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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2504-2006 (O&M)
Date of decision: 06.05.2025

SHYAM SUNDER WADHWA ..Appellant

Versus

SURINDER SINGH & ORS. ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aman Pal, Advocate
for the appellant.

Mr. Anil Shukla, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

I. Brief facts of the case:-

1. The plaintiff assails the correctness of First Appellate Court's judgment, which in turn has reversed that of the trial Court.

2. The execution of agreement to sell dated 22.04.1993, on receipt of Rs.1,50,000/- as earnest money out of total sale consideration of Rs.5,00,000/- is admitted. The possession of the property was also delivered to the plaintiff. Further payment of Rs.1,00,000/- vide receipt dated 04.05.1993 is also admitted. As per the original agreement to sell, the sale deed was to be executed on 07.05.1993, however, by writing dated 04.05.1993, it was extended to 30.04.1994. Subsequently, vide writing dated 02.05.1994, the date for execution of the sale deed was extended to 13.05.1994.

3. The plaintiff claims that he paid Rs.20,000/- to the husband of defendant No.1, who was impleaded in the suit as defendant No.2, vide

receipt dated 14.05.1994. He further claims that another amount of Rs.29,450/- was paid by the office of Registrar while refunding stamp duty. The defendant on the other hand claims that plaintiff was never ready and willing to perform the part of the contract.

4. The suit for specific performance of agreement to sell was filed on 05.06.1997. The First Appellate Court has held that the plaintiff is not proved to be ready and willing to perform his part of the contract.

II. Arguments addressed:-

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the scanned copy of the requisitioned record.

6. Learned counsel for the appellant has made the following submissions:-

> i. The trial Court did not frame any specific issue with regard to the question whether the suit was filed within the period of limitation but the First Appellate Court overlooked the assertions made in the plaint while dismissing the suit on the ground that it was filed beyond the prescribed period of limitation.
>
> ii. The plaintiff had paid more than 50% of the total sale consideration and he was always ready and willing.
>
> iii. Sh. Nathu Ram was impleaded as defendant No.2, however, he chose not to contest the suit.
>
> iv. The finding of the First Appellate Court that amount of Rs.29,450/- was paid to the plaintiff is erroneous.

7. Per contra, learned counsel for respondent has submitted that defendant attended the office of the Registrar on 13.05.1994, whereas, the plaintiff absented. It is further contended that plaintiff was served with a 'Notice of Accusation' in the complaint filed under Section 138 of the Negotiable Instruments Act, 1881, on 15.04.1996, whereas, the suit was filed on 05.06.1997. It is also brought to the notice of the Court that there was no requirement of obtaining the Income Tax Clearance Certificate in the agreement to sell.

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

8. This Court has considered the submissions of learned counsel for the parties.

9. Article 54 of the Schedule attached to the Limitation Act, 1963 (in short '1963 Act') prescribes the period of limitation for filing suit for specific performance of the agreement to sell, which reads as under:-

Description of suit	*Period of limitation*	*Time from which period begins to run*
54. For specific performance of a contract.	*Three years.*	*The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.*

10. It is evident that the time from which the period to file the suit will begin to run has been divided into two parts. In the first part, the time will begin to run from the date fixed for performance. In the present case, the last date for execution of the sale deed was 13.05.1994. There was no further extension. The suit was filed on 05.06.1997, hence, the suit was filed beyond the prescribed period of limitation. The assertion of the plaintiff that there

was further negotiation would not come to the rescue of the plaintiff in view of specific language used in Column III of Article 54 of the Schedule attached to the '1963 Act'.

11. This Court has read the agreement to sell and extension dated 02.05.1994. It is only stipulated that defendant No.1 will pay all the taxes. It is nowhere stipulated that defendant No.1 will obtain the Income Tax Clearance Certificate.

12. Admittedly, the plaintiff did not attend the office of the Registrar on 13.05.1994, the date for registration of the sale deed, whereas, the defendant attended the office of the Registrar.

13. Additionally, the plaintiff made an attempt to pay Rs.50,000/- through cheque dated 02.05.1994, which on presentation in the bank, was dishonoured. Ultimately, the plaintiff was convicted in a complaint filed by defendant no.1. That itself proved that plaintiff did not have wherewithal to pay the amount.

14. The plaintiff has failed to furnish any explanation for not filing the suit within the period of limitation. The plaintiff was delivered possession of the property. He continued to enjoy the property, hence, he never took steps to file the suit.

15. Sh. Nathu Ram's failure to contest the suit would not come to the rescue of the plaintiff particularly when he was a not party to the agreement to sell. The plaintiff is required to prove his case as per Section 16 of the Specific Relief Act, 1963. He is also required to prove that he was always ready and willing to perform his part of the contract. In fact, the plaintiff took a factually incorrect stand by asserting that defendant No.1 was required to obtain the Income Tax Clearance Certificate.

16. Hence, the amount of earnest money i.e. Rs.1,50,000/- shall stand forfeited.

IV. <u>Decision:-</u>

17. Consequently, finding no merit, the appeal is dismissed.

18. The judgment passed by the First Appellate Court is modified. The plaintiff is held entitled to refund of Rs.1,00,000/- along with interest at the rate of 9% per annum from the date of filing of the suit till payment provided he delivers the possession of the suit property to defendant No.1.

19. All the pending miscellaneous applications, if any, are also disposed of.

May 06th, 2025 **(ANIL KSHETARPAL)**
Ayub **JUDGE**

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