IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(209) **RSA No. 3089 of 1997(O & M)**
Reserved on: 11.11.2025
Pronounced on: 14.11.2025

DALIP KAUR AND OTHERS … APPELLANTS

VERSUS

SWINDERJIT SINGH(Since Deceased) Through LRs … RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- MR. R.S.Athwal, Advocate
for the appellants

Mr. A.S.Gill, Advocate
for LRs of respondent

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VIRINDER AGGARWAL,J.

1. The present appeal has been preferred by the defendants-appellants against the judgment and decree dated 5.5.1997 passed by the learned Additional District Judge, Jalandhar, whereby the judgment and decree dated 13.2.1995 rendered by the learned Sub Judge Ist Class, Nawanshahr, was set aside, and the suit filed by the plaintiff-respondent for specific performance of an agreement to sell dated 25.8.1990(Ex. P-4) was decreed.

BACKGROUND FACTS

2. Briefly stated, the case of the plaintiff-respondent was that the defendants, being owners of 3 marlas of land forming part of Khewat No. 1414, Khatoni No. 1706, Khasra No. 5980/4626/(0-4) situated in Nawanshahr, entered into an agreement to sell dated 25.8.1990 for a total sale consideration of ₹1,40,000/-.

A sum of ₹25,000/- was paid as earnest money at the time of execution of the agreement. It was further stipulated that another ₹25,000/- would be paid by October 1990, and the sale deed was to be executed by October 1991 on payment of the remaining sale consideration. The plaintiff averred that he remained ready and willing to pay the additional ₹25,000/- and went to the office of the Sub Registrar on 31.10.1990 to tender the said amount, but the defendants failed to turn up. He also issued notices thereafter and appeared again in the office of Sub Registrar on the stipulated date for execution of the sale deed, but the defendants avoided the transaction. According to the plaintiff, it was the defendants who defaulted, being influenced by the rising prices of property. The defendants, on the other hand, admitted the execution of the agreement and the receipt of ₹25,000/-, but pleaded that the plaintiff failed to pay the second instalment of ₹25,000/- by October 1990 as agreed. They relied upon notices dated 23.2.1991 and 26.3.1991 calling upon the plaintiff to make the payment within a week, failing which the agreement would stand cancelled. Since the plaintiff did not comply even thereafter, the defendants treated the contract as rescinded.

3. The learned Trial Court, after evaluating the pleadings, evidence and the terms of Ex. P-4, held that the plaintiff had failed to pay the second instalment of ₹25,000/- within the stipulated time(by October 1990). It was further held that the time was the essence of the contract so far as the payment of this amount was concerned, and consequently, the plaintiff was not entitled to specific performance. Learned Trial Court dismissed the suit for specific performance but ordered refund of the earnest money of ₹25,000/- with interest. Aggrieved by the said judgment, the plaintiff preferred an appeal and the learned Additional District Judge, Jalandhar reversed the said findings. It was

held that time was not of the essence, the plaintiff had been ready and willing and the defendants' conduct in giving further time for payment amounted to waiver. The appellate court thus decreed the suit for specific performance of the agreement. Aggrieved by the reversal, the defendants have filed the present second appeal.

CONTENTION

4. Learned counsel for the appellants has assailed the judgment of the learned First Appellate Court as being contrary to law and evidence on record. It is contended that the agreement to sell dated 25.08.1990 (Ex. P4) clearly stipulated that the second instalment of ₹25,000/- was to be paid by October 1990, and the plaintiff having failed to do so, committed a fundamental breach. It is urged that the First Appellate Court erred in holding that time was not the essence of the contract, despite the specific terms of the agreement and the findings of the learned Trial Court which had rightly dismissed the suit on this ground. Counsel further submits that the plaintiff was neither ready nor willing to perform his part of the contract and that the subsequent notices issued by the defendants were only a measure of indulgence and not a waiver of the essential condition regarding time. It is thus argued that the learned First Appellate Court misread the evidence and misapplied the settled principles of law, and that the decree for specific performance deserves to be set aside.

5. Per contra, learned counsel for the respondent-plaintiff has supported the judgment and decree of the learned First Appellate Court, submitting that the findings are based on a correct appreciation of evidence and settled law. It is urged that the conduct of the defendants themselves clearly shows that time was never intended to be of the essence of the contract. Counsel further submits that

the plaintiff was always ready and willing to perform his part, had sufficient funds, and even sent a cheque which was unjustifiably not accepted by the defendants. It is argued that the refusal to execute the sale deed was a result of the defendants' desire to take advantage of the rise in property prices. Hence, the learned First Appellate Court rightly decreed the suit for specific performance, and the findings do not call for interference.

OBSERVATION AND FINDING

6. I have given my thoughtful consideration to the submissions advanced by the learned counsel appearing on behalf of the appellants. I have also carefully scrutinized the entire record of the case in detail, with particular attention to the pleadings, documentary evidence, and findings of the Courts below.

7. The substantial question of law that arises for determination in this appeal is:

Whether, in the facts and circumstances of the case, time was of the essence of the contract within the meaning of Section 55 of the Indian Contract Act, 1872, and whether the learned First Appellate Court erred in granting a decree for specific performance in favour of the plaintiff?

(i) Whether Time Was of the Essence

8. It is a well-settled principle of law that, in contracts relating to the sale of immovable property, time is not ordinarily of the essence unless the parties have expressly made it so or the intention/conduct of parties and circumstances of the transaction necessarily imply that time was intended to be essential. This rule

flows from the long-standing equitable principle that the transfer of immovable property normally contemplates procedural formalities, verification of title and payments in stages. Hence, unless the parties clearly express otherwise, the law presumes that some latitude in time is permissible.

9. The governing provision in this regard is ***Section 55 of the Indian Contract Act, 1872***, which is reproduced here for ready reference as below:

> ***"55. Effect of failure to perform at fixed time, in contract in which time is essential.****—When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.*
>
> ***Effect of such failure when time is not essential.-*** *If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.*
>
> ***Effect of acceptance of performance at time other than that agreed upon.-****If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other*

than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so."

10. It contemplates two contingencies: first, when time is expressly made of the essence, non-performance within the stipulated period renders the contract voidable at the option of the promisee; and secondly, where time was not intended to be essential but performance is accepted after the fixed date, the contract remains enforceable and the promisee is entitled only to compensation for any delay. The statutory language itself recognises that, to make time essential, there must be clear intention either expressed in words or manifested by the conduct of the parties.

11. In the present case, the agreement to sell dated 25.08.1990 (Ex. P-4) provided that the purchaser would pay an additional sum of ₹ 25,000/- "up to October 1990" and that the sale deed would thereafter be executed by October 1991 on payment of the remaining amount of consideration. The instrument nowhere stipulates that failure to make the payment by October 1990 would render the agreement void or authorise forfeiture of rights under it. The clause fixing time for payment thus appears only as a schedule for convenience and not as a condition fundamental to the very existence of the contract. *Significantly*, the conduct of the defendants after execution of the agreement makes this position even more explicit. The first notice dated 23.02.1991 (Ex. D-1) called upon the plaintiff to make payment within one week and warned that failure would lead to presumption of his inability to pay and forfeiture of earnest money. However, before taking any action of rescission or forfeiture,

the defendants issued another notice dated 26.03.1991 (Ex. D-2), thereby extending the time by ten more days and permitting payment through cash, cheque or bank draft. This two-stage correspondence is incompatible with the plea that the contract had already lapsed in October 1990; it demonstrates that the vendors themselves were willing to keep the agreement alive at least up to the first week of April 1991.

12. Such extension amounts in law to waiver of strict performance within the original period. Once a party, after default, grants further time or entertains delayed performance, it cannot afterwards insist that time was essential. This principle is squarely embodied in the second paragraph of Section 55 of the Contract Act and has been consistently recognised by the courts. If the intention truly was that the contract would automatically lapse on failure to pay by October 1990, the defendants would not have served two notices successively granting additional opportunities for compliance. Further, the defendants' decision to repeatedly extend time for payment indicates that they were guided by convenience rather than by any rigid insistence on punctuality. It is, therefore, difficult to hold that the parties regarded the timeline as sacrosanct or fundamental to their contractual relationship.

13. Had time been truly essential, the defendants would have been under no obligation to accept payment after October 1990; the very issuance of further notices inviting performance conclusively negatives such an intention. Their conduct, viewed through the prism of Section 55, constitutes acceptance of delayed performance and thereby converts the original fixed time into a reasonable time for performance. The parties thus by their own actions placed the transaction outside the category of contracts where time is of essence.

14. In this context, reference may be made to the decision of the Hon'ble Supreme Court in ***Chand Rani v. Kamal Rani***, (1993) 1 SCC 519, the Hon'ble Supreme Court reiterated that even where the contract specifies a date for performance, time does not become the essence unless the parties intended it to be so either expressly or by necessary implication. The Court emphasized that, in transactions concerning immovable property, stipulations as to time are ordinarily regarded as directory unless special circumstances exist. Likewise, In ***Gomathinayagam Pillai and others v. Palaniswami Nadar*, *AIR 1967 SC 868*,** the Hon'ble Supreme Court authoritatively held that the mere specification of a period within which a contract is to be performed does not, by itself, render the stipulation as to time the essence of the contract, nor does the inclusion of a default clause in the contract automatically show an intention to make time essential. The Court observed that time can be regarded as of the essence only if the parties intended it to be so, and such intention may be evidenced either by express stipulation in the contract or by circumstances so compelling and unequivocal as to displace the ordinary presumption that, in contracts for the sale of immovable property, stipulations as to time are not of essence. Applying this principle to the present case, it is manifest that the agreement to sell dated 25.08.1990 (Ex. P4) contains no clause declaring the contract void for non-payment by October 1990, and the defendants' own conduct in successively extending the period for payment through notices Ex. D1 and Ex. D2 clearly negatives any intention to treat the time fixed therein as fundamental or essential to the contract.

15. Applying these principles to the facts of the case, it becomes evident that the defendants, by their conduct, waived and abandoned any insistence on strict adherence to the time mentioned in the agreement and repeatedly extending the

time for payment and keeping the contract alive. The extensions given up to the end of March 1991 and the absence of any act of rescission until then conclusively establish that **time was not the essence** of the contract. The finding recorded by the learned First Appellate Court on this issue is, therefore, supported by both statutory provisions and binding judicial precedent.

(ii) Readiness and Willingness of the Plaintiff

16. The plaintiff produced his affidavit Ex. P6 to show that he had remained present in the office of the Sub-Registrar on 31.10.1990 with the requisite amount for payment of the second instalment. He further produced his bank account statement and a cheque for ₹ 25,000/- issued in favour of the defendants to establish his financial capacity and bona-fide readiness to perform his part of the agreement. Significantly, after receiving the defendants' notice, the plaintiff also replied thereto on 26.03.1991 (Ex. D2), and in continuation of that correspondence he sent a cheque for ₹ 25,000/- on 09.04.1991, drawn on the State Bank of Nawanshahr, towards the second instalment of the sale consideration. The said amount, however, was not accepted by the defendants, who failed to turn up for execution of the sale deed on the date fixed. The plaintiff nonetheless remained present in the office of the Sub-Registrar ready with the consideration amount, awaiting the appearance of the vendors. On the other hand, defendant Parminder Singh (DW-1) candidly admitted in cross-examination that the defendants were willing to execute the sale deed only at the prevailing market price, which had by then escalated considerably. This admission demonstrates that the defendants' reluctance stemmed not from any default by the plaintiff but from their desire to take advantage of rising property values and thereby evade their contractual obligation. The cumulative effect of

this evidence establishes that the plaintiff possessed both the capacity and the uninterrupted intention to perform his part of the contract and was continuously ready and willing to do so within the meaning of Section 16(c) of the Specific Relief Act, 1963. The findings recorded by the learned First Appellate Court on this issue are, therefore, well-founded, reasoned, and free from any perversity.

(iii) Discretion under the Specific Relief Act

17. The relief of specific performance under the Specific Relief Act, 1963 is indeed discretionary, but such discretion must rest upon sound judicial principles and equitable considerations, not upon arbitrariness. In the present case, the learned Trial Court, while declining the relief, failed to appreciate that the defendants themselves had successively extended the time for payment and thus treated the agreement as subsisting even beyond the stipulated period. The learned First Appellate Court, on a careful reappraisal of the record, rightly corrected this error, observing that the plaintiff had at all times remained ready and willing to perform his part and that the defendants' refusal was motivated solely by escalation in market prices. The plaintiff's prompt institution of the suit in year 1992, immediately after the defendants' refusal, demonstrates diligence and good faith. On the contrary, the conduct of the defendants in repeatedly extending time for payment and thereafter refusing to honour the agreement on account of escalation in property prices, reveals a deliberate attempt to to evade a concluded bargain. In these circumstances, no equitable ground exists to deny the relief; rather, the balance of justice and equity lies in favour of enforcing the contract. The First Appellate Court thus rightly exercised its discretion in decreeing the suit for specific performance, and its findings warrant no interference.

FINDINGS

18. From the foregoing discussion, this Court finds that the agreement in question did not make time the essence of the contract, as the defendants themselves extended the period for payment, thereby waiving any insistence on time. The plaintiff was ready and willing to perform his part, whereas the defendants committed breach. Therefore, the First Appellate Court's findings are based on correct appreciation of evidence and settled principles of law.

19. In view of the above, this Court finds no merit in the present appeal and hereby is **dismissed**. The judgment and decree dated 5.5.1997 passed by the learned Additional District Judge, Jalandhar, are affirmed. The decree for specific performance of the agreement to sell dated 25.8.1990 in favour of the plaintiff-respondent stands upheld.

20. Since the main case has been decided, pending miscellaneous application(s), if any, stands also disposed of.

(VIRINDER AGGARWAL)
JUDGE

14.11.2025
Saurav Pathania

Whether reasoned / speaking? *Yes / No*
Whether reportable? *Yes / No*