

RSA-2249-2024 (O&M)

2025:PIIIC:170905



136 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA-2249-2024 (O&M)

Date of decision : 27.11.2025

Kamal Kishore Bhalla

..... Appellant

Versus

Vineet Bhalla & anr.

..... Respondents

**CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN**

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Present :- Mr. L.M.Gulati, Advocate  
for the appellant.

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**PANKAJ JAIN, J. (ORAL)**

1 Defendant No.1 is in second appeal. For convenience, parties hereinafter are referred to by their original position in the suit i.e. the appellant as defendant No.1, respondent No.1 as plaintiff and respondent No.2 as defendant No.2.

2 Plaintiff filed suit for specific performance of agreement to sell dated 7<sup>th</sup> August 2011 executed by defendant No.1 in his favour with respect to a residential house. The Trial Court held plaintiff entitled for the alternative relief of recovery of earnest money of Rs.1,50,000/- along with interest @ 6% per annum from the date of order till realization.

3 In appeal preferred by plaintiff, the Lower Appellate Court held plaintiff entitled to recovery of Rs.3,00,000/- lakhs along with interest @ 6% per annum from the date of agreement to sell till realization.



4 Counsel for the appellant is not in position to dispute that the performance of contract became impossible as defendant No.1 failed to discharge his loan liability *qua* the suit property from defendant No.2-Bank. The contract had been rendered unenforceable on account of act of defendant No.1, the Lower Appellate Court modified the judgment and decree by observing as under :-

*“16. On the basis of the oral and documentary evidence and in the wake of not so much contest by defendant No.1, the plaintiff has been in successful to prove the due execution of the agreement to sell dated 07.08.2011 Ex.P1, which bears the un-rebutted signatures of defendant No.1, appended on this agreement, in the presence of marginal witnesses as well as the plaintiff. Further, a perusal of the said agreement Ex.P1 would reveal a clear cut stipulation to the effect that the vendor i.e. defendant No.1 has agreed to sell the house in dispute i.e. suit property for a total sale consideration of Rs.10,00,000/- and has also received Rs.1,50,000/- as earnest money in the presence of the witnesses and has agreed to execute and register the sale deed within 04 months of the agreement i.e. on or before 07.12.2011. Further, it is recited in the agreement that the house is lying mortgaged with Bank of Baroda with title deed and one of the other important stipulations in the agreement is that the vendor i.e. the defendant No.1 would clear the entire loan amount and obtain the clearance certificate along-with all the documents from the abovesaid bank as one of the condition precedent for performing the contract before the execution as well as the registration of the sale deed. Now, in view of the above prior conditions to be fulfilled by defendant No.1, it was required before hand that he would obtain the relevant documents pertaining to the bank as well as clearance certificate so as to transfer a valid title in favour of his vendee i.e. the plaintiff. From the evidence of the plaintiff it is demonstrated that defendant No.1 failed to perform his part of the contract (Ex.P1) i.e. the pre-conditions mentioned above, for the transfer of the valid title by way*



*of execution and registration of sale deed in favour of the plaintiff, rather, admittedly the loan account of defendant No.1 with defendant No.2 has become non performing assets as deposed by DW1. Furthermore, it has come on record in the testimony of DW1 that suit property is joint holding of Kamal Kishore Bhalla and his son Yogesh Bhalla, whereas the agreement to sell Ex.P1 has only been signed by defendant No.1 Kamal Kishore Bhalla and not by Yogesh Bhalla nor defendant No.1 has obtained any authority or permission from his son i.e. Yogesh Bhalla to transfer his share in the suit property on his behalf, on the basis of the agreement Ex.P1. From the deposition of DW1 which has remained uncontroverted and unchallenged by defendant No.1, it is transpired that defendant No.1 has meticulously concealed this material fact from the plaintiff that the house in question was joint ownership of defendant No.1 and his son, whereas, defendant No.1 purported to be the exclusive owner of the disputed property/house. In such facts and circumstances, when defendant No.1 has failed to discharge the loan over the suit property, he failed to procure the No due/clearance certificate from defendant No.2 Bank i.e. the Mortgagee and when it is discovered that the defendant no.2 could not have transferred the entire house in favour of the plaintiff in the absence of the permission from co-sharer i.e. Yogesh Bhalla son of defendant No.1, the performance of agreement Ex.P1 so far as the plaintiff Vineet Bhalla is concerned, became impossible on the stipulated date. Meaning thereby, the plaintiff is not in a legal position to get the relief of possession the suit property by way of the specific performance of agreement Ex.P1. Hence, I agree with the findings of the learned Lower Court that on the basis of equity, when the plaintiff has already paid earnest money to the tune of Rs.1,50,000/- to defendant No.1, it is reasonable and equitable that the alternative relief sought by the plaintiff so far as the refund of earnest money to the tune of Rs.1,50,000/- alongwith 6% interest be allowed. However, I do not agree with the findings of the learned Lower Court whereas it wholesome declined the relief claimed by the plaintiff for damages to the tune of Rs.1,50,000/-.*



17. The learned counsel for the plaintiff has raised short contention by way of this appeal for the modification of the impugned Judgment and decree on the grounds that the plaintiff is entitled for reasonable compensation where, for no fault of the plaintiff, the performance of the contract has become impossible. In this regard he has referred to **'Sukhbir vs. Ajit Singh, reported as 2022(1) Apex Court Judgments 406 (S.C.) and "Jagdish Singh vs Natthu Singh" on 25 November, 1991 reported as 1992 AIR 1604, 1991 SCR Supl. (2) 567.**

18. ***In Sukhbir Singh's case (Supra)***, the Hon'ble Apex Court has held that in case of agreement to sell in a suit for specific performance, compensation in lieu of decree for specific performance, is to be granted, where contract for no fault of plaintiff becomes impossible and that Court to award compensation in lieu and substitution of specific performance. (Specific Relief Act, 1963, S.21). Similar views were expressed by Hon'ble Apex Court in ***Jagdish Singh's case (Supra)***.

19. It is relevant to note that ***in Jagdish Singh's case (Supra)***., the Hon'ble Apex Court came up with the similar issue as involved in the present case. In the facts of that case before the Hon'ble Apex Court, when the learned trial court as well as the first appellate court dismissed the suit for specific performance. However, the Hon'ble High Court in second appeal reversed the findings of the courts below and held that the plaintiff was ready and willing to perform the contract and was entitled for decree. However, during the pendency of the second appeal before the High Court, proceedings for compulsory acquisition of the land were initiated and the land was acquired. Therefore, the question arose as to whether the plaintiff was entitled for the amount of compensation received in the land acquisition proceedings or was entitled only to the refund of the earnest money. The High Court modified the decree of the specific performance of the contract with decree for a realization of compensation payable in lieu of acquisition. The matter was carried before the Hon'ble Apex Court. After referring to Section 21 of the



*Specific Relief Act, the Hon'ble Apex Court has held that where the contract for no fault of the plaintiff becomes impossible, Section 21 enables award of compensation in lieu and substitution of the specific performance. So far as the determination of the amount of compensation, this Court observed and held that the compensation awarded under the Land Acquisition Act may safely be taken to be the measure of damages subject, of course, to the deduction therefrom of money value of the services, time and energy expended by the original landowner in pursuing the claims of compensation and the expenditure incurred by him in the litigation culminating in the award.*

*In the relevant paras 24 and 29 of Jagdish Singh's case (Supra) the Hon'ble Apex Court has observed and held as under:--*

***“24. When the plaintiff by his option has made specific performance impossible, Section 21 does not entitle him to seek damages. That position is common to both Section 2 of Lord Cairn's Act, 1858 and Section 21 of the Specific Relief Act, 1963. But in Indian law where the contract, for no fault of the plaintiff, becomes impossible of performance Section 21 enables award of compensation in lieu and substitution of specific performance.***

***xxx xxx xxx***

***29. In the present case there is no difficulty in assessing the quantum of the compensation. That is ascertainable with reference to the determination of the market value in the land acquisition proceedings. The compensation awarded may safely be taken to be the measure of damages subject, of course, to the deduction therefrom of money value of the services, time and energy expended by the appellant in pursuing the claims of compensation and the expenditure incurred by him in the litigation culminating in the award.”***

*20. Now applying the ratio of aforesaid landmark Judgment of Hon'ble Apex Court, this Court is of the considered opinion that even*



*in the present case there was no difficulty for the Lower Court in assessing the quantum of compensation. In this regard, the relevant provision of Section 73 of the Indian Contract Act, 1872 would be a guiding force in determining the quantum of compensation for loss or damage caused by the breach of contract, which is as under:-*

***“73. Compensation for loss or damage caused by breach of contract.*** -When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

*Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.*

***Compensation for failure to discharge obligation resembling those created by contract.*** -When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

***Explanation.*** – In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by non-performance of the contract must be taken into account.”

21. Thus, when the plaintiff(PW3) has cogently demonstrated in his unrebutted deposition Ex.PW3/A that he is entitled for compensation by way of damages to the tune of Rs.1,50,000/- over and above the refund of earnest money, which is the tune of Rs.1,50,000/- along-with interest. It was not fair nor justified on the part of the learned Lower Court to have denied the amount of compensation by way of damages to the plaintiff and



*by only giving him the refund of earnest money along-with interest. It was not quite a rocket science to have assumed that on account of breach of contract and on account of use of his money i.e. earnest money by the defendant No.1 in a wrongful way, which led to suffering of economic and monetary loss, such as, by incurring expenses on purchase of stamp papers, bringing witnesses, engaging lawyer for issuing legal notice etc. Therefore, by the very breach of contract, the plaintiff must have suffered loses which naturally arose in usual course of things from such breach which the parties knew at the time of the execution of the agreement, to be likely to result from the breach of it.”*

- 5            Learned counsel for the appellant while assailing the impugned judgment and decree passed by the Appellate Court submits that the Lower Appellate Court erred in granting interest @ 9% p.a. in favour of the plaintiff.
- 6            On being confronted with the decree, learned counsel agreed that the argument raised is misconceived as the interest has been granted 6% per annum from the date of agreement to sell and not @ 9% per annum. Thus the argument raised is misconceived and against the record.
- 7            No other point has been argued. Finding no ground to interfere in the well-reasoned finding recorded by the Lower Appellate Court, the present appeal is ordered to be dismissed.
- 8            Pending miscellaneous application, if any, also stands disposed off.

27.11.2025  
Pooja Sharma-I

Whether speaking/reasoned:  
Whether reportable:

( PANKAJ JAIN )  
JUDGE  
Yes/No  
Yes/No