This itself shows that in fact the respondent/plaintiff was always ready and willing to perform his part of agreement and the amazing swiftness shown by the appellants/defendants was not at all bona fide and the uncalled for. Before terminating the agreement in question, the appellant/defendant never called upon the respondent/plaintiff to come forward and execute the sale deed in pursuance to the agreement in question which happens to be the most relevant distinguishing factor as compared to the facts in the case of **I. S. Sikandar (D) By LRs.Vs. K. Subramani and others 2014(1) R.C.R. (Civil) 236**. To point out the same, relevant portion from paragraph No.17 of the aforesaid judgment is reproduced as under:-

*“.....The period of five months stipulated under clause 6 of the Agreement of Sale for execution and registration of the sale deed in favour of the plaintiff had expired. Despite the same, the defendant Nos. 1-4 got issued legal notice dated 06.03.1985 to the plaintiff pointing out that he has failed to perform his part of the contract in terms of the Agreement of Sale by not paying balance sale consideration to them and getting the sale deed executed in his favour and called upon him to pay the balance sale consideration and get the sale deed executed on or before 18.3.1985. The plaintiff had issued reply letter dated 16.3.1985 to the advocates of defendant Nos. 1-4, in which he had admitted his default in performing his part of contract and prayed time till 23.05.1985 to get the sale deed executed in his favour. Another legal notice dated 28.03.1985 was sent by the first defendant to the plaintiff extending time to the plaintiff asking him to pay the sale consideration amount and get the sale deed executed on or before 10.04.1985, and on failure to comply with the same, the Agreement of Sale dated 25.12.1983 would be terminated since the plaintiff did not avail the time extended to him by defendant Nos. 1-4. Since the plaintiff did not perform his part of contract within the extended period in the legal notice referred to supra, the Agreement of Sale was terminated as per notice dated*

*28.03.1985 and thus, there is termination of the Agreement of Sale between the plaintiff and defendant Nos. 1-4 w.e.f. 10.04.1985. As could be seen from the prayer sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of Agreement of Sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit schedule property on the basis of Agreement of Sale and consequential relief of decree for permanent injunction is not maintainable in law.....”.*

From the portion reproduced hereinabove, it can be easily traced out that in the case of **I.S.Sikandar (Supra)**, the purchaser was initially called upon by the vendor to get the sale deed executed on payment of balance sale consideration. The purchaser having failed to do so, another opportunity was even granted to him to perform his part of the agreement with a caveat that in case the purchaser failed to do so by the stipulated date, the agreement would stand terminated. It was under those circumstances, when the purchaser failed to perform his part of obligation under the agreement, the Hon'ble Supreme Court accepted the plea of termination of the agreement. On the contrary, in the present case, notice of termination was issued by appellants/defendants merely within 5 days of the target dates and that too without granting any opportunity to the respondent/plaintiff to pay the balance consideration and get the sale deed executed. In these distinguishing circumstances, the judgment passed in the case of **I. S. Sakandar (supra)** can't be made applicable to the present case. More than that even the unilateral termination of agreement in question could not be accepted, in view of the law laid down by this Court in case of **Brahm Dutt Vs. Sarabjit Singh 2018 (1) L.A.R. 119**. Relevant paragraphs No.17 & 18 of the aforesaid judgment are reproduced as under :

*“17. However, otherwise also the defendant could not have, unilaterally, cancelled the agreement in question. Unilateral cancellation of agreement to sell by one party is not permissible in law except where the agreement is determinable in terms of Section 14 of this Specific Relief Act. Such cancellation cannot be raised as a defence in a suit for specific performance. If any such a plea of cancellation/termination is raised by the defendant then the Court can just ignore this and the plaintiff need not 6 of 8 challenge such an alleged cancellation. If such unilateral cancellation of non-determinable agreement is permitted as a defence then virtually every suit for specific performance can be frustrated by the defendant. Therefore the Specific Reliefs Act has made detailed provisions for this aspect. The bare perusal of the provisions of the Specific Relief Act shows that once a party claims the right of revocation or rescission, of the agreement then such a party is required to seek a declaration from the Court regarding the validity of revocation or rescission, as the case may be. In the present case also, it was not the duty cast upon the plaintiff to challenge the alleged cancellation of agreement, which, otherwise also, is not proved on record. On the contrary, if the defendant so claimed that he had valid reasons to terminate the contract or rescind the contract then he should have sought a declaration from the competent Court, as required under Section 27 and 31 of Specific Relief Act. Hence the plea of termination of agreement raised by the defendant has rightly not been accepted by the Courts below.*

*18. So far as the judgement of the Hon'ble Supreme Court in case of I.S. Sikandar (supra) is concerned, there is no dispute regarding the proposition laid down by the Hon'ble Supreme Court. However, that judgement is distinguishable on the facts of the present case. In the case before the Hon'ble Supreme Court, the defendant had, in fact, asked the plaintiff to make the payment of the money and to get the sale deed executed. On failure of the plaintiff to make the payment the agreement had become determinable and the defendant had terminated the contract by specific communication. This action of the defendant was within the realm of the Contract Act, as provided under Section 38 and 51 of the Contract Act and Section 14 of Specific Relief Act, which provides that in case of the performance which was required of the plaintiff/promisee is refused by him 7 of 8 then the*

*defendant/promisor need not perform his part of the agreement. In the present case, the appellant had not offered the performance on his part. Still further, in the present case, the termination as such has also not been proved on record, as has been held above.”*

Once the alleged termination of agreement in question, in the facts and circumstances of the present case has not been found to be bona fide being done in a unilateral manner without even calling upon the respondent/plaintiff to perform their part of agreement and particularly under the circumstances, wherein, the suit was filed promptly thereafter, no declaration, challenging the alleged termination was called for.

So far as the plea raised at the instance of appellant/defendant as regards not carrying of cash by the respondent/plaintiff in the office of Sub-Registrar on the target date, as pointed out by it may be pointed out by the learned counsel for the respondent, sufficient evidence has been produced on record in the shape of bank statements showing adequately sufficient amount lying in their accounts. In these circumstances, the findings on the point of readiness cannot not be recorded against the respondent as it is not necessary always to carry case against balance consideration in order to establish readiness which can always be proved through bank statements or income tax returns etc.

I even do not find substance in the submissions made on behalf of appellant alleging forgery having been committed at the instance of respondents/defendants of the date mentioned on the application submitted by him in the office of Sub Registrar, for the purpose of marking himself present there. I have gone through the statement made by PW-4 namely Ramesh Kumar, Registration Clerk, who appeared from the office of Sub Registrar, Ambala Cantt. Even a perusal thereof shows that he too was not sure about the

date shown on the stamps affixed on the application as to whether it was 05.07.2007 or 08.07.2008. Thus, in the absence of any reliable evidence as regards the change of date on the stamp, no finding of forgery can be recorded against respondents/plaintiffs in this regard as well.

The findings have been recorded by the first Appellate Court on careful and comprehensive appreciation of evidence available on record and in view of the discussions made hereinabove, I do not find any merit in the present appeal. There being no question of law much less substantial question of law involved in the present appeal, the same being devoid of merit is accordingly dismissed.

Pending application, if any, is disposed of accordingly.

**(HARKESH MANUJA)**  
**JUDGE**

**19.12.2022**  
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Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No