

RSA-1771-2023 (O&M)

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

RSA-1771-2023 (O&M)

Reserved on: 15.11.2023

Date of Pronouncement: January 05, 2024

RAJINDER SINGH AND OTHERS

...APPELLANTS

V/S

RANJEET SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ashish Chopra, Senior Advocate with
Ms. Nitika Sharma, Advocate and
Mr. Khushdeep Singh Maan, Advocate for the appellants.

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

HARKESH MANUJA J. (ORAL)

By way of present appeal, challenge has been made to the judgments and decrees dated 07.08.2019 and 25.01.2023 passed by the Courts below, whereby a decree of recovery for a sum of Rs.4,50,01,000/- along with interest at the rate of 9 % per annum from the date of payment of the individual amounts to the appellants/ vendors till the date of decree besides interest at the rate of 6 % per annum from the date of decree till actual realization of the decretal amount was passed in favour of respondent/plaintiff.

2. Briefly stated, based upon an agreement to sell dated 11.04.2012, the respondent/plaintiff filed a suit for possession by way of specific performance regarding 209 kanal and 3 marla of land situated at village Kikkar Kheda, Tehsil Abohar, District Fazilka against

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appellants/ defendants/ vendors.

As per the plaint, the total sale consideration was of Rs.6,46,01,206.25/- with 15th of April, 2013 being the target date. It was further pleaded that a sum of Rs.30,01,000/- was paid as earnest money/advance money followed by part payments made on different dates with the following details:-

- “a) Rs.30,01000/- (Thirty Lakhs One thousand) on 11.04.2012*
- b) Rs.70,00000 (Seventy Lakhs) on 17.04.2012*
- c) Rs.30,00000 (Thirty Lakhs) on 18.06.2012*
- d) Rs.70,00000 (Seventy Lakhs) on 22.12.2012*
- e) Rs.150,00,000 (One Crore Fifty lakhs) on 5.4.2013;*
- e) Rs.1,00,00000 (One Crore) on 15.04.2013.”*

The respondent/plaintiff further pleaded that despite he being ready and willing to perform his part of the agreement, the appellants/ defendants did not execute the sale deed on 15.04.2013 thereby compelling him to file the present suit for grant of decree for possession by way of specific performance qua agreement to sell dated 11.04.2012, besides praying for mandatory injunction for issuance of directions to the appellants/defendants to clear the loan amount due against the suit land as an encumbrances as well as seeking relief of permanent injunction, restraining the appellants/defendants from alienating the suit property. In alternate, prayer was made for recovery of Rs.6,46,01,206.25/- i.e. Rs.4,50,01,000/- against refund of amount paid and Rs.1,96,00,206.25/- towards damages with future interest at the rate of 18% yearly from the date of filing the suit till recovery.

3. On notice, the appellants/defendants appeared and filed detailed written statements admitting the factum of execution of the

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agreement to sell dated 11.04.2012 besides no serious rebuttal being made towards the payment of Rs.4,50,01,000/- under the agreement. The suit was mainly contested on the ground that the respondent/plaintiff was not ready and willing to perform his part of the agreement. It was pleaded that the respondent- plaintiff having failed to appear before the sub-Registrar on the target date i.e. 15.04.2013 along with the balance sale consideration was thus required to be non-suited.

4. The trial Court vide its judgment and decree dated 07.08.2019, though non-suited the respondent/plaintiff as regards his prayer for grant of possession by way of specific performance, finding him to be not ready and willing to perform his part of agreement, yet, awarded a decree qua the alternate relief to the extent of recovery of an amount of Rs. 4,50,01,000/-.

Aggrieved thereof, the appellants/defendants filed first appeal i.e. Civil Appeal No.16 of 2023 dated 25.01.2023, assailing the money decree granted in favour of respondent/plaintiff. On the other hand, respondent/ plaintiff also filed his cross-objections being registered as Civil Appeal No. 302 of 2019 dated 04.12.2019, praying for interest upon the money decree awarded in his favour. The First Appellate Court vide judgment and decree dated 25.01.2023, while upholding the money decree passed in favour of respondent/plaintiff awarded him interest thereupon @ 9% per annum from the date of payment/ deposit of different amounts till the date of decree with 6% per annum interest from the date of decree till actual realization of the decretal amount.

5. Impugning the aforementioned judgments and decrees,

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learned Senior counsel representing the appellants/defendants submitted that the Courts below went wrong while granting decree in favour of respondent/plaintiff while relying upon clause (5) of the agreement to sell dated 11.04.2012. Learned counsel also submitted that the said clause could not be treated being contingent upon the performance of the agreement besides the other obligations casted upon respondent/plaintiff regarding proof of his readiness and willingness to perform the same especially in terms of the prayer made by respondent/plaintiff in his plaint, wherein mandatory injunction was even prayed for against appellants/defendants to clear the loan liability before execution of sale deed. In this regard, he placed reliance upon a decision dated 04.07.2022 passed by this Court in **RSA No.4725 of 2019** titled as **Satwant Kaur and others versus Surinder Singh and others**. Paragraph No.16 thereof is reproduced hereunder:

“16. Moreover, it has been held by Hon’ble Supreme Court in M/s J.P Builders and anothers Versus A. Ramadas Rao and anothers 2011(1) RCR (Civil) 604 that “where the vendors entered into agreement to sell the property against which the bank loan was raised by them and it was agreed to execute the sale-deed after the discharge of bank loans and release of original deeds to the vendors, it could not be construed as impossible event which would make the contract void and it could also not be termed as a contingent contract and would not come to an end and the plaintiff was entitled to the specific performance of the contract.” The present matter is squarely covered by the above-quoted observations and in view of the same, it becomes explicit that agreement Exhibit P-2 is not a contingent contract and hence, the same could be legally enforced”.

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Learned Senior counsel further submitted that the First Appellate Court went wrong while awarding interest in favour of respondent/plaintiff as no specific prayer in this regard was made in the plaint. He went on to submit that the earnest money even as per the agreement to sell, was Rs.4,50,01,000/-which was liable to be forfeited in the facts and circumstances of the present case wherein the respondent/plaintiff was never ready and willing to perform his part of the agreement dated 11.04.2012 and was concurrently recorded in favour of appellants/ defendants and against respondents/plaintiffs with there being no challenge to the said finding from the side of respondent/plaintiff besides even admitting the said amount of Rs.4,50,01,000/- to be the earnest money during his cross-examination while appearing as PW-10. As regards opposition to the payment of interest granted in favour of respondent/plaintiff, learned Senior counsel placed reliance upon a decision made by the Hon'ble Apex Court in case of ***Small Industries Development Bank of India versus Sidco Industries Private Ltd (2022) 3 SCC 56***. Para 48 of the aforesaid judgment is reproduced hereunder:-

“48. The plaintiff did pray for pendente lite interest in the trial court but neither did the trial court frame any issue in this regard, nor were any arguments recorded. This shows that such claim was not pressed by the plaintiff. Further, no ground is urged in the appeal memo, that such an issue ought to have been framed. Hence, it is clear that the plaintiff is not serious on its claim for pendente lite interest. The issue is rested accordingly.”

6. On the other hand, learned counsel representing

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respondent/ plaintiff submitted that the terms of the agreement in question were to be read in conjunction with each other. While referring to clauses (5) and (7) of the same, learned counsel submitted that appellants/defendants were under an obligation to clear the loan which was outstanding towards the land in question besides effecting an exchange of land falling in Rectangle No.168 killa No.4, 7, 19/1 and 19/2, before the sale deed could be executed on the target date and thus, the earnest money could not have been forfeited while relying upon clause (3) of the agreement to sell in question. As regards the payment of interest, learned Senior counsel submitted that a specific prayer was made in the plaint in this regard, though the same did not find favour with the trial Court and therefore, specific cross-objections on this point were filed before the First Appellate Court. Learned counsel further submitted that the judgments passed by the Courts below regarding refund of amount were based upon proper appreciation of terms of the agreement in question and thus, the same warrant no interference.

7. I have heard learned counsel for the parties and gone through the paper book as well as the records besides the law cited at bar. I am unable to find merits in the submissions made on behalf of the appellants/ defendants. The plaintiff/ respondent having failed to assail the findings recorded against him qua the declining of relief of specific performance, mandatory and permanent injunction, the only issue for adjudication remains about refund of Rs. 4,50,01,000/- and interest thereupon. Moreover, the judgment passed in case of **Satwant Kaur's** (supra) in no way help the cause of the appellants/ defendants, but rather support the respondent/ plaintiff to the effect that the agreement

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in question cannot be treated as a contingent contract.

8. Entire controversy in the present appeal revolves around the enforcement of agreement to sell dated 11.04.2012 based on different clauses thereof. Some of the relevant clauses which mainly casted obligations on respective parties are reproduced hereunder in a tabulated form:-

Obligations casted upon Vendors-defendants/ appellants.		Obligations casted upon Vendee-plaintiff/ respondent.	
Clause 5:	<i>That if there is any encumbrance on this land, it will be cleared before the registration of the sale deed.</i>	Clause 3	<i>That the registration of the deed has to be completed by 15.04.2013, in favour of the buyer or any person named by the buyer. If I refused to execute the sale deed then the buyer will be entitled to recover double the amount or get the decree from the learned Court to get the sale deed executed. If the buyer does not executed the same within the stipulated period, then the earnest money will be forfeited.</i>
Clause 7	<i>That the land measuring 24 kanal 17 marla, khatoni No.634, Jamabandi for the year 2006-07 is in the name of Bhupinder Singh son of S. Narain Singh and this area be given to Bhupinder Singh in exchange and in lieu of this, rect. No.168, Qilla No.4, 7, 19/1, 19/2 will be transferred in favour of buyer and get registered before the execution of the sale deed.</i>		

9. Agreement to sell being a bilateral act of the parties, has to operate in both directions. Its implementation being based on reciprocal promises, the order of performance of the terms has to be regulated in accordance with Section 52 of the Indian Contract Act, 1872, which

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reads as under:-

“52. Order of performance of reciprocal promises:

Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.”

10. Applying the principle of law being reflected from the aforementioned provision and also upon a conjoint reading of the relevant terms of the agreement to sell in question dated 11.04.2012, it can be traced out that the vendors- defendants/ appellants were under an obligation to first clear the outstanding loan as well as to get the exchange effected before 15.04.2013 i.e. the date fixed for registration of the sale deed and thereafter only, the vendee- plaintiff/ respondent was to discharge his obligation of getting the sale deed executed on payment of balance sale consideration or in default thereof the earnest money could be forfeited. Thus, performance of his obligation by the respondent/ plaintiff been dependent upon the performance of the reciprocal obligations by the appellants/ defendants/ vendors and the respondent / plaintiff who was prevented from performance of his part of the agreement was required to be exonerated from the consequences of breach of contract/ agreement in question.

In the given facts, the redemption of mortgage against discharge of loan liability towards part of suit land was effected on 30.04.2013 and 09.05.2013; whereas the exchange as obligated was got effected on 15.07.2013; which were all beyond the target date for execution of sale deed i.e. 15.04.2013 and thus, having failed to

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perform their obligations before the relevant date, the appellants/defendants had no right to enforce forfeiture of the earnest money-part sale consideration (without going into the aspect of payment being either earnest money or part sale consideration as the same may not be required in the given facts). Even the first Appellate Court dealt with this relevant aspect in detail. Relevant portion from para 23 of the judgment passed by the First Appellate Court is reproduced hereunder:-

“23. The said arguments so advanced by counsel for the defendants/ appellants is not at all convincing. Perusal of the agreement Ex.P2 goes to show that there is a specific stipulation at serial No.5 whereby it was required on behalf of defendants to clear all the loan amount of the banks on the suit land prior to the execution of the sale deed. The arguments of the counsel for the defendants/appellants that the suit land was free from all the encumbrance pales into insignificance in the light of testimony of PW-1 Chander Kumar Patwari, who has categorically stated that out of the suit land, 40 kanals 08 marlas land was mortgaged with P.N.B. Gaushala Road, Abohar against amount of Rs. 15 Lacs which was only redeemed on 09.05.2013 i.e. after the date fixed for execution of the sale deed. Similarly, he has stated that land measuring 20 Kanals 18 Marlas out of the suit land was mortgaged with Harbans Finance Company for an amount of Rs. 1,00,000/- which was redeemed on 30.04.2013, which is also after the date fixed for execution of sale deed. Furthermore, he stated that 24 Kanals 17 Marlas of land out of the suit land was exchanged by defendants with Bhupinder Singh on 15.07.2013 whereas they were required to execute the said exchange deed as per stipulation at serial No.7 in agreement Ex.P2

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before 15.04.2013. Therefore, there is overwhelming evidence on record that there was default on behalf of defendants/appellants to have not complied with the stipulation mentioned at serial No. 5 & 7 of the agreement Ex.P2.”

11. In the present case, the absence of readiness and willingness on the part of respondent/ plaintiff to perform his part of agreement to sell dated 11.04.2012 against which he was non-suited qua the relief of specific performance as well as the mandatory injunction and the permanent injunction, could not be taken to be in favour of appellants/ defendants; those who before the target date failed to perform the reciprocal promises/ obligations casted upon them under the same agreement. As per clause 3 of the agreement, the forfeiture clause was to become operative and enforceable once, the respondent/ plaintiff being purchaser, failed to get the sale deed executed from the date of agreement till the target date i.e. between 11.04.2012 to 15.04.2013. Contrarily, the appellants/ defendants themselves having failed to get the part of land redeemed and the exchange effected regarding some other part, there was no opportunity for the respondent/ plaintiff to get the sale deed executed before the target date, except for praying specific performance and mandatory injunction as well as permanent injunction or in the alternate for refund with interest. Moreover, as per clause (c) of Section 16 of Specific Relief Act, 1963, the concept of readiness and willingness primarily governs and regulates the grant of relief of specific performance and thus, its strict application may not be as an absolute rule relevant qua the relief of refund as prayed for in the given facts and circumstances, wherein the appellants/ defendants did not perform their obligations within the time

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frame and thus, could not claim benefit out of their own wrongs. The situation may be of course different in a case where there were no counter obligations to be discharged by a vendor before the target date, under an agreement.

12. Equally important, having failed to perform their obligations before the target date, the appellants/ defendants could not have resisted the claim raised by the respondent/ plaintiff qua interest upon the refund of the amount paid under the agreement by raising the plea of readiness and willingness on the part of respondent/ plaintiff in the wake of Section 54 of the Indian Contract Act, 1872, for short 'the Act', which is reproduced hereunder:-

"54. Effect of default as to that promise which should be performed, in contract consisting of reciprocal promises.—When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract."

Reference in this regard can also be drawn from the case titled as ***Pushkarnarayan S. Maheshwari Vs. Kubrabai Gulamali***, reported as (1969) 71 BOMLR 769, and relevant portion of the same is reproduced hereunder:-

"The principle that a plaintiff suing for damages for breach of contract must prove readiness and willingness to perform his own part

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of the contract can, however, have no application to a contract which is not of the nature specified in Section 51 of the Contract Act, but is one which expressly fixes the order in which reciprocal promises are to be performed so as to fall within the terms of Section 52 of that Act. In the case of such contracts, Section 54 of the said Act lays down in the clearest possible terms that, if the promisor of the promise which was to be first performed fails to perform it, he cannot claim performance of the reciprocal promise and is liable in damages for breach of contract to the other party.”

13. Furthermore, the appellants/ defendants in the given facts and circumstances having failed to discharge their obligation before the target date were not entitled to determine the agreement entered into between the parties so as to deny the refund to the respondent/ plaintiff. Reference in this regard can be made to para 25 of ***Rattan Lal (since deceased) through his Legal representatives Vs. S.N. Bhalla and others***, reported as 2012 (4) RCR 283, which is reproduced hereunder:-

“25. The other point raised on behalf of the Respondents regarding the import of Clause 9 of the Agreement to sell is also not of much substance. In our view Clause 9 was never meant to provide the Respondents with an escape route if they themselves failed to discharge their responsibility of not only applying for sale permission, but to also follow up the matter with the authorities in order to obtain the same within the stipulated period of six months. In the absence of any material on record to show that the Respondents had made positive efforts for procuring the

necessary sale permission and clearance certificates, they were not entitled to determine the Agreement in terms of Clause 9.”

14. Moreover, there is no merit in the contention raised on behalf of appellants/ defendants to the effect that the respondent/ plaintiff was not entitled for interest upon refund, especially there being no specific prayer in this regard. A perusal of prayer clause in the plaint shows that interest was categorically claimed therein. Equally important, the appellants/ defendants being not entitled to retain the amount, having utilized the same for long, were rightly saddled with the liability to refund the same with interest and thus, no interference was warranted on this count. Even the judgment in case of **Sidco Industries Private Limited (Supra)** was not applicable in the facts and circumstances of the present case as in that case no specific ground was raised in the appeal qua the relief of interest whereas in the case in hand, cross-objections were filed before the First Appellate Court by the respondent/ plaintiff only on the point of interest.

15. In view of the detailed discussion made hereinabove, finding no illegality or perversity with the concurrent findings of fact recorded by both the Courts below, the present appeal is hereby dismissed there being no question of law involved.

16. Pending misc. application(s), if any, shall also stand disposed of.

January 05, 2023
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes