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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**RSA-2253-2022 (O&M)**

**Reserved on : 02.05.2025**

**Date of Decision : 20.05.2025**

Naveen Vashisht & Anr

... Appellant(s)

VERSUS

Bal Kishan (deceased) through LRs

... Respondent(s)

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Kunal Dawar, Advocate for the appellants.

**ALKA SARIN, J.**

1. The present appeal has been preferred by the plaintiff-appellants challenging the concurrent findings returned by the Trial Court vide judgment and decree dated 06.03.2018 and the First Appellate Court vide judgment and decree dated 13.07.2021.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellants filed a suit against the defendant-respondent for specific performance of the agreement to sell dated 04.07.2011. It was averred in the plaint that the defendant-respondent had entered into an agreement to sell with the plaintiff-appellants qua land measuring 10 kanals 07 marlas out of total land measuring 54 kanals 19 marlas situated within the revenue estate of village Bhagola, Tehsil and District Palwal, fully described in the plaint. The agreement to sell was for a total consideration of ₹1,42,00,000/- and on the date of agreement to sell the defendant-respondent received an amount of ₹14,20,000/- as earnest money qua which a separate

writing was executed. The target date for registration of the sale deed was fixed as 04.10.2011. According to the case set up by the plaintiff-appellants, they were always ready and willing to perform their part of the contract and had sufficient funds and means to make the payment of the balance sale consideration. It was further averred that they were present in the office of the Sub-Registrar, Palwal on the target date however the defendant-respondent failed to appear. Thereafter, three legal notices dated 30.09.2011, 25.06.2012 and 29.08.2013 were issued to the defendant-respondent, however, he failed to perform his part of the contract. Hence, the suit for specific performance of the contract.

3. The defendant-respondent during his lifetime filed a written statement raising various preliminary objections. On merits, it was contended that the plaintiff-appellants were never ready and willing to perform their part of the contract and they did not have the finances to fulfil the terms and conditions of the contract. It was further the case set up that on the target date i.e. 04.10.2011 the defendant-respondent duly presented himself in the office of the Sub-Registrar, Palwal, however, the plaintiff-appellants expressed their inability to pay the balance sale consideration and requested for extension upto 04.11.2011 which the defendant-respondent refused to agree to. However, the defendant-respondent as a matter of gesture of goodwill asked the plaintiff-appellants to come on the next date i.e. 05.10.2011 however the plaintiff-appellants failed to appear on 05.10.2011. On 05.10.2011 a notice was received by the defendant-respondent dated 30.09.2011 and a reply was submitted to the said notice extending the date of execution of the sale deed upto 20.10.2011. Though on

the said extended date the defendant-respondent remained present in the office of the Sub-Registrar, Palwal from 09.00 am to 05.00 pm, the plaintiff-appellants did not appear. Thus, the plaintiff-appellants themselves cancelled the agreement to sell (Ex.P1). After remaining silent for upto 8-9 months, another notice dated 25.06.2012 was sent when they came to know that the defendant-respondent was filling in the earth in the suit land and some residential houses were being constructed in the nearby area. The defendant-respondent sent a reply to the legal notice, however, the plaintiff-appellants remained silent thereafter for 14-15 months. The defendant-respondent again started developing the land and spent over ₹20,00,000/- and the value of the suit land increased to ₹3-4 crores. The plaintiff-appellants again sent another notice dated 29.08.2013 which was again duly replied to.

4. Replication was not filed. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled to decree for possession by way of specific performance of contract ?  
OPP
2. Whether the plaintiff is still ready and willing to perform his part of performance ? OPP
3. Whether the suit of the plaintiff is not maintainable ? OPD
4. Whether the plaintiffs has no locus standi to file the present suit ? OPD
5. Whether the plaintiff has no cause of action to file the present suit ? OPD

6. Whether the plaintiff is estopped by own act and conduct to file the present suit ? OPD

7. Whether the suit of the plaintiff is time barred ? OPD

8. Relief.

5. The Trial Court dismissed the suit of the plaintiff-appellants vide judgment and decree dated 06.03.2018. Aggrieved by the same, an appeal was preferred which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 13.07.2021. Hence, the present regular second appeal.

6. Learned counsel for the plaintiff-appellants would contend that both the Courts have erred in dismissing their suit. It is urged that the plaintiff-appellants were always ready and willing to perform their part of the contract and had also produced on record a cheque which clearly reveals that the plaintiff-appellants always had the requisite amount available with them and were ready and willing to perform their part of the contract.

7. I have heard the learned counsel for the plaintiff-appellants.

8. In the present case, though the case set up by the plaintiff-appellants was that they had a cheque qua the entire sale consideration, however, surprisingly in the notices sent by the plaintiff-appellants there is no mention of the cheque dated 04.10.2011 (Ex.P9) which was drawn by PW4 - Director of M/s Super Infra Engineering Private Limited in favour of the defendant-respondent. The plaintiff-appellants failed to show that the cheque was drawn on the target date as the cheque does not find mentioned in any of the three legal notices sent by the plaintiff-appellants. PW4 who

claimed that on 04.10.2011 he had issued a cheque (Ex.P9) stated in his cross-examination that another agreement to sell was executed by the plaintiff-appellant - Naveen Vashisht - in his favour and that the sale deed was to be registered in favour of PW4 - Rajmal Gupta - thereby setting up an entirely new case, which was neither pleaded or proved by the plaintiff-appellant. Further still, the plaintiff-appellants though had claimed that on the target date i.e. 04.10.2011 the defendant-respondent was not present in the office of the Sub Registrar, however, in his statement PW1 - Naveen Vashisht - stated that the defendant-respondent was present in the office of the Sub-Registrar on the said date. Learned counsel for the plaintiff-appellants has not been able to convince this Court that the plaintiff-appellants had the requisite financial viability on the target date i.e. 04.10.2011. No cogent or reliable evidence has been pointed out by the learned counsel for the plaintiff-appellants to even remotely suggest that the said amount was available with the plaintiff-appellants on the target date. In the absence of any such cogent or reliable evidence, no fault can be found with the judgments and decrees passed both the Courts.

9. In view of the discussion above, no question of law, much less any substantial question of law, arises for determination by this Court in the present case. The present appeal being wholly devoid of any merit and is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

20.05.2025  
Yogesh Sharma

**( ALKA SARIN )**  
**JUDGE**

NOTE: Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO