

RSA-2964-2011 (O&M)

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

RSA-2964-2011 (O&M)

Date of decision : 11.12.2025

Nathi Ram & ors.

..... Appellants

Versus

Shri Lal Singh & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Ritender Rathee, Advocate
for the appellants.

Mr. Ashok Khubbar, Advocate
for respondents No.1 to 4.

Respondent No.5 proceeded ex-parte
Vide order dated 12.01.2012.

PANKAJ JAIN, J. (ORAL)

1 Plaintiffs are in second appeal. For convenience, parties hereinafter are referred to by their original position in the suit i.e. the appellants as plaintiffs and respondents as defendants.

2 Plaintiffs are in appeal aggrieved of judgment and decree passed by the Courts below. Plaintiffs filed suit for recovery of earnest money of Rs.10.00 lakhs claiming that defendants No.1 to 4 agreed to sell land in their favour by way of written agreement to sell dated 20.05.2003 and received Rs.5.00 lakhs. As per the plaintiffs, defendants No.1 to 4 assured them that the land was free from all encumbrances and the sale deed was agreed to be executed on or before 15.07.2003. Later on, the plaintiffs discovered that the



land was under mortgage with the bank and defendants No.1 to 4 failed to obtain 'No Due Certificate' by the agreed date, i.e.15.07.2003. Plaintiffs further plead that they remained present in the office of Sub-Registrar on the agreed date but defendants No.1 to 4 failed to turn up and to produce the requisite 'No Due Certificate' from the bank concerned. Plaintiffs claimed that they always remained ready and willing to perform their part and also served legal notice upon defendants No.1 to 4 (Ex. P3) calling upon them to get 'No Due Certificate' and registration of sale deed.

3 The suit was contested by the defendants. Execution of agreement to sell is not in dispute. Defendants No.1 to 4, however, claimed that it was the plaintiffs who were neither ready nor willing to get the sale deed executed. Defendants No.1 to 4 accordingly prayed for dismissal of the suit claiming forfeiture of the earnest money.

4 Both the Courts below have non-suited the plaintiffs holding that in the absence of any proof regarding their readiness and willingness, the plaintiffs are not entitled for recovery.

5 I have heard learned counsel for the parties and have gone through the records of the case.

6 In the considered opinion of this Court, Section 16 (c) of the Specific Relief Act, 1963 (for short, 'the 1963 Act') is a bar to the grant of the main relief of specific performance of the agreement to sell, and not to the relief of recovery. Admittedly, there was a clause contained in the agreement to sell which entitled the defendants to cancel the agreement to sell and forfeit the earnest money. Such right was never exercised by the defendants. Apart

from that, it is also matter of record that prior to 15.07.2003, plaintiffs served legal notice upon defendants No.1 to 4 calling upon them to produce ‘No Due certificate’ so that the sale deed can be executed on 15.07.2003. Though defendants No.1 to 4 moved an application before the bank (Ex.D1), but the same is dated 15.07.2003 i.e. the date of execution of sale deed.

7 In view of aforesaid facts, the Courts below erred in invoking Section 16 of the 1963 Act to deny the relief of recovery to the plaintiff.

8 In view of above, the findings recorded by the courts below, are hereby ordered to be reversed. Plaintiffs are held entitled to recovery of Rs.5,00,000/-, i.e. the earnest money paid to defendants No.1 to 4 along with interest @ 7% per annum from the date of agreement to sell till the date of decree.

9 The plaintiffs shall be entitled to interest @ 6% per annum for the period post-decree.

10 Appeal stands allowed.

11.12.2025		(PANKAJ JAIN)
<i>Pooja Sharma-I</i>		JUDGE
	Whether speaking/reasoned:	Yes/No
	Whether reportable:	Yes/No