

Neutral citation No. **2023:PHHC:073833**

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA 3735 of 2012 (O&M)

Date of decision : May 18th, 2023

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A.K. Mohan s/o late Sh. C.L. Mohan

.....Appellant

vs.

Rajinder Singh (since deceased) s/o
Sh. Harcharan Singh Brar, through LRs

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Anupam Gupta, Senior Advocate
with Mr. Sukhpal Singh, Mr. Gautam Pathania,
Mr. Bhavnik Mehta and Mr. Shekharan Singh Virk,
Advocates for the appellant

Mr. K.S. Boparai, Advocate for
Ms. Archana Vashisht, Advocate for the respondent.

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H. S. Madaan, J. (Oral)

1. Briefly summed up, facts of the case are that plaintiff –
Rajinder Singh s/o Harcharan Singh Brar, r/o House No. 2224, Sector
21-C, Chandigarh had filed a suit against defendant A.K. Mohan s/o
Late Shri C.L. Mohan, r/o House No. 310, Rail Vihar, Sector 4,
Mansa Devi Complex, Panchkula, seeking grant of a decree for
possession by way of specific performance of agreement to sell dated
1.6.2004, with regard to Flat No. H -111, First Floor, AWHO, Sector

4, Mansa Devi Complex, Panchkula (hereinafter to be referred as 'flat in suit'), by specific performance of that agreement and by way of grant of mandatory injunction directing the defendant to execute all the necessary papers regarding sale of that flat in the name of plaintiff after receiving the remaining sale consideration amount.

2. As the case of the plaintiff goes, the defendant had entered into an agreement to sell the flat in suit with the plaintiff on 1.6.2004 for a total consideration amount of Rs. 17 lacs, receiving Rs.1.70 Lacs in cash as earnest money. It was agreed that the seller will pay, if anything is found due regarding the flat in question in record of the Society/Municipal Corporation or in record of the Electricity Department before the last date of the final payment, which was fixed as on or before 30.8.2004. It was agreed that the seller would deliver peaceful, vacant possession of the flat alongwith all original documents and papers pertaining and fitting fixtures of the said flat to the purchaser at the time of full and final payment. Other terms and conditions are detailed in the agreement itself. That agreement to sell was signed by both the parties and attested by two witnesses. According to the plaintiff, he has been ready and willing to perform his part of the contract and is even now ready and willing to do so, however, the defendant had served a legal notice dated 19.8.2004 upon the plaintiff issued through Mr. Sanjay Gupta, Advocate. The plaintiff had sold his property and prepared two bank drafts bearing No. 494833 dated 24.8.2004 for Rs. 8,30,000/- and another bank draft No. 18984 dated 25.8.2004 for Rs. 7 lacs and he

remained present before the Sub Registrar, Panchkula, as per the directions of defendant, having remaining amount of Rs.15,30,000/- on 26.8.2004, for execution of the sale deed. The plaintiff had offered both the bank drafts/ remaining amount of Rs.15,30,000/-, but the defendant with mala fide intention did not receive the same and refused to come forward to execute the sale deed in favour of the plaintiff and to get it registered. The plaintiff marked his presence alongwith the remaining amount before Sub Registrar.

3. On getting notice, the defendant had appeared and filed a written statement contesting the suit, inter alia raising preliminary objections that the plaintiff has not approached the Court with clean hands and is guilty of concealing material facts he is not entitled to equitable relief of specific performance of agreement to sell. The suit is barred for non-joinder of necessary parties, etc. On merits, the defendant admitted having entered into an agreement to sell dated 1.6.2004 with the plaintiff stating that it was so done on the understanding that within 15 days, the plaintiff and the said property dealer would find a suitable buyer and in case they failed to do so, the flat would be purchased by the present plaintiff in accordance with terms and conditions of the agreement to sell. The defendant denied that the plaintiff had approached the property dealer for purchase of the flat. The defendant admitted execution of agreement dated 1.6.2004 and receipt of the earnest money. As it is pleaded in the written statement, as per clause 5 of the agreement, all the expenses were to be borne by the plaintiff, but the plaintiff was not

paying the expenses on account of execution of conveyance deed, which is necessary for execution of the sale deed in question. Several requests had been made by the defendant to the plaintiff, but to no effect. The flat in question is part of Mahander Vihar Complex, which was allotted to Army Welfare Housing Organization and that flat cannot be transferred without obtaining permission for transfer of the flat by the Army Housing Welfare Organization and from the Mahander Housing Cooperative Maintenance Society. For the purpose of obtaining permission of those two Societies, the present plaintiff was required to submit willingness letter, one affidavit to become member of Army Welfare housing Organization, New Delhi, his detailed bio-data duly verified by the police authorities and an affidavit of undertaking for obtaining provisional membership and to abide by all the rules and regulations of the Society. Rs.50,200/- as membership fee to the Society and Rs.20,500/- as transfer fee and application fee to be submitted to AWHO, New Delhi. In these circumstances, the defendant was forced to serve a legal notice dated 19.8.2004, upon the plaintiff to supply the necessary documents and get the sale deed executed on or before 30.8.2004. Refuting the remaining assertions, the defendant prayed for dismissal of the suit. According to the defendant, he was ready and willing to perform his part of contract and did perform his part of contract but it was because of the plaintiff that the suit property was not transferred in favour of the plaintiff because he had failed to pay expenses on account of execution of the conveyance deed despite various requests

of the defendant.

4. From the pleadings of the parties, following issues were framed :-

1. Whether the plaintiff has had been ready to perform his part of the agreement dated 1.6.2004 ? OPP
2. If issue no.1 is proved in affirmative then as to whether the plaintiff is entitled for the specific performance of the agreement to sell dated 1.6.2004 in respect of the plot in dispute? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the suit is bad for non-joinder of necessary parties? OPD
5. Relief.

5. Parties were afforded adequate opportunities to lead evidence in support of their respective claims.

6. During the course of evidence of plaintiff, he got his statement recorded as PW-2, and further examined Budh Raj, Clerk of Syndicate bank, Patiala, as PW-1, MH Kureishy, Manager of Co-operative Bank as PW-3, Nek Raj, Manager of Mahander Vihar Housing Co-operative Maintenance Society Ltd., as PW-4, Jainender Pal as PW-5 and Manmohan Walia as PW-6. After tendering certain documents, counsel for the plaintiff, closed the evidence of the plaintiff.

7. In rebuttal, the defendant, A.K. Mohan, stepped into

witness box as DW-1, and also examined Lt. Col. R.S. Grewal, Secretary of the Society as DW-2. The defendant further relied upon certain documents and closed his evidence.

8. After hearing the arguments, the trial Court of Civil Judge (Senior Division), Panchkula, vide judgment and decree dated 28.11.2009, decreed the suit of the plaintiff, directing the defendant to execute and get registered the sale deed in respect of the suit property in favour of the plaintiff and to hand over its vacant possession to the plaintiff, after performing all the necessary formalities required for transfer/sale of the suit property and on receiving balance sale price from the plaintiff, within two months from the date of order.

9. The defendant had preferred an appeal against the judgment and decree passed by the trial Court, before the District Judge, Panchkula, who after hearing the arguments, vide judgment and decree dated 23.3.2012, dismissed the appeal and affirmed the judgment and decree passed by the trial Court.

10. Still feeling dissatisfied, the defendant has approached this Court, by way of filing the present appeal, notice of which was given to the respondent, who has appeared through counsel.

11. I have heard learned counsel for the parties, besides going through the record.

12. A perusal of the pleadings of the parties goes to show that the defendant admits the factum of having entered into an agreement to sell dated 1.6.2004 with plaintiff and receipt of Rs.1.70

Lacs as earnest money. It being so, then the question to be seen is as to why the transaction could not be completed. Was it on account of lack of readiness or willingness on part of the plaintiff or due to the fact that the plaintiff wanted to back out of the agreement.

13. Both the Courts below while considering the pleading of the parties and analysing the evidence brought on record by them in light of other facts and circumstances have returned concurrent findings that the plaintiff has been ready and willing to perform his part of agreement dated 1.6.2004 throughout and for the said reason the plaintiff was found entitled to the specific performance of agreement to sell dated 1.6.2004 in respect of flat in dispute.

14. The version of the defendant that the agreement dated 1.6.2004 was executed on the understanding that within 15 days the plaintiff and property dealer M/s Dhruv Properties, 2845, Sector 15, Main Road, Panchkula, would find a suitable buyer and only then the suit property will be purchased by the plaintiff was considered and not found worthy of acceptance. There is absolutely no mention of any such contention in the agreement to sell.

15. Another submission made on behalf of the appellant-defendant is that the defendant was ready and willing to perform his part of contract but for the reason that the plaintiff had failed to pay expenses for execution of the conveyance deed, despite various requests of the defendant, the sale deed could not be executed in favour of the plaintiff. However, this contention raised on behalf of defendant is also not believable because as it evident from the record

the conveyance deed in favour of the defendant had been executed a few days before the final date fixed for execution of the sale deed by the defendant in favour of the plaintiff in terms of the agreement to sell dated 1.6.2004. The defendant has also contended that it was for the plaintiff to submit requisite document in the form of willingness letter, affidavit to become member of Army Welfare Housing Organization, New Delhi, AWHO, submit his detailed bio-data verified by the police authorities and affidavit of undertaking for obtaining provisional membership and to abide by all the rules and regulations of the Society, deposit Rs.50,200/- as membership fee of the Society and Rs.20,500/- as transfer fee, as well as application fee to be submitted to AWHO, but the plaintiff did not do so, despite notice dated 19.8.2004, having been served by the defendant upon the plaintiff and as such permission from the Society could not be obtained.

16. A perusal of the agreement to sell goes to show that no such mention is therein and the Courts below, in view of Sections 91 and 92 of the Indian Evidence Act, had rejected the contention, stating that on account of non-mentioning of such condition, the same cannot be looked into and considered.

17. Learned counsel appearing for the appellant-defendant has however drawn my attention to the proviso to Section 92 of the Indian Evidence Act, as well as Judgment **HPA International vs. Bhagwandas Fateh Chand Daswani and others (2004) 6 Supreme Court Cases 537**, submitting that the execution of sale deed was

contingent on obtaining permission from the society on furnishing of requisite documents by the plaintiff, which the plaintiff did not do so, therefore, the condition on which the agreement was entered into, was not fulfilled. As such the contract cannot be got specifically enforced.

18. He had further referred to judgment in case *PYM vs. Campbell by Justice Crompton*, as well as *Sahdeo Shrawan vs. Namdeo Atmaram Mankar AIR (36) 1949 Nagpur 15*, wherein, oral evidence, as to the condition claimed by the defendant that the plaintiff should execute a deed of re-conveyance but the plaintiff avoided doing so, therefore, sale deed was not executed by the defendant, was lead, which was accepted by both the Courts below and in the lower Appellate Court, it was held that evidence as to this oral agreement, which was not implemented by the plaintiff, was admissible under proviso (3) of Section 92 of the Evidence Act, which provides that the existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant of disposition of property, may be proved. Learned counsel had referred to judgment in that regard i.e. *Motilal and others vs. Nanhelal and another AIR 1930 Privy Council 287*,

19. Learned counsel appearing for the respondent – plaintiff has contended that no such condition was incorporated in the agreement to sell, as such, such condition cannot be taken to be there, as a condition precedent for performance of the agreement. However,

even if it is presumed that such condition was there, then it was for the defendant to take necessary measures and he cannot conveniently pass the buck to the plaintiff. Learned counsel has contended that even if for a moment it is taken that such condition was agreed upon by both the parties, then it can be got performed after execution of the sale deed by the defendant in favour of the plaintiff. In support of that contention, he had referred to judgment *Nirmala Anand vs. Advent Corporation (P) Ltd. and others (2002) 5 Supreme Court Cases 481*. In the said judgment, the Supreme Court while dealing with a case of specific performance of contract for sale of a flat in a building, had held that per curiam, specific performance cannot be refused merely because the proposed vendor (defendant) is required to obtain permission/sanction from authorities concerned for completing the building so as to make the sale effective. He has referred to judgment *Vishwa Nath Sharma vs. Shyam Shanker Goela and another 2007 (10) Supreme Court Cases 595*, by the Supreme Court, wherein it was observed that a vendor can sell his property and execute sale deed even though sale was prohibited without prior sanction of Authority and sanction can be obtained subsequently.

20. After considering the rival contentions, I find that the specific performance of agreement to sell cannot possibly be denied to the plaintiff for the reason that necessary formalities with regard to the Housing Society are yet to be completed, since as has been held in *Vishwa Nath Sharma's case (Supra)*, those formalities can be

completed after execution of the sale deed by the defendant in favour of the plaintiff.

21. One more argument put forward by learned counsel for the appellant – defendant was that the agreement being of year 2004 i.e. About 19 years earlier, the prices of the properties have increased manifolds and the defendant who is an Ex–Army Officer, has no other place to go and live alongwith his family, except the flat in question and if he is asked to transfer that flat in favour of the plaintiff, in terms of agreement to sell, then he will face a great hardship and the equity demands that the specific performance of agreement could not be granted to the plaintiff and he can be granted alternative relief of refund of earnest money with some interest / damages.

22. On the other hand, learned counsel for the respondent-plaintiff has contended that such respondent has waited for a long period of around 19 years to get ownership and possession of the flat in question, having paid earnest money of Rs.1.70 lacs at the time of execution of the agreement and having remained ready and willing to pay the remaining consideration amount, so as to get the sale deed executed in his favour. A great prejudice would be caused to him in case the specific performance of the agreement to sell is denied, more particularly when both the Courts below had accepted the version set up by the plaintiff and there is no reason to upset those judgments and decrees.

23. Again, considering the submissions made by learned

counsel for the parties, I find that the settled law with regard to agreement for sale of immovable property is that its specific performance should normally be granted. The defendant having himself entered into agreement to sell, receiving the earnest money, he being an educated person, who was an officer of high rank in Indian Army, he is expected to know the implications of entering into an agreement, therefore, there is no question of any exceptional hardship to the defendant. The civil suit was decreed on 28.11.2009, he could have made some alternative arrangement at that time.

24. In support of his contentions, learned counsel for the appellant has pressed into service judgments, *Vishwa Nath Sharma vs. Shyam Shanker Goela and another (2007) 10 Supreme Court Cases 595*; *K.S. Vidyanadam and others vs. Vairavan (1997) 3 Supreme Court Cases 1*; *Chand Rani (Smt.)(dead) by LRs vs. Kamal Rani (Smt.)(dead) by LRs (1993) 1 Supreme Court Cases 519* and *Sardamani Kandappan vs. S. Rajalakshmi and others (2011) 12 Supreme Court Cases 18*. However, I find that keeping in view the facts and circumstances of the case, it being proved on record that plaintiff had been ready and willing to perform his part of contract and is even now ready and willing to do so, he has approached the Court on 8.9.2004 soon after expiry of the final date for execution of the sale deed fixed as 30.8.2004 and has prosecuting the litigation ever since at the level of High Court, beginning from the trial Court to the Ist Appellate Court and then this Court in regular second appeal. It would not be proper and appropriate to deny

the relief of specific performance to the plaintiff, merely for the reason that prices of the property have escalated considerably in the meanwhile. There is no reason to deny the relief of specific performance to the plaintiff and grant of relief of refund of earnest money alongwith interest to him. The judgment referred to by the appellant *Kanta vs. Gajanand 2016 (3) Civil Court Cases, 696 (P&H)*, by a Single Bench of this Court, is not helpful to the case of the appellant due to different facts and circumstances and the context in which such observations have been made.

25. Thus I find that the impugned judgments and decrees passed by the Courts below are quite detailed, well reasoned, based upon proper appraisal and appreciation of evidence, as well as correct interpretation of law. There is no illegality or infirmity therewith, which might have called for interference by this Court while hearing the regular second appeal.

26. No substantial question of law has arisen in the present appeal.

27. The appeal is found to be without any merit, and stands dismissed accordingly.

May 18th, 2023

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(H.S. Madaan)

Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No