

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

RSA-3334-2019 (O&M)
Date of decision : 27.02.2023

Rajbir Singh ... Appellant(s)

Versus

Suraj Bhan ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amandeep Goswami, Advocate for
Mr. M.S. Khillan, Advocate for the appellant.

ALKA SARIN, J. (ORAL)

CM-8948-C-2019

This is an application for condonation of delay of 48 days in
refiling the appeal.

For the reasons stated in the application, delay of 48 days in
refiling the appeal is condoned. CM stands disposed off.

RSA-3334-2019

The present appeal has been preferred against the concurrent
findings of fact returned by both the Courts below.

The brief facts relevant to the present *lis* are that the plaintiff-
appellant herein filed a suit for possession by way of specific performance of
contract with consequential relief of permanent injunction. It was averred
that an agreement dated 17.04.2006 was entered in respect of a plot
measuring 356.6 sq. yards situated in Hakikat Nagar, Ghoghripur Railway

Phatak Par, within Municipal Limits, Karnal. The total sale consideration was agreed at Rs.4,13,656/- (Rs.1160/- per sq. yard). It was further averred that an amount of Rs.1,00,000/- was paid as earnest money i.e. Rs.60,000/- on 17.04.2006 and Rs.40,000/- on 27.04.2006. It was further averred in the plaint that the target date was 10.07.2006. The plaintiff-appellant averred in the plaint that on 10.07.2006 i.e. the target date, the plaintiff-appellant was present in the office of the Sub-Registrar, Karnal along with the balance sale consideration and other ancillary expenses of stamp duty and registration fees etc., however, the defendant-respondent did not turn up to perform his part of the contract. An affidavit was also executed to mark his presence and the same was got attested from the District Magistrate, Karnal. It was further the case that after the target date, the plaintiff-appellant contacted the defendant-respondent a number of times and offered the balance sale consideration and requested for execution of the sale deed, however, to no avail. It was further averred that the plaintiff-appellant was always ready and willing to perform his part of the contract. On notice, the defendant-respondent appeared and admitted in the written statement that the agreement to sell dated 17.04.2006 was executed with respect to a plot measuring 356.6 sq. yards and a sum of Rs.1,00,000/- was received. However, the case was that the plaintiff-appellant was not ready and willing to get the sale deed executed and did not come forward with the balance sale consideration. It was further the case set up by the defendant-respondent that he remained present in the office of the Sub-Registrar and waited for the plaintiff-appellant to come, however, he did not show up. Two legal notices dated 14.11.2006 and 05.12.2006 were served on the plaintiff-appellant to

get the sale deed executed, however, the plaintiff-appellant did not come forward. Replication was filed wherein the averments made in the plaint were reiterated and those of the written statement were denied.

On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled to a decree for possession by way of specific performance of the agreement to sell dated 17.04.2006 on payment of balance sale consideration ? OPP
2. Whether the plaintiff is/was ready and willing to perform his part of contract ? OPP
3. If issues no. 1 and 2 are proved, whether the plaintiff is entitled to the relief of injunction as prayed for ? OPP
4. Whether the suit is not maintainable in the present form ? OPD
5. Whether the plaintiff has no cause of action to file and maintain the present suit ? OPD
6. Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD
7. Whether the suit has not been properly valued for the purposes of Court fee and jurisdiction ? OPD
8. Relief.

The Trial Court vide judgment and decree dated 15.01.2016

dismissed the suit holding that the plaintiff-appellant had failed to prove his

readiness and willingness to perform his part of the contract. Aggrieved by the said judgment and decree, an appeal was preferred by the plaintiff-appellant which was also dismissed vide judgment and decree dated 09.01.2019. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellant has contended that the plaintiff-appellant was always ready and willing to perform his part of the contract and he was also present in the office of the Sub-Registrar on 10.07.2006 and got his presence marked. It is further the contention that a Panchayat was also got convened on 05.06.2009 which clearly reveals that the plaintiff-appellant was always ready and willing to perform his part of the contract along with the balance sale consideration.

Heard.

In the present case the agreement to sell has not been denied by the defendant-respondent nor the payment of Rs.1,00,000/- as earnest money by the plaintiff-appellant has been denied. However, it is the case set up by the defendant-respondent that the plaintiff-appellant was not ready and willing to perform his part of the contract. Both the Courts below have concurrently found as a matter of fact that the plaintiff-appellant was not ready and willing to perform his part of contract. The target date in the present case was 10.07.2006. After the target date, no effort was made by the plaintiff-appellant till 05.06.2009 when the Panchayat is said to have been convened to pay the balance sale consideration to the defendant-respondent. Meanwhile, two legal notices were served upon the plaintiff-appellant on 14.11.2006 and 05.12.2006, however, the plaintiff-appellant refused to receive the same and did not come forward with the balance sale

consideration.

On the other hand, admittedly, from 10.07.2006 till 05.06.2009 when the Panchayat was got convened by the plaintiff-appellant, no efforts were made to pay the balance consideration and to get the sale deed executed. No legal notice was served upon the defendant-respondent to come present. Rather, the plaintiff-appellant failed to perform his part of the contract despite being called to do so vide two legal notices dated 14.11.2006 and 05.12.2006 served upon him by the defendant-respondent.

In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by both the Courts below. No question of law, much less substantial question of law, arises in the present case. Pure findings of fact have been returned by both the Courts below which call for no interference by this Court. The present regular second appeal, which is wholly devoid of any merit, is dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

27.02.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO