

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106

RSA-2315-2013 (O&M)
Date of decision: 27.02.2025

M/S HARI CREATIONS PVT LTD

..Appellant

Versus

AZAD SINGH & ANR

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.P.S. Sandhu, Advocate
Mr. Abhishek Kaushik, Advocate
for the appellant.

Mr. P.K. Ganga, Advocate
for LR's of respondent No.1 and
for respondent No.2.

ANIL KSHETARPAL, J(Oral)

1. The plaintiff assails the correctness of concurrent findings of fact arrived at by the courts below while refusing to grant relief of specific performance of the agreement to sell but instead ordering refund of earnest money. The First Appellate Court has culled out the events, which led to filing of the suit in the following manner:-

- "i. That agreement Ex.P-3 was executed on 09.10.2000.*
- ii. That on 09.10.2000 itself earnest money of Rs. 1,50,000/- was paid.*
- iii. That on 01.02.2001, 12.04.2001 and 13.12.2001 vide Ex. P-5 to Ex. P-8, additional amount of Rs. 30,000/-, Rs. 12,000/-, Rs. 67,150/- and Rs. 1,000/- were paid by plaintiff to defendants.*
- iv. That vide supplementary agreements (extending time for execution of sale deed) dated 10.01.2001, 10.07.2001, 09.01.2002, 10.07.2002, 15.01.2003 Ex. P-9 to Ex. P-13, time for execution of sale deed was extended by mutual consent of both parties from time to time and lastly it was agreed to execute sale deed on or before 10.06.2003.*
- v. No specific reasons for extension were given.*



vi. That plaintiff has not placed any evidence to show that on 10.06.2003, he had called upon defendants to execute sale deed and or that he was ready with balance sale consideration for execution of sale deed as per agreement to sell Ex. P-3 or had visited office of Sub-Registrar for execution of agreement.

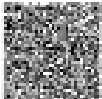
vii. That present suit was preferred by plaintiff on 12.04.2006.

viii. That notices calling upon defendants to execute sale deed were issued on 04.02.2006 and 28.03.2006, whereas, last extended date was 10.06.2003.”

2. Both the Courts have found that the plaintiff is not proved to be ready and willing to perform his part of the contract on 10.06.2003, the date agreed for execution and registration of the sale deed as he did not visited the office of the Sub-Registrar. It has further been held that it was the plaintiff, who was seeking extensions for honouring his part of the agreement. In this case, the payments of earnest money and additional amounts has been made in a staggered manner. The last payment of Rs.1,000/- was paid on 13.12.2001, whereas, the suit was filed on 12.04.2006. There is total inaction on the part of the plaintiff from 10.01.2003 till February, 2006. On the basis of the aforesaid facts, the Courts have come to a conclusion that the plaintiff was not ready and willing to perform his part of the contract.

3. Learned counsel for the appellant contends that time was not the essence of the contract and the suit was filed within the period of limitation. He submits that the defendant denied the execution of the agreement, hence, the Court is not required to examine the readiness and willingness of the plaintiff to perform his part of the contract.

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



5. Before the amendment in Specific Relief Act, 1963 (in short ‘1963 Act’), the relief of specific performance was discretionary. The Court in the facts of the case was entitled to examine the feasibility of decreeing relief of specific performance.

6. In this case, the defendants have taken a stand that there was only negotiation and payment of Rs.25,000/- was received. Subsequently, the agreement to sell was got executed by misrepresentation as the land was agreed to be sold for Rs.7,50,000/- per acre, whereas, in the agreement to sell it was written that it will be sold for Rs.2,50,000/-. In such circumstances, the plaintiff was required to prove that he was always ready and willing.

7. The attention of the Court has not been drawn to any provision in the ‘1963 Act’, absolving the plaintiff from proving his readiness and willingness.

8. Hence, no ground to interfere is made out.

9. Dismissed accordingly.

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

February 27th, 2025

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(ANIL KSHETARPAL)
JUDGE

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