IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

201 **RSA-4289-2016 (O&M)**
Reserved on: 27.08.2025
Pronounced on: 02.09.2025

Jasbir Singh **...Appellant(s)**

Vs.

Bagicha Singh **...Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Prateek Sodhi, Advocate with
Ms. Jasmine, Advocate for the appellant.

Ms. Rupinder Kaur Thind, Advocate with
Mr. J.S.Thind, Advocate for the respondent.

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NIDHI GUPTA, J.

Present Second Appeal has been filed by the defendant against the judgment of reversal dated 26.07.2016 passed by the learned Additional District Judge, Amritsar; whereby appeal filed by the respondent/plaintiff against the dismissal of his suit was, "*partly accepted and the impugned judgement dated 15.11.2014 is set aside and suit of the plaintiff is partly decreed granting the alternative relief of recovery of Rs.6,00,000/- to the plaintiff-appellant with interest at the rate of 9% per annum from the date of payment/agreement till its realisation.*"

2. Brief facts of the case are that the respondent/plaintiff had filed a suit for possession by way of specific performance of the Agreement to Sell dated 21.07.2008 (Ex.P1) executed by the defendant in favour of the plaintiff in respect of suit land measuring 3K 8M/1700

sq.yds. @ Rs.1885 per sq.yd.; **and** consequential relief of permanent injunction; **and** in alternative, suit for recovery of Rs.12 lacs being double of the earnest money. It was pleaded in the plaint that the Agreement dated 21.07.2008 has been executed by the defendant in favour of the plaintiff for sale of suit land for total sale consideration of Rs.32,04,500/-. A sum of Rs.6 lakhs was received by the defendant from the plaintiff as earnest money at the time of execution of Agreement to Sell. Delivery of possession of the suit land was to be given to the plaintiff upon execution of Sale Deed on target date of 25.04.2009. It was the case of the plaintiff that although he had approached the defendant from time to time to execute the Sale Deed, the defendant always put off the matter on one pretext or the other. It was contended that the plaintiff possessed sufficient funds with him at all times to make payment of sale consideration. It was further pleaded that since target date of 25.04.2009 and 2 days thereafter were holidays, therefore on 28.04.2009 plaintiff had gone to the office of Sub Registrar alongwith sufficient funds for purpose of execution of Sale Deed. The plaintiff had waited for the defendant the whole day, but the defendant did not turn up. To show his bonafide, plaintiff had submitted an application alongwith his sworn Affidavit dated 28.04.2009 for marking his presence which is entered in the Tehsil Office Diary at Sr. No. 201 dated 28.04.2009. Even thereafter, despite requests, defendant had refused to execute the Sale Deed on one pretext or the other and instead threatened to alienate or transfer the suit land. With these pleadings, present suit was filed on 16.02.2011.

3. Vide judgment and decree dated 15.11.2014, learned trial Court had dismissed the suit of the plaintiff with costs on the grounds that although defendant had not denied the execution of Agreement to Sell (Ex.P1), and defendant had also not denied receipt of earnest money of Rs.6 lakhs, however, mere pleadings of readiness and willingness on behalf of the plaintiff were not sufficient to prove the same. It was held that positive evidence had to be led by the plaintiff to prove his readiness and willingness however, plaintiff did not come forward to depose his pleaded case in witness box. Rather he has only examined his GPA PW2 Mukhtiar Singh despite the fact that plaintiff was present in Amritsar at relevant time. Thus, adverse inference was drawn against the plaintiff. It was further held that PW2 was neither a witness to the Agreement, nor he was present at the time of execution of Agreement, or at the time when plaintiff marked his presence before the office of Sub Registrar; and therefore, he was not competent to prove the case of the plaintiff. Moreover, PW2 during his cross-examination had made certain statements against the pleaded case of the plaintiff to the effect that Agreement to Sell had been scribed by Deed Writer Gagan, who put his signature on the Agreement (Ex.P1). However, the Agreement did not reveal signature of any Deed Writer much less that of Deed Writer Gagan. PW2 had further stated that the stipulated date for execution of Sale Deed was 21.07.2008 which was factually incorrect as, 21.07.2008 was a date of execution of the Agreement to Sell Ex.P1; and 25.04.2009 was the date fixed for execution of Sale Deed. From the above facts, it was clear that

PW2 GPA Mukhtiar Singh had no knowledge about the facts of the case. Even PW1 Jagjeet Singh produced by the plaintiff was neither the attesting witness nor present at the time when plaintiff got his presence marked in Tehsil Office.

4. Learned trial Court further held that on the other hand, the defendant had successfully proved on record his readiness and willingness to perform his part of the contract not only by appearing and deposing as his own witness but had also proved on record his application dated 28.04.2009 marking his presence in the office of Sub Registrar alongwith the sworn Affidavit Ex.D1 and Ex.D2 respectively.

5. In view of the above findings, suit of the plaintiff stood dismissed. However, the appeal filed by the plaintiff was partly allowed by the learned Additional District Judge, Amritsar holding the plaintiff entitled to alternative relief of recovery of Rs.6 lakhs alongwith interest @ 9% p.a. Hence, present second appeal by the defendant.

6. It is *inter alia* submitted by learned counsel for the appellant/defendant that the respondent was not entitled to decree of alternative relief of refund of earnest money as it is the categoric finding of both the Courts below that the respondent/plaintiff had been unable to prove his readiness and willingness to perform the contract. It is submitted that it is categoric finding of even the learned Additional District Judge that respondent was not having sufficient funds on target date of 28.04.2009 to make payment of balance sale consideration to the appellant. It is contended that as it was proved on record that the plaintiff

was not having balance sale consideration on 25.04.2009 or even on 28.04.2009 therefore, alternative relief of refund of earnest money could not have been granted. In fact, the learned lower Appellate Court also drew adverse inference against the plaintiff for not having stepped into the witness box as plaintiff's Attorney appearing as PW2 had admitted that the plaintiff was in the city however, he could not appear as he was busy in business.

7. It is further submitted that even as per the terms and conditions of the Agreement in question, it had been *inter alia* agreed between the parties that in case the plaintiff fails to get the Sale Deed executed in his favour on the date fixed, the earnest money shall stand forfeited. It is contended that since the failure was on account of conduct of plaintiff therefore, as per terms and conditions of the Agreement, earnest money automatically stood forfeited. Further, perusal of the agreement would reveal that no mode for the forfeiture of the earnest money was prescribed therein and rather it was, in certain and clear terms agreed *inter se* the parties, that the same shall stand forfeited if the Respondent fails to get the sale deed executed in his favor. Thus when, even as per findings of the Ld. Additional District Judge, it was on account of failure of Respondent that the sale deed was not executed therefore the earnest money automatically stood forfeited and no notice/suit/counter claim was required to be issued/instituted by the Appellant. As such the findings of Ld. Additional District Judge qua issue

No. 8, being whimsical and capricious, are legally untenable and liable to be reversed.

8. Learned counsel further submits that the learned lower Appellate Court was wrong in observing that the amount of Rs.6 lakhs paid by the plaintiff was not in the form of earnest money but was rather part of advance sale consideration. Ld. counsel contends that the said observation is not only illegal but also arbitrary as it is not even the case of the plaintiff that the said amount of Rs.6 lakhs was not earnest money but advance part of the sale consideration. In this regard, learned counsel refers to the averments made in the plaint wherein it is clearly averred that the amount of Rs.6 lakhs was received by the defendant as earnest money.

9. In support of his contentions, learned counsel for the appellant/defendant has placed reliance upon the following judgments: -

1. Satish Batra vs. Sudhir Rawal (SC) Law Finder Doc Id # 398894;

2. Gurjinder Singh vs. Paramjit Kaur and another (P&H), Law Finder Doc Id # 735945; and

3. Satnam Singh vs. Paramjit Singh and others (P&H), Law Finder Doc Id # 1991617.

10. It is accordingly prayed that the present Regular Second Appeal be allowed; and the impugned judgment and decree of the learned lower Appellate Court, be set aside.

11. *Per contra,* learned counsel for the respondent/plaintiff vehemently opposes submissions made on behalf of the defendant and submits that the plaintiff had duly proved his presence in the Tehsil Office

on the target date of 25.04.2009 by way of his Affidavit of Attendance Ex.P2 and Ex.P3. It is contended that the plaintiff had also proved that he had sufficient funds available by way of his account statement 'Mark X' which shows balance of Rs.25 lakhs in his account. Learned counsel further relies upon the following judgments: -

> ***1. S.M.Jayasaravanan vs. P. Palaniammal, (Madras), Law Finder Doc Id # 1688956***
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> ***2. P.Narayana Reddy vs. Mr. C.N.Ramesh, (Madras), Law Finder Doc Id # 1713422; and***
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> ***3. H. Ashiq vs. N. Mohyamed Mazihullah, (Madras), Law Finder Doc Id # 1717721***.

12. Learned counsel for the plaintiff refers to para No. 23 and 28 of the judgment of ***S.M.Jayasaravanan's case (supra)***, which are as under:-

> *"23. This Court has to consider the fact that in the event of rejecting the claim of specific performance, it would be consequential to return the advance amount. Even in case where the parties themselves have agreed to cancel the Sale Agreement, the advance amount would be returned to the owner of the property and accordingly, the Sale Agreement would be cancelled. When the principle of equity and justice require that in the event of cancelling the agreement even by the parties themselves, the advance amount should be refunded in a suit for specific performance, the Courts ought not to have declined such alternate relief of return of advance amount to the parties.*
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> *28. This Court is of the considered opinion that the conduct of the first respondent in this regard is also to be taken into*

account. As rightly pointed out by the learned counsel for the appellant, the Sale Deed was executed by the first respondent in favour of the second respondent in respect of the suit schedule property in March 2007 and admittedly, within the period of 15 months from the date of agreement i.e., on 16.07.2006 and more specifically, during the subsistence of the suit Sale Agreement. Thus, the forfeiture clause now cannot be operated against the appellant/plaintiff as the first respondent also committed the breach of contract. Though the said ground is also a ground to grant the relief of specific performance in view of the fact that the appellant/plaintiff also has not established his readiness and willingness, this Court is of an opinion that the relief of specific performance cannot be granted. However, the appellant/plaintiff is entitled for the alternate relief of refund of advance amount with interest."

13. It is accordingly submitted that the impugned judgment and decree suffer from no error, and the present appeal be dismissed.

14. No other argument is raised on behalf of the parties.

15. I have heard learned counsel and perused the case file and the lower Court records in minute detail. Upon giving thoughtful consideration to the rival submissions made on behalf of both the parties, I find merit in the submissions advanced on behalf of the appellant/defendant.

16. Vide the impugned judgment dated 26.7.2016, the learned lower Appellate Court has partly decreed the suit of the respondent/plaintiff by granting the alternative relief of recovery/refund of earnest money of Rs.6 lakhs to the plaintiff along with interest at the

rate of 9% per annum from the date of date of payment/agreement till its realisation. It is the contention of the appellant that since the respondent/plaintiff was not ready and willing to perform the contract on the target date, therefore, he is not entitled to refund of earnest money.

17. Thus, the entire dispute centres around the readiness and willingness of both the parties to perform the contract. The Hon'ble Supreme Court in ***'R. Shama Naik vs. G. Srinivasiah' Law Finder Doc Id # 2670489,*** has held that in order to establish readiness and willingness, two specific ingredients are required to be fulfilled: (a) presence in the Tehsil office; and (b) demonstrate availability of funds. In the present case, the plaintiff may have been able to prove his presence in the Tehsil Office on the target date of 28.04.2009; however, has not been able to prove availability of funds.

18. The learned Trial Court has given a positive finding (in para 9 of it's judgment dated 15.11.2014) that the readiness and willingness of the appellant was proved on record; and has further categorically found that the Respondent had failed to prove his readiness and willingness to perform his part of the contract.

19. The ld. Lower Appellate Court has upheld the abovesaid findings of the Trial Court on readiness and willingness. In para 20 of the impugned judgment, the learned first Appellate Court has held that Plaintiff could not prove his readiness and willingness as plaintiff had failed to prove availability of requisite funds. The relief of recovery has been granted solely on the ground that the Appellant did not give notice

of forfeiture or file counter claim. However, the said reasoning of the learned first Appellate Court is erroneous as there is no need of notice of forfeiture as Agreement itself provided automatic forfeiture. Even otherwise, the relief granted is beyond pleadings, as recovery of Rs.6 lakhs was not even the relief claimed.

20. In any event, it has been held by both the ld. Courts below that Plaintiff was not ready and willing; and the Appellant has been held to be ready and willing. The learned lower Appellate Court has categorically recorded that on the target date of 28.04.2009, the plaintiff was not having sufficient funds to make payment of balance sale consideration. From this fact, it is clear that the plaintiff had failed to prove his readiness and willingness - as is required in terms of above referred judgment in ***R. Shama Naik supra.*** The Hon'ble Supreme Court in case titled as ***Satish Batra vs Sudhir Rawal; 2013 (1) SCC 345,*** has held that when fault of the purchaser is proved, seller is entitled to forfeit earnest money. Similar view has been taken by this Court in case of ***Gurjinder Singh supra*** wherein in para No. 9 of the judgment following questions were framed: –

> *"9. In the cross-objection, learned counsel for the cross-objector has also framed substantial questions of law in the following manner:-*
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> > *"i) Whether once the Courts have come to the conclusion that plaintiff is not ready and willing to perform his part of contract then, can the plaintiff be granted relief of recovery of earnest money?*

ii) Whether clause in the agreement of the sale that if the purchaser fails to perform his part of the contract, the entire earnest money would stand forfeited, would come into play thereby dis-entitling the plaintiff from recovery of earnest money?

iii) Whether the Ld. Courts below erred in not ordering for registration of FIR against the appellant/plaintiff once it is proved that he has made interpolations in the agreement of sale and signatures on Ex.P1 and Ex.P2 are different?" (Emphasis added)

21. The said question no. (ii) was answered in para 19 of the judgment as follows: –

"19. Since the plaintiff himself has violated terms and conditions of the agreement and was not found ready and willing to perform his part of contract, therefore, as per terms and conditions of agreement to sell the amount was liable to be forfeited and for that no separate notice was required to be served upon the plaintiff. Terms and conditions of the agreement to sell are applicable only after admitting the terms and conditions of the agreement to be in operation between the parties."

22. The argument of learned counsel for the plaintiff that from the account statement of the plaintiff i.e. 'Mark X', it was clear that the plaintiff had sufficient funds on target date, is incorrect. A perusal of the said statement/record reveals that on the target date of 25.04.2009, account of plaintiff did not have sufficient funds. This fact has been admitted by learned counsel for the plaintiff. It has however been submitted by learned counsel for the plaintiff that Rs.25 lakhs in cash had

been deposited by the plaintiff in his account on 28.04.2009. However, perusal of account statement 'Mark X' (available at page 253 of the LCR) shows that amount of Rs.25 lakhs has been deposited by the plaintiff on dated 30.04.2009. Even otherwise, given the fact that total sale consideration was Rs.32,04,500/-, balance sale consideration after payment of Rs.6 lakhs as earnest money is Rs.26,04,500/-. Thus, there was still shortfall of Rs.1,04,500/–.

23. Therefore, from the above facts, it is clear that the plaintiff had been unable to prove availability of balance sale consideration on target date. In this regard, findings of the learned lower appellate Court in paras 19, 20 and 21 of the impugned judgment are relevant, which are reproduced herein below: -

> *"19. Plaintiff filed application under order 41 Rule 27 CPC for proving the copy of account statement by way of additional evidence reply to which was given by the defendant-respondent but this document need not to be taken by way of additional evidence on the file because the said very document has been put by the defendant to plaintiff in cross-examination and even if the said document i.e. copy of account statement is proved which is Mark X on 30.4.2009 the amount of Rs.25,00,000/- was deposited by plaintiff-appellant in cash in his account but no such amount existed in the account of the plaintiff on 28.4.2009 when he put appearance before Sub Registrar for getting the sale deed executed and to make the payment of balance sale consideration to the defendant-respondent. So, the application for additional evidence stands dismissed being not necessary as document is already on file.*

20. Therefore, it is proved that the plaintiff was not having sufficient funds on 28.4.2009 to make the payment of balance sale consideration to the defendant-respondent on 25.4.2009 or 28.4.2009.

21. The plaintiff himself has not appeared in the witness box. He has given a power of attorney to Mukhtiar Singh but if the cross-examination of said Mukhtiar Singh is perused it reveals that he has no personal knowledge about the matter in hand and, therefore, it was necessary for the plaintiff himself to depose on the facts which were in his exclusive knowledge. Plaintiff could have appeared easily as he was in Amritsar only and PW-2 Mukhtiar Singh stated that being busy in business he was unable to appear whereas in the power of attorney it is mentioned that he was having heart problem due to which he was unable to appear. So, adverse inference is liable to be drawn against the plaintiff and in this regard the case law cited by the learned counsel for the defendant-respondent (supra) is fully applicable."

24. It is my considered view that in this proven circumstance, learned lower Appellate Court is in error in holding the plaintiff entitled to refund of earnest money. Reasoning of the learned lower Appellate Court in this regard is untenable also in view of the recent judgment of Hon'ble Supreme Court passed in ***Civil Appeal No. 3334 of 2023*** titled as ***Godrej Projects Development Limited v. Anil Karlekar, (SC): Law Finder Doc Id # 2690777, decided on 03.02.2025***.

25. Argument of the plaintiff that the amount of Rs.6 lakhs was not earnest money and was advance payment made by the appellant, and consequential reliance upon judgment ***S.M.Jayasaravanan's case (supra)***,

is misplaced in view of another recent judgment of the Hon'ble Supreme Court in ***Civil Appeal No.5822 of 2025*** titled as ***K.R.Suresh vs. R.Poornima, (SC), Law Finder Doc Id # 2725902, decided on 02.05.2025.*** The relevant paras of the said judgment are as under: -

> *"37. From the above exposition of law, it becomes amply clear that the amount of Rs. 20,00,000/- termed as "advance money" in the ATS, was essentially "earnest money". In other words, it was in the nature of a guarantee for the due performance of the contract. In a fashion akin to earnest money, the said amount was paid at the very execution of the ATS. It was meant to be adjusted against the total sale consideration of Rs. 55,50,000/- if the transaction was carried out, which is evident from the ATS clause that states the balance sale consideration to be as Rs. 35,50,000/-. Further, it was liable to be forfeited in the event that the transaction fell through by reason of the default on part of the purchaser. Consequently, when the appellant purchaser failed to comply with the contractual stipulation of paying the balance sale consideration within a period of four months from the date of the agreement, the respondent nos. 1-4 (vendors) were justified in forfeiting the advance money.*
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> *XXXXXXXXXXXXXXX*
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> *51. On a conspectus of the aforementioned authorities, it is evident that a clause for the forfeiture of earnest money is not penal in the ordinary sense, rendering Section 74 of the 1872 Act, inapplicable. In the present case, the stipulated amount under the ATS was in the nature of an earnest money deposit and thus, Section 74 of the 1872 Act cannot apply to the same. Further, the forfeiture clause was fair and equitable rather than one-sided and unconscionable, as it imposed liabilities on both the appellant purchaser and respondent-*

sellers, wherein the seller was obligated to pay twice the advance amount paid by the buyer in case of his default.

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64. For all the foregoing reasons, we have reached the conclusion that the forfeiture of advance money by the respondent nos. 1-4 was justified. In such circumstances, we are not inclined to grant the relief of refund of advance money to the appellant."

26. Reference is also made to judgment passed by a Coordinate Bench of this Court in ***"Narinder Kaur v. Jagmeet Singh, (Punjab And Haryana): Law Finder Doc Id # 2540183"***; wherein it is held that "*Earnest money paid at the time of execution of an agreement to sell can be forfeited if the buyer fails to prove readiness and willingness to perform his part of the contract."* The relevant paras of the said judgment are as under: -

"11. The trial Court dismissed the suit. The plaintiff filed first appeal. The First Appellate Court on re-appreciation of evidence came to a conclusion that the plaintiff has failed to prove that he remained ready and willing to perform his part of the contract, however, the First Appellate Court held that the plaintiff is entitled to claim refund of earnest money of Rs. 2,00,000/-. The correctness of decree passed by the First Appellate Court is challenged in this appeal.

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13. The learned counsel representing the appellant submits that the Appellate Court has erred in ordering refund of earnest money after recording finding that the plaintiff was not ready and willing to perform his part of the contract. He *submits that it is not necessary in the agreement to sell to recite that if the plaintiff fails to perform his part of the contract, the amount of earnest money shall stand forfeited. He submits that this is inherent in the agreement to sell.*

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16. The earnest money at the time of execution of agreement to sell is paid to ensure that the parties perform their part of the contract. Such earnest money is a payment towards security for performance of the contract on the part of the proposed buyer. Once, the buyer fails to prove that he was ready and willing to perform his part of the contract, the amount of earnest money is liable to be forfeited.

17. In fact, this issue has been examined in detail by this Court in ***RSA-4920-2014, titled as "Ran Singh and others v. M/s C a pex Projects Pvt. Ltd.", decided on 28.03.2019*** *and in* ***RSA-1915-2016, titled as "Satnam Singh (since deceased) through his legal representative v. Paramjit Singh and others", decided on 19.04.2022****.*

18. A Larger Bench of the Supreme Court in ***Maula Bux v. Union of India (1969) 2 SCC 554****, held that the earnest money is liable to be forfeited for breach of contract because it is the amount of penalty, which the buyer undertakes to forego once he fails to perform his part of contract.*

19. Keeping in view the aforesaid discussion, the appeal is allowed. The judgment and decree passed by the First Appellate Court ordering refund of earnest money along with the interest is not sustainable. Hence, the same is set aside."

27. Keeping in view the above noted factual and legal position, the present Second Appeal is **allowed**. Accordingly, the impugned judgment and decree dated 26.07.2016 passed by learned Additional

District Judge, Amritsar is set aside; and the judgment and decree dated 15.11.2014 passed by learned trial Court is restored.

28. Pending applications, if any, stand(s) disposed of.

02.09.2025 **(NIDHI GUPTA)**

Divyanshi **JUDGE**

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