

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****123****RSA-2623-2025 (O&M)****Date of decision: 01.08.2025****Jagdeep Singh****...Appellant(s)****Vs.****Jagdish Arora and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Prateek Gupta, Advocate for the appellant.

NIDHI GUPTA, J.**CM-9080-C-2025**

Prayer in this application filed under Section 151 CPC is for condonation of delay of 16 days in refiling the accompanying appeal.

2. Heard.

3. For the reasons mentioned in the application which is duly supported by affidavit of the applicant-appellant, the same is allowed and delay of 16 days in refiling the appeal is condoned.

RSA-2623-2025 (O&M)

The appellant/plaintiff is in Second Appeal against the concurrent judgments and decrees of the Courts below; whereby suit filed by the appellant for possession by way of specific performance of Contract for sale dated 28.12.2004 in respect of total land measuring 5 kanal and 8 marlas as detailed in the head note of the plaint; **and** suit for permanent injunction restraining the defendants from selling, alienating in any



manner the above said suit land, has been dismissed by both the Courts below.

2. Learned counsel for the appellant submits that the learned Courts below have non-suited the appellant only on the ground that the appellant was unable to establish his readiness and willingness to perform the contract; *in-as-much* it has been held that the appellant was unable to prove availability of balance sale consideration of Rs.3,25,00,000/-. Learned counsel submits that the said finding of the learned Courts below is factually incorrect as the appellant had examined PW4 Yadwinder Sharma and PW5 Maninder Singh Bedi, who had deposed that they had lent funds to the plaintiff, and had therefore, proved availability of balance sale consideration with the appellant. However, the learned Courts below have discarded the evidence of PW4 and PW5 on the ground that this aspect of the matter was not pleaded in the plaint. Ld. Counsel contends that the said finding is incorrect as the appellant had very much categorically averred in the plaint that he was ready and willing to perform his part of Contract.

3. Learned counsel for the appellant refers to paras 6 and 7 of the plaint to submit that it has been specifically pleaded and stated therein that plaintiff was ready and willing, and also that the plaintiff had requisite funds to get the execution of Agreement dated 28.12.2004. However, learned Courts below have taken a narrow view of the pleading in order to dismiss the suit of the plaintiff.



Learned counsel for the appellant further submits that there is overwhelming evidence on record to prove the case of the plaintiff that the plaintiff was always ready and willing to perform his part of the contract. The evidence on record proves that the plaintiff was ready with the money on the agreed date for execution of the contract for sale dated 28.12.2004 but the defendants were not in a position to deliver the possession of agreed total area of 3300 sq. yards. Therefore, it was the defendants who had sought time of one month more and thereafter kept on delaying the matter on pretexts due to which the plaintiff filed the present civil suit.

It is further submitted by learned counsel for the appellant that both the Courts below have wrongly held that the appellant/plaintiff has failed to prove the oral agreement entered into between the parties regarding demarcation of the property. In this regard the observations arrived at by the Ld. Courts below are not sustainable being based on assumptions and presumptions without actually appreciating the evidence brought on file by the plaintiff in the shape of not only his own statement but the all important statements made by PW2 and PW3 who have specifically proved about the factum of oral agreement regarding the extension of the date on the pretext of demarcation of the suit land by the defendants. But the Ld. Courts below have totally erred in law in not relying upon the testimony of both the said witnesses especially in light of the fact that in the cross-examination, the Ld. Counsel for defendant has not put even a single question regarding the said fact.



It is further submitted by learned counsel for the appellant that another wrong committed by Ld. Courts below by discarding the testimony of witnesses PW4 and PW5, who were produced by the plaintiff to show his readiness and willingness as the plaintiff has borrowed Rs.1,00,00,000/- from PW4 and Rs.1,25,00,00/- from PW5, and remaining amount of sale consideration alongwith expenses for stamp duty, registration charges, etc. had been brought by him. The Ld. Courts below erred in rejecting the testimony of PW4 and PW5 on the erroneous ground that the plea of taking money from PW4 and PW5 as deposed in affidavit, is not finding place in the pleadings of the plaintiff. In this regard it is submitted that Order VI Rule 2 CPC says that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved. The plaintiff, in the present case has specifically pleaded in para no. 7 that at that time, he was having ready cash with him so as to get the sale deed executed. The Ld. Courts below erred in concluding that the evidence of PW4 and PW5 cannot be permitted because the plaintiff has not pleaded that money had been borrowed in cheque from the aforesaid witnesses. It is settled law that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. But it is also equally well settled that pleadings shall receive a liberal construction. No pedantic approach should be adopted to defeat justice on hair splitting



technicalities. Pleadings must be construed reasonably. Therefore, considering the fact that even if the plea of taking cheque is not specifically made, yet it is covered by the issue of readiness and willingness. The parties also knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle the plaintiff from relying upon it as it is satisfactorily proved by evidence of PW4 and PW5.

7. In support of his contentions, learned counsel for the appellant/plaintiff relies upon the following judgments: -

1. **Basavaraj vs. Padmavathi (2023) 4 Supreme Court Cases 239;**
2. **Beemaneni Maha Lakshmi vs. Gangumalla Appa Rao (since Dead) by Legal Representatives (2019) 6 Supreme Court Cases 233;**
3. **Anand Prakash Bansal vs. Naresh Batra (2025) SCC OnLine Del 3290; and**
4. **Smt. Indira Kaur and others vs. Sheo Lal Kapoor (1988) 2 Supreme Court Cases 488.**

8. It is accordingly prayed that the impugned judgments and decrees be set aside, and the suit be decreed in favour of the appellant.

9. No other argument is raised on behalf of the appellant.

10. I have heard learned counsel for the appellant/plaintiff and perused the case file in great detail. I find no merit in the submissions advanced on behalf of the appellant.



11. The facts may be briefly noticed. It is not in dispute that an Agreement to Sell dated 28.12.2004 (Ex.P1) was entered into between the parties for sale of suit land measuring 5 kanal and 8 marlas for a total sale consideration of Rs.3,75,00,000/- (Rs. Three Crores and Seventy-Five Lacs only). It is the case of the appellant that a sum of Rs.50 lacs was paid in cash by the appellant by way of earnest money. On a Court query, it is also admitted by learned counsel that the appellant has been unable to demonstrate the source of the said Rs.50 lacs purportedly paid, in cash, by the appellant to the defendants.

12. Next, it is the contention of the appellant that he was ready and willing to perform the contract on target date of 30.4.2005. In this regard, reference needs be made to judgment of the Hon'ble Supreme Court in '**R. Shama Naik vs. G. Srinivasiah**' 2024 INSC 927, wherein it is held that in order to establish readiness and willingness, the following two specific ingredients are required to be fulfilled: (a) presence in the Tehsil office; and (b) demonstrate availability of funds. It has been candidly admitted by learned counsel for the appellant that on 30.04.2005, he was not present in Tehsil office. The ostensible reason given by the appellant for his absence in Tehsil office on 30.04.2005 is that it was a holiday on the said date. It has been stated that as such, the appellant had 'orally' informed the defendants and asked them to execute the Sale Deed. However, it is not specified as to for which date was the defendant asked to execute the sale deed. It has next been stated that it was the defendants who had requested



for one month's time. However, even assuming the same to be correct, on a Court query, it is admitted by Id. counsel for the appellant that even after expiry of one month, no legal notice was issued by the plaintiff to the defendants calling upon them to execute the sale deed. I shall elaborate more on this hereinafter.

13. As regards the second condition precedent for establishing readiness and willingness viz availability of funds, learned counsel for the appellant has relied heavily upon the evidence of PW4 and PW5 to prove that he was in possession of remainder sale consideration of Rs.3,25,00,000/-. In affidavit, plaintiff has stated that he was in possession of 1 Crore, and another 1 crore was given to him by PW4, and remaining 1,25,00,000/- was given by PW5. However, the said evidence is unreliable as, PW4 and PW5 in their examination-in-chief have stated that the money of Rs.1.25 Crores and One Crore was given by way of cash; and the very same witnesses in their cross-examination and before the Income Tax Authorities have stated that they paid the money by way of cheque. Thus, the Ld. Courts below correctly discarded the testimonies of PW4 and PW5 as there was material contradiction in their statements at different times viz that both of them in their affidavits have stated that money was paid in the shape of cash; whereas in their cross-examination they had claimed to have made the payment by cheque. Even the Cheques purportedly issued by PW4 and PW5 have not been tendered into evidence. Not even photocopies of the cheques have been brought on record. Thus, there was



no proof that Plaintiff was in possession of ready money to make payment of balance sale consideration to defendants.

14. It has next been argued that the learned Courts below have non-suited the appellant only on the ground that readiness and willingness was not sufficiently and specifically pleaded in the plaint. This finding has been controverted by stating that specific averment was made in para 7 of the plaint. The exact pleadings of the plaintiff in the plaint in regard to readiness and willingness are as under:

“7. That as 30-4-2005 and 1-5-2005 were holidays, plaintiff contacted the defendants on 30-4-2005 and asked them to execute and register the sale deed in his favour after demarcating the suit land so as to put the plaintiff in possession of 3330 sq yards of land, but defendants requested the plaintiff to wait for some time as they were not in position to put the plaintiff into possession over, 3330 sq yards of land by getting the suit land demarcated. It is executed and registered form defendants as per terms of agreement of sale dated 28-12-2004.

8. That keeping in view of said request made by defendants, plaintiff contacted the defendants on 2-5-2005 and asked them to executed the sale deed, but they requested for at least one month time and when plaintiff asked for extension of time on agreement to sell then all of them told that as they will execute the sale deed in favour of plaintiff within one month, there is no need to extend the date for execution and registration of sale deed.

9. That thereafter the plaintiff had been meeting the defendants with request to either execute and register sale deed in his



favour on receipt of balance sale consideration or to extend the date for execution and registration of sale deed till the land is got demarcated by them. The defendants for few months kept the matter postponing on one pretext or the plaintiff and rather threatened to transfer the same in the name of third person. Hence the present suit.”

15. At the very least, the abovesaid pleadings are utmosty vague. By no stretch of the imagination, can it be said on the basis of the above averments made in the plaint that the plaintiff had pleaded his readiness and willingness as required under law. It will be apposite at this juncture, to refer back to landmark judgment of the Hon’ble Supreme Court in ***R Shama Naik supra***, wherein, it is mandated as follows: –

“A. Specific Relief Act, 1963 Section 16(c) Specific performance - Readiness and willingness - Relief of specific performance is barred under Section 16(c) of the Act in favor of a person who fails to aver readiness and willingness to perform his part of the contract - Plaintiff must not only make specific averments in the plaint but also adduce oral and documentary evidence to show availability of funds and capacity to perform the contract in time.

B. Specific Relief Act, 1963 Section 16(c) Readiness and willingness - Distinction - Readiness refers to financial capacity and ability to perform the contract, while willingness relates to the conduct of the plaintiff.

C. Appellate jurisdiction - High Court's finding of fact - Finding that plaintiff failed to prove readiness and willingness to perform his part of the contract cannot be termed as perverse - Supreme Court declined to interfere with the impugned judgment.” (Emphasis is mine)



16. Thus, as per the above pronouncement of Law, a 'specific averment' is required to be made in the plaint; which is to be substantiated and backed by oral and documentary evidence to show 'availability of funds'; and the capacity to perform the contract 'in time'. It is my considered view, that from the facts and findings noticed above, it is amply established that the plaintiff has been unable to fulfil any of the above said conditions. The averments in the plaint do not specifically state the manner and mode in which payment shall be made to the defendant. As demonstrated above, the source/availability of funds is not proved. Even, it has been accepted by the plaintiff that contract could not be performed in time. However, in defence, it has been stated that delay was caused by the defendants, as demarcation was not got done in time; and extension time of one month was sought by them to do the needful.

17. Even assuming the same to be true that extension was sought by the defendant, it is important to note that admittedly no written instrument was drawn by the plaintiff regarding extension of time for executing the Sale Deed. The plaintiff has stated that he had believed the oral assurances given by the defendants. In support, plaintiff had examined PW2 and PW3. However, evidence of PW2 and PW3 is not believable as they have put forth a whole new version of events not pleaded heretofore. In cross-examination PW2 has stated that on 29.04.2005 and on 02.05.2005 he alongwith PW3 and plaintiff remained present before office of Sub Registrar. This is an entirely new version concocted by the said witnesses



which is at variance with the case of the appellant in the plaint, replication, and even beyond the affidavit by way of examination in chief of PW2. It was nowhere the case of the plaintiff that either on 29.04.2005, or 02.05.2005, he alongwith PW2 and PW3 remained present in office of Sub Registrar. The plaintiff nowhere pleads that he remained present in the office of Sub Registrar on date of execution of Sale Deed as agreed between the parties or one day prior to the said date as on 30.04.2005 was holiday or on 02.05.2005 as 01.05.2005 was also a holiday.

18. PW2 thus, created an entirely new story in his cross-examination that on 02.05.2005 they came to office of Sub Registrar at 12 noon and returned at 2/2:30 p.m. This is not the case of plaintiff. In fact, this demolishes the version of the plaintiff that he had met the defendants on 30.04.2005 and 02.05.2005 and date was extended by mutual agreement. To the contrary, PW2 stated that defendants never came in office of Sub Registrar on 02.05.2005. Thus, he stated that plaintiff never met the defendants in his presence either on 29.04.2005 or on 02.05.2005. Similar is the statement of PW3.

19. Rather, the plea of the plaintiff was that 1 month period was sought by defendants; which also is not agreed upon between the parties at any stage in writing. This story of one month being sought by defendants is not recorded anywhere; nor during this period of 1 month plaintiff has issued any notice to defendants.

20. In any event, even if the above contradictions are ignored for the sake of argument, it cannot be ignored that it has been admitted by



learned counsel for the appellant that even after one month, no legal notice was issued by the plaintiff to the defendants. Plaintiff never notified them through any legal notice that they were required to demarcate suit property. He never notified them that they failed to comply with extended oral agreement. Thus, there is nothing on record to indicate that any steps were taken by the plaintiff himself to get Sale Deed executed. On the contrary, the record would indicate that it was the defendant who had issued a legal notice dated 10.05.2005 to the plaintiff, which is denied by the plaintiff.

21. From the above discussion, it is established beyond doubt that plaintiff cannot be held entitled for grant of relief of specific performance. The appellant can also derive no benefit from the relied-upon judgments as the same are distinguishable on facts and law.

22. Even otherwise, the present second appeal is liable to be rejected as this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. The Hon'ble Supreme Court in ***M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559***; has held as under: -

*"14. This Court, in the case of **Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71**, after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:*

"15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of

documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact.”

15. It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force.”

(Emphasis added)

23. I find no error or defect in law and procedure in the present case. Therefore, too, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below.

24. The present Regular Second Appeal is hereby **dismissed**.

25. Pending applications, if any, stand disposed of.

01.08.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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