



220 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3224-2013(O&M)
Date of decision : 29.05.2024

Nirmal Singh (since deceased)
through his LRs

...Appellant

Vs.

Smt. Harjinder Kaur

...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S. Punia, Senior Advocate with
Mr. P.S. Punia, Advocate
for the appellant.

Mr. Divanshu Jain, Advocate and
Mr. Abhinav Goel, Advocate
for the respondent.

ANIL KSHETARPAL, J. (Oral)

1. In this appeal the plaintiff assails the correctness of judgment passed by the First Appellate Court which in turn has reversed the judgment passed by the trial Court.

2. The plaintiff filed a suit for possession of the suit property by way of specific performance of the agreement to sell with a consequential relief of permanent injunction. It was alleged by the plaintiff that the defendant entered into an agreement to sell on 16.11.2005, with respect to constructed house over a plot measuring 03 marlas on receipt of Rs.1,80,000/- against total sale consideration of Rs.18,00,000/-. The sale deed was to be executed on 16.02.2006. The plaintiff visited the office of Sub Registrar on 16.02.2006, however, the defendant did not come for execution. The plaintiff filed a suit for the grant of permanent injunction on 24.02.2006, in which, the defendant appeared on 13.03.2006 and offered to execute the sale deed. However, the



plaintiff did not latch to the aforesaid offer. On 23.04.2007, the plaintiff withdrew the suit as the defendant refused to execute the sale deed after a passage of one year. The plaintiff filed this suit on 01.08.2008. The trial Court decreed the suit, however, the First Appellate Court has found that the plaintiff was never ready and willing to perform his part of the contract.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

4. Learned senior counsel representing the appellant submits that the plaintiff was always ready and willing to perform his part of the contract as he attended the office of Sub Registrar on 16.02.2006 and thereafter, immediately filed a suit for injunction. He submits that on 13.03.2006, the defendant offered to execute the sale deed. However, the Court did not pass any order. Hence, the First Appellate Court has erred in accepting the appeal.

5. *Per contra*, the learned counsel representing the respondent submits that on 13.03.2006, the defendant offered to execute the sale deed and the plaintiff's counsel was present. He did not instruct the plaintiff to come forward and to get the sale deed executed. The plaintiff came forward to get the sale deed executed only after a passage of more than one year. Hence, the defendants refused. He further submits that the plaintiff filed this suit after a period of 01 year and 04 months from the date of withdrawal of injunction suit.

6. This Court has considered the submissions made by the learned counsel representing the parties.

7. As is evident that on 13.03.2006, the defendant offered to get the sale deed executed in favour of the plaintiff. In these circumstances, the plaintiff was required to take steps to honour the agreement. However, the



plaintiff did not take any step for more than one year. Hence, the First Appellate Court has correctly found that the plaintiff was not ready and willing to perform his part of the contract. Furthermore, there is no explanation from the plaintiff with respect to the period of 01 year 04 months after the injunction suit was withdrawn because the suit for specific performance of the agreement to sell was fixed on 01.08.2008.

8. Learned Senior counsel representing the appellant submits that the defendant is required to prove actual loss before forfeiting the amount of earnest money.

9. In RSA No.4920 of 2014 titled as '*Ran Singh and others vs. M/s Capex Projects Pvt. Ltd*', this Court has examined the aforesaid issue in detail while relying upon the judgments of the Hon'ble Supreme Court in *Shree Hanuman Cotton Mills and others Vs. Tata Air Craft Limited, (1969) 3 SCC 522*, Satish *Batra Vs. Sudhir Rawal, (2013) 1 SCC 345* and *Videocon Properties Limited Vs. Dr. Bhalchandra Laboratories, (2004) 3 SCC 711*. It was held that for forfeiting the amount of earnest money in terms of the agreement to sell, the intended vendor is not required to prove actual loss.

10. In view of the aforesaid facts, no ground to interfere is made out.
11. Dismissed.
12. All the pending miscellaneous applications, if any, are also disposed of.

29.05.2024
neeraj

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No