

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

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2023:PHHC:094814

RSA-1079-2020

Date of decision: 26.07.2023

ANIL KUMAR

..Petitioner

Versus

ROHTASH SINGH AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Raghav Goel, Advocate
for Mr. Govind Rana, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

1. This appeal has been filed by the plaintiff to challenge the correctness of findings of fact arrived at by the First Appellate Court. His suit was for the recovery of Rs.30,70,000/-, which was paid as earnest money pursuant to the agreement to sell dated 15.11.2006, was decreed by the trial Court but in appeal reversed by the First Appellate Court. The execution of the agreement to sell dated 15.11.2006 for a total sale consideration of Rs.47,70,000/- on payment of earnest money of Rs.30,70,000/- is not in dispute. As per the agreement to sell, no target date was fixed for execution of the sale deed. On 24.12.2007, the defendants sent a notice to the plaintiff to come forward for registration of the sale deed within a period of 15 days. The appellant (plaintiff) sent a reply to the notice on 05.01.2008. It was stated that no target date for execution and registration of the sale deed has been fixed and he has already paid a sum of Rs.30,70,000/-. The defendants filed a civil suit for the grant of decree of declaration that agreement to sell dated 15.11.2006 has become unenforceable. During the pendency of the suit, many opportunities were given to the plaintiff to honour the agreement. However, after some time, the

suit was dismissed in default. The plaintiff filed a suit for recovery on 09.10.2012. Though, the trial Court decreed the suit, however, as noticed above, the judgment of the trial Court was reversed by the First Appellate Court.

2. This Bench has heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook.

3. The learned counsel representing the appellant contends that as per the agreement to sell, there was no agreed date for the execution and registration of the sale deed. He further submits that the land in question was mortgaged with the bank on the date of agreement to sell. Hence, the plaintiff was justified in refusing to get the sale deed registered unless the mortgage is redeemed.

4. This Court has considered the submissions of the learned counsel representing the appellant.

5. During the course of arguments, the learned counsel representing the appellant has passed on a copy of the reply sent by the plaintiff on 05.01.2008. It is evident that the plaintiff did not take a plea that unless the mortgage is redeemed, the plaintiff is not prepared to get the sale deed executed. Thus, on 24.12.2007, the defendants had expressed their intention to honour the terms of the agreement.

6. Moreover, it is the defendants who filed the first suit for the grant of decree of declaration that the agreement to sell becomes unenforceable. The First Appellate Court has recorded that in the aforesaid suit, the plaintiff (appellant herein) failed to show his intention to honour the agreement to sell. Moreover, the suit has been filed nearly after 6 years

from the date of agreement to sell. The plaintiff has failed to show that he was always ready and willing to perform his part of the contract.

7. Keeping in view the aforesaid facts and discussions, a detailed judgment passed by the First Appellate Court requires no interference.

8. Hence, dismissed.

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

July 26th, 2023

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(ANIL KSHETARPAL)
JUDGE

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