In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2320 of 1993 (O&M)

Reserved On: 29.01.2025
Pronounced On: 21.04.2025

Dan Sahai and Others

... Appellant(s)

Versus

Bal Kishan (Since Deceased) through his Legal Representatives and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Amit Jain, Senior Advocate
with Mr. Chetan Slathia, Advocate
for the appellant(s).

Mr. Ashish Aggarwal, Senior Advocate
with Ms. Aashima Aggarwal, Advocate
for the respondent.

Anil Kshetarpal, J.

I. Brief Facts

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in ***Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157***.

2. The defendants assail the correctness of the First Appellate Court's judgment, which, in turn, has reversed the judgment and decree passed by the Trial Court.

3. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed. The defendants,

namely, Dan Sahai along with his three other brothers including Mohan Singh (minor) were the owners in possession of the land measuring 126 kanals 4 marlas. Dhansahai, Rambir and Jagdish, three brothers, entered into an agreement to sell in favour of the plaintiff(respondent), namely Bal Kishan on 09.12.1981 on receipt of ₹15,000/- as earnest money out of the total sale consideration of ₹1,50,000/-. An amount of ₹5,000/- was further to be paid which was duly paid on 14.12.1981. The defendants were to take permission from the Guardian Judge for selling the share of Mohan Singh (minor) and it was agreed that if the Income Tax Clearance Certificate would be required, the sellers would arrange the same. The sale deed was to be executed and registered upto 30.06.1982. It is specifically noted in the agreement to sell that the last date for execution for the sale deed is 30.06.1982.

4. The plaintiff claims that on 30.06.1982, he went to the office of the Sub Registrar, but the office was closed on account of the bank holiday. He further claims that he again went to the office of the Sub Registrar on 01.07.1982 along with the balance sale consideration, however, the defendants did not come. He sent notice to the defendants on 03.07.1982 and thereafter, filed the suit on 16.07.1985 for possession by way of specific performance. The defendants contested the suit on various grounds, but mainly on the ground that the plaintiff was not ready and willing to perform his part of the contract. Agreement with regard to the share of Mohan Singh (minor) was also denied. It was also asserted that on 30.06.1982, the defendants were present at the office of the Sub Registrar but the plaintiff did not appear.

5. When the plaintiff appeared in evidence as PW.3, the learned counsel representing the defendants called upon him to produce his passbook or account book, the plaintiff refused to produce the same. He stated that he had borrowed the amount for payment of the balance sale consideration but he did not remembers as to how much amount was borrowed. He failed to produce any document in this regard. It was proved that the plaintiff did not attend the office of the Sub Registrar whereas the defendants did attend the same. It was also proved that the defendants applied for permission on 11.01.1982 which was granted on 28.04.1982. Three brothers, namely Dhansahai, Rambir and Jagdish also filed Form 34A in the Income Tax Department on 23.06.1982 for getting issued an Income Tax Clearance Certificate.

II. <u>Findings arrived at by the Courts below</u>

6. The Trial Court found that the plaintiff was not ready and willing to perform his part of the contract and his conduct does not entitle him to seek decree of specific performance. The Trial Court passed a decree for recovery of ₹20,000/- whereas the First Appellate Court reversed the Trial Court's judgment for the following grounds:-

I) Ordinarily, time is not essence of the contract.

II) The plaintiff was not required to show the source of the sufficient funds on the date stipulated for execution of the sale deed.

III) The plaintiff attended the office of the Sub Registrar on 30.06.1982 and 01.07.1982. Thereafter, he sent notice to the defendants on 03.07.1982, hence, the plaintiff is proved to be ready and willing to perform his part of the contract.

IV) The conduct of the defendants proves that they are not fair with the Court. The suit was filed within the period of limitation, hence, the First Appellate Court reversed the findings.

III. <u>Discussion and Analysis</u>

7. Heard the learned senior counsels representing the parties, at length and with their able assistance, perused the judgments passed by both the Courts below and the record.

8. Undoubtedly, time is not ordinarily an essence of the contract, however, the plaintiff is required to prove that he was always ready and willing to perform his part of the contract. It is evident from the reading of the plaint that the plaintiff, after allegedly sending notice to the defendants on 03.07.1982, slept over the matter. The plaintiff has not disclosed the steps taken by him between 03.07.1982 till July, 1985. While appearing as PW.3, the plaintiff has also not disclosed the reasons for waiting for more than three years before filing the suit.

9. Moreover, it is proved that the plaintiff was never ready and willing to perform his part of the contract. He was to pay the balance sale consideration of ₹1,35,000/- which was the sufficient amount in the year 1982. When he was called upon to produce his passbook or account book, he refused. He also failed to disclose the names of the persons from whom he borrowed the amount. He even failed to disclose the amount borrowed by him. Additionally, the plaintiff has lied in the Court. He claims that on

30.06.1982 there was a bank holiday, hence, he again visited the office of the Sub Registrar on 01.07.1982. The defendants have produced Ex.D1 the certificate issued by the Sub Registrar on 30.06.1982 certifying the presence of the defendants in his office. Thus, the plaintiff has tried to mislead the Court.

10. The First Appellate Court has also erred in observing that the plaintiff was not required to show sufficient funds at the time of sale deed. It is evident that the plaintiff can succeed only if he shows that he possessed wherewithal to pay an amount of ₹1,35,000/- along with the stamp duty and registration charges. In the absence thereof, his suit could not be decreed.

11. Though the defendants have denied the execution of the agreement to sell on behalf of Mohan Singh (minor), however, their conduct is not important particularly when the plaintiff has failed to prove his readiness and willingness to perform his part of the contract.

12. Undoubtedly, the limitation for filing of the suit is three year and the suit was filed within the period of limitation, however, the plaintiff was required to prove that he was always ready and willing to perform his part of the agreement as provided under Section 16(c) of the Specific Relief Act, 1963. The plaintiff's silence for a period of more than three years is sufficient to conclude that he was not ready and willing to perform his part off the contract particularly when he not only failed to disclose his financial resources but he refused to disclose the same. Hence, an adverse inference is required to be drawn against him.

13. The First Appellate Court has also erred in observing that the defendants were mandatorily required to obtain the Income Tax Clearance

Certificate. This finding of the First Appellate Court is a result of misreading of the agreement to sell. On its careful perusal, it becomes evident that the parties agreed that if the Income Tax Clearance Certificate would be required, the defendants will obtain the same. Moreover, the defendants did apply for the Income Tax Clearance Certificate.

IV. <u>Decision</u>

14. Keeping in view the aforesaid facts and discussion, this Court is left with no choice but to set aside the First Appellate Court's judgment and restore that of the Trial Court. Accordingly, the present appeal is allowed.

15. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

April 21, 2025
"DK"

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