IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RFA No. 929 of 2012
Reserved on: 24.09.2026
Date of decision: 27.10.2026
Date of uploading on website: 27.10.2026

M/s Blue Bell Projects (Pvt.) Ltd.
.....Appellant/plaintiff.

Versus

Ms. Santosh Kumari & another
.....Respondents/defendants.

Coram
The Hon'ble Mr. Justice Sushil Kukreja, Judge.
[1] *Whether approved for reporting?* Yes.

For the appellant:	Ms. Devyani Sharma, Senior Advocate, with Mr. Shivam Sharma and Ms. Srishti Negi, Advocates.
For respondent No. 1:	Dr. Lalit K. Sharma, Advocate.
For respondent No. 2:	Mr. Ajay Kumar, Senior Advocate, with Mr. Vinay Kumar Thakur, Advocate.

Sushil Kukreja, Judge.

The instant appeal has been preferred by the appellant-M/s Blue Bell Projects (Pvt.) Ltd., who was plaintiff before the learned Court below (hereinafter referred to as "the plaintiff") under Section 96 of the Code of Civil Procedure against judgment and decree, dated 29.09.2012, passed by learned Additional District Judge, Solan, District

[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

Solan, H.P., in Civil Suit No. 04-NL/01 of 2009/05, whereby the suit filed by the plaintiff was partly decreed for recovery of Rs.3,00,000/- with interest @ 9% per annum from the date of filing of the suit till recovery of the said amount, however, the relief claimed by the plaintiff for specific performance of agreement of sale dated 29.09.2004 was declined.

2. The facts giving rise to the instant appeal are that plaintiff-company, through it's the then Director Shri Surinder Mandhwani, had preferred a suit under Section 26 read with Order 7, Rules 1, 2 and 5 CPC as well as Sections 15, 19, 20 and 22 of the Specific Relief Act, 1963, for specific performance of agreement of sale dated 29.09.2004 qua the land measuring 02 bighas, 14 biswas, comprised in khewat/khatauni No. 174/176, khasra No. 891/657, situated in Thana hadbast No. 211, Pargana Dharampur, Tehsil Nalagarh, District Solan, as per jamabandi for the year 1997-98 (hereinafter referred to as "the suit land"). The plaintiff had also sought relief of declaration to the effect that sale deed dated 30.06.2005, which was executed by defendant No. 1-Ms. Santosh Kumari in favour of defendant No. 2-Shri Balwant Kumar, qua the suit land, was the result of fraud and misrepresentation and the same was null and void and has

no effect on plaintiff's rights. The plaintiff also prayed that the defendants be restrained from changing the nature of the suit land.

2(a). The plaintiff-company averred that defendant No. 1, being owner of the suit land, had agreed to sell the same to the plaintiff-company for a consideration of Rs.14,25,000/- and also executed an agreement to sell on 29.09.2004 and consequent thereupon had received Rs.3,00,000/-, as earnest money, at the time of execution of the agreement of sale. It was further averred by the plaintiff-company that remaining sale consideration had to be paid to defendant No. 1 by 05.01.2005, i.e., at the time of execution and registration of the sale deed. The plaintiff-company, being non-agriculturist, had to take permission from the State of Himachal Pradesh under Section 118 of the H.P. Tenancy and Land Reforms Act, for purchase of the suit land. As per the plaintiff-company, defendant No. 1, at the time of execution of agreement to sell, agreed to extend full co-operation to the plaintiff-company for obtaining the aforesaid permission and also agreed to receive balance sale consideration at the time of the execution and registration of the sale deed after the permission. Subsequently, the

plaintiff-company had applied for changing the land use as well as for grant of Essentiality Certificate for construction of hotel over the suit land and also deposited a sum of Rs.30,483/- with the Town and Country Planning Department and accordingly, vide letter dated 25.02.2005, change of land use was permitted subject to certain conditions. After grant of Essentiality Certificate as well as change of land use, the plaintiff company submitted the entire documents seeking permission under Section 118 of the H.P. Tenancy and Land Reforms Act. Thereafter, the plaintiff-company came to know that defendant No. 1 had written to Deputy Commissioner, Solan, which created hindrance in processing permission under Section 118.

2(b). As per the plaintiff-company, it was always ready and willing to perform its part of the agreement and application seeking permission under Section 118 was pending with the State Government, as the process qua the same was cumbersome and time taking at the government level. It was further averred that at the time of execution of agreement of sale, there was clear understanding between the parties that time will not be essence for the performance of the agreement and the time limit mentioned in the

agreement was only for expediting the matter. The plaintiff-company took due diligence to perform all such acts within its power, however, due to the delay on the part of the government officials, permission qua purchase of land was awaited and non-cooperation on behalf of defendant No. 1 also delayed the matter unnecessarily.

2(c). The plaintiff averred that on 27.01.2025 it received a legal notice from Shri Roshan Lal Kanojia, Advocate, which was replied through counsel Shri Balbinder Singh Hira on 10.02.2005. Subsequently, the plaintiff received reply from defendant No. 1 with cheque in the sum of Rs.3,00,000/-, which was also replied by the plaintiff-company. As per the plaintiff-company, defendant No. 1 had become greedy due to increase in the prices, thus she tried to avoid the specific performance of the agreement of sale. Through Shri Surinder Mandhwani, the plaintiff-company approached defendant No. 1 after obtaining change of land use as well as essentiality certificate and defendant No. 1 also agreed to co-operate, but surprisingly, defendant No. 1 had sent some communication, due to which grant of permission to the plaintiff-company under Section 118 of the H.P. Tenancy and Land Reforms Act was delayed.

2(d). As per the plaintiff-company, defendant No. 1 had sold the suit land to defendant No.2, vide sale deed, dated 30.06.2005, which was the result of fraud. Defendant No. 1 was not entitled to have sold the suit land to defendant No. 2, therefore, sale deed, dated 30.06.2005, which was executed by defendant No. 1 in favour of defendant No. 2, was null and void and not binding upon the plaintiff-company. The plaintiff-company averred that cause of action firstly arose on 29.09.2004, the date of execution of agreement of sale and lastly on 27.09.2005 when the plaintiff-company came to know that defendant No. 1 had sold the suit land to defendant No. 2.

3. Defendant No. 1 by filing written statement contested the suit. He raised preliminary objections, i.e., viz maintainability of the suit, estoppel, cause of action and the suit is bad for non-joinder of necessary parties. On merits, it was averred that the plaintiff-company itself had admitted that the time was the essence of the contract, as sale deed was required to be executed on or before 05.01.2005. It was further averred that the plaintiff-company was required to obtain permission of the State Government qua purchase of the suit land prior to 05.01.2005, but the plaintiff-company

deposited the amount of Rs.30,483/- on 25.02.2005, i.e., beyond the date fixed for the execution of the sale deed. It was also averred that neither the plaintiff nor its nominee appeared in the office of Sub-Registrar on 05.01.2005 and since 05.01.2005 was a holiday, defendant No. 1 was present in the office of Sub-Registrar, Nalagarh on 05.01.2005 as well as on 06.01.2005, for the execution and registration of the sale deed, but the plaintiff-company or its nominee did not come there for payment of balance sale consideration, execution and registration of the sale deed. The replying defendant averred that time was the essence of the contract and there was no understanding between the parties that time would not be essence of the contract. As per the terms of the agreement, the sale deed was required to be executed on or before 05.01.2005, but the plaintiff did not perform its part of the contract and even it mischievously returned Rs.3,00,000/- to defendant No.1, which amount had been sent by defendant No. 1 to the plaintiff. The replying defendant denied the claim of the plaintiff-company and prayed for dismissal of the suit.

4. Defendant No. 2 filed separate written statement, wherein it was alleged that he was bonafide purchaser of the

suit land without notice or knowledge qua the alleged agreement of sale between the plaintiff-company and defendant No. 1. It was denied by defendant No. 2 that sale deed qua the suit land executed by defendant No. 1 in his favour was illegal, null and void. It was further averred suit was barred under Order 2 Rule 2 CPC and prayed for dismissal of the suit.

5. Initially, the plaintiff had filed the suit in this Court, but due to increase in the pecuniary jurisdiction of the learned Trial Court, the suit was transferred to the Court of learned District Judge, Solan, (Trial Court) on 06.03.2009.

6. On the basis of the pleadings of the parties, on 14.12.2006 the learned Trial Court framed the following issues:

> "1. Whether the plaintiff did not get the sale deed executed and registered within the time fixed in the agreement, as alleged? If so, its effect? OPD-1
>
> 2. Whether the plaintiff is entitled to the relief of specific performance of agreement dated 29.09.2004, as claimed? OPP
>
> 3. Whether the plaintiff has been and is still ready and willing to perform his part of the contract? OPP
>
> 4. Whether defendant No. 2 is bona fide purchase for consideration? If so, its effect? OP-2

5. Relief."

7. On 10.07.2007 following additional issues were framed:

"4-A Whether the suit is barred under Order 2 Rule 2 CPC? OPD

4-B Whether the plaintiff is not an agriculturist within the meaning of H.P. Tenancy and Land Reforms Act? If so, its effect? OPD"

8. After the parties led their evidence and after hearing the learned counsel for the respective parties, the learned Trial Court, partly decreed the suit of the plaintiff-company. The learned Trial Court declined the plaintiff-company the relief of specific performance of agreement of sale dated 29.09.2004. However, the suit was decreed for recovery of Rs.3,00,000/- with interest @ 9% per annum from the date of filing of the suit till the recovery of the said amount in favour of the plaintiff-company and against defendant No. 1with proportionate cost.

9. I have heard the learned Senior Advocate for the appellant, learned counsel for respondent No. 1 (defendant No. 1), learned Senior Counsel for respondent No. 2 (defendant No. 2) and carefully examined the entire records.

10. The plaintiff-company, in order to prove its case,

had examined four witnesses, i.e., PW-1 Shri Narinder Kumar, PW-2 Shri Ganesh Lal, PW-3 Shri Kamal Chand and PW-4 Shri Surinder Madhwani.

11. Shri Narinder Kumar, the then Senior Assistant office of Deputy Commissioner, Solan, appeared in the witness-box as PW-1 and brought the summoned record. As per the record, Ex.P1 is the copy of application filed by the plaintiff under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act and it was received in the office on 09.05.2005. He further deposed that the application, Ex. P1, was accompanied by documents, as mentioned in the application. PW-2 Shri Ganesh Lal, the then Assistant Town Planner, Baddi Barotiwala, Nalagarh Development Authority, Nalagarh, District Solan, had also brought the summoned record. As per the record, application, Annexure P2, was filed by the plaintiff with the Authority on 19.11.2004. Ex. P3 is the copy of the demand notice, which was sent by the Authority to the plaintiff asking to deposit Rs.30,483/- for change of the land use. Ex.P4 is copy of letter addressed by the Authority acknowledging receipt of payment of amount, as demanded vide Ex. P3. Ex.P5 is copy of letter granting change of land use to the plaintiff. Shri Kamal Chand, then

the District Tourism Development Officer, Sirmaur and Solan district, at Solan, appeared in the witness-box as PW-3 and had brought the summoned record. As per the record, Ex.P6 is copy of the application moved by the plaintiff, whereby he requested for Essentiality Certificate. Ex.P7, dated 06.12.2004, is copy of communication addressed to the plaintiff asking to supply certain particulars/information. This witness further deposed that the plaintiff wrote back, vide Ex. P8, answering the queries, which were raised vide Ex, P7. Ex. P9 is the copy of the Essentiality Certificate issued by the defendant. Shri Surinder Mandhwani, the then Director-cum-Authorized signatory of the plaintiff-company, appeared in the witness-box as PW-4 and he tendered in evidence his affidavit, Ex. PW-4/A. This witness also proved on record documents, Ex. PW-4/B to Ex. PW-4/K.

12. On the other hand, defendants, in order to support their case, had examined five witnesses, i.e., DW-1 Shri Sunder Singh, DW-2 Shri Raj Kumar, DW-3 Shri Santosh Kumari, DW-4 Shri Jitender Kumar and DW-5 Shri Balwant Kumar.

13. Shri Sunder Singh, the then Registration Clerk, appeared in the witness-box as DW-1 and he had proved on

record copy of sale deed dated 30.06.2005, Ex.DW-1/A. Similarly, DW-2 Shri Raj Kumar, the then Patwari, had proved jamabandi, Ex. DW-2/A. Defendant No. 1, Smt. Santosh Kumari, appeared in the witness-box as DW-3 and she tendered in evidence her affidavit, Ex. DW-3/A, wherein she supported the contents of her written statement. She had also brought on record her affidavit, Ex. DW-3/B, notice Ex. DW-3/C, UPC Ex. DW-3/D, again notice Ex. DW-3/E and UPC Ex. DW-3/F. Shri Jitender Kumar, appeared in the witness-box as DW-4 and tendered in evidence his affidavit, Ex. DW-4/A. This witness deposed that agreement of sale between the plaintiff and defendant No. 1 was executed in his presence and as per the agreement, the sale deed was to be executed on or before 05.0-1.2005. He further deposed that at the time of the execution of the agreement of sale, defendant No. 1 had informed the plaintiff-company that she was in need of money and for that reason she was selling the suit land. Shri Balwant Kumar (defendant No. 2) stepped into the witness-box as DW-5 and tendered in evidence his affidavit, Ex. DW-5/A, wherein he supported the contents of the written statement.

14. It is an admitted case of the parties that

defendant No. 1 was the owner of the suit land and she agreed to sell the same to the plaintiff-company for a consideration of Rs. 14,25,000/- and in this respect she executed an agreement to sell dated 29.09.2004, Ex. PW-4/D, and received an amount of Rs.3,00,000/- lacs as an earnest money at the time of the execution of the sale deed. The perusal of the agreement to sell reveals that the sale deed was to be executed and registered on or before 05.01.2005 on the payment of the balance sale consideration by the plaintiff-company to defendant No. 1. It is also not in dispute that defendant No. 1 had sold the suit land to defendant No. 2, vide registered sale deed, Ex. DW-1/A, dated 30.06.2005.

15. The claim of the plaintiff-company is that it was always ready and willing to perform its part of the contract, but defendant No. 1 had failed to perform her part of the contract, whereas, the case of defendant No.1 is that time mentioned in the agreement of sale was the essence of the contract and the plaintiff-company failed to get the sale deed executed and registered within the time fixed in agreement, Ex. PW-4/D.

16. Now, the first question which arises for

consideration before this Court is as to whether the plaintiff-company has always been ready and willing to perform its part of the agreement or not.

17. In a suit for specific performance, the plaintiff has to prove a valid sale agreement; the breach of the contract by the defendants; and readiness and willingness of the plaintiff to perform his part of the contract. Section 16(c) of the Specific Relief Act mandates "readiness" and "willingness" on the part of the plaintiff as a condition precedent to seek specific performance. At this stage, it would be apposite to examine Section 16 (c) of the Specific Relief Act, 1963, which reads as under : -

> ***"16. Personal bars to relief. Specific performance of a contract cannot be enforced in favour of a person--(a) and (b).....***
>
> ***(c) who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.***
>
> ***Explanation.-- For the purposes of Clause (c).***
>
> ***(i) where a contract involved the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court;***
>
> ***(ii) the plaintiff must prove performance of, or readiness and willingness to perform the contract according to its true construction."***

18. A bare reading of the section shows that a decree for specific performance cannot be granted to anyone who fails to prove that either he had performed or had

always been ready and willing to perform the essential terms of the contract. The compliance of the requirements of Section 16(c) of the Specific Relief Act is, therefore, mandatory in nature. The "readiness" and "willingness" are two separate issues. The former depends on the availability of requisite funds whereas the latter depends on the intention of the purchaser. The "readiness" has to be proved by the purchaser that he had the availability of the funds whereas the intention has to be inferred from his conduct and circumstances. In ***N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao, (1995) 5 SCC 115***, the Hon'ble Supreme Court held that the Court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances to adjudge the "readiness" and "willingness" of the plaintiff. The amount of balance sale consideration must be proved to be available with the purchaser right from the date of execution of the agreement till the date of decree.

19. In ***J.P. Builders v. A. Ramadas Rao, (2011) 1 SCC 429,*** the Hon'ble Supreme Court explained the distinction between "readiness" and "willingness". The former refers to financial capacity and the latter to the conduct of the

plaintiff wanting performance.

20. The specific performance is an equitable relief and the Court is not bound to grant such relief merely because it is lawful to do so. The Court is required to see the totality of the circumstances which are to be assessed by the Court in the light of facts and circumstances of each case. The specific performance is usually granted where substantial sale consideration has been paid. When the parties enter into an agreement relating to an immovable property, they amicably agree on the sale consideration, earnest money as well as the payment of the balance sale consideration. If both the parties are ready and willing, they usually complete the transaction within the stipulated time. Once a seller has entered into an agreement to sell of an immovable property, he is looking for the sale consideration within the period stipulated in the agreement. If he does not get the money within the stipulated period, his plan to use the money for whatever purpose he has intended would get frustrated. He may have a plan to buy some other property or for some other purpose. Secondly, the delay in completion of sale also causes injustice to the seller as the property prices keep on increasing in normal parlance. As such, more the

delay, the seller may suffer loss due to rise in property price and greater is the profit which the purchaser would derive by tying down a property and not paying the sale consideration within the stipulated period.

21. In ***Saradamani Kandappan v. S. Rajalakshmi & Ors., (2011) 12 SCC 18,*** the Supreme Court declined to grant the discretionary relief of specific performance to the purchaser who had made payment of nominal advance to the seller. The Apex Court while examining the doctrine that time is generally not the essence in contracts relating to immovable property, clarified that such a principle cannot be applied mechanically in modern commercial realities. The Court observed that although earlier precedents treated time stipulations in property contracts as merely indicative, the significant escalation in property values and changing economic circumstances require courts to give due significance to the time stipulations agreed between the parties. Where the contract clearly prescribes specific dates for payment of consideration and provides consequences for default, such stipulations may demonstrate the intention of the parties to treat time as the essence of the contract. In such circumstances, failure to adhere to the agreed schedule

of payment may justify termination of the agreement and disentitle the purchaser from seeking the equitable relief of specific performance. The relevant portion of the aforesaid judgments is extracted hereunder:-

> ***"37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and 'non-readiness'. The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and received rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees.***
>
> ***xxx xxx xxx"***

22. In ***Padmakumari & others v. Dasayyan & others, (2015) 8 SCC 695,*** the Apex Court, emphasized that where the agreement of sale stipulates a specific period for payment of the balance consideration, failure on the part of the purchaser to comply with such stipulation assumes significant legal importance in determining entitlement to

specific performance. The Court held that when the purchaser does not pay the balance consideration within the agreed period and no acceptable explanation is offered for such default, the conduct of the purchaser clearly indicates lack of readiness and willingness to perform the essential terms of the contract. The Court further observed that courts must carefully examine the contractual terms and surrounding circumstances and cannot ignore such material aspects while granting the equitable relief of specific performance. Accordingly, non-compliance with the stipulated time for payment of consideration may disentitle the purchaser from obtaining the relief sought. The relevant para of the aforesaid judgment is as under:

> ***"20. The said contention urged on behalf of the plaintiff is unacceptable to us that the question of taking measurement would not arise before the plaintiff performed his part of the contract regarding the balance consideration within the period stipulated in the agreement. Undisputedly, that had not been done by the plaintiff in the instant case within the stipulated time and the notice was issued by the plaintiff only after one year, therefore, the plaintiff has not adhered to the time which is stipulated to pay the balance consideration amount to defendants 1 to 11 which is a very important legal aspect which was required to be considered by the courts below at the time of determining the rights of the parties and passing the impugned judgment. The courts below have ignored this important aspect of the matter while answering the contentious issues (i) and (ii) in favour of the plaintiff and granted decree of specific performance in respect of the suit scheduled property. The said finding of fact is contrary to the terms and conditions of the agreement, pleadings and the evidence on record. Accordingly, we answer the said issues in favour of defendants 12 to 15 after setting aside the concurrent findings of fact recorded by the High Court."***

23. In the light of the aforesaid principles, coming to the facts of the present case. In the instant case, admittedly, the agreement to sell was executed between the parties on 29.09.2004. At this stage, it would be pertinent to reproduce the relevant portion of agreement, Ex.PW-4/D, which reads as under:

> ***"Today on 29.9.2004 first party (defendant No.1 in present suit) has received earnest money of Rs.3 lacs by way of draft and she, on receipt of balance sale consideration of Rs.11,25,000/- on 5.1.2005, is bound to execute the sale deed in favour of second party (plaintiff in the present suit). Since second party has to construct a hotel over suit land, it has to obtain permission from the government of H.P. for purchasing the suit land. If for some reason, permission is delayed, then first party shall not hesitate to execute the power of attorney in favour of the second party on receipt of balance sale consideration if desired by the second party. If for any reason second party does not want to purchase the suit land the first party shall return earnest money and get the agreement cancelled. If the first party for any reason does not want to sell suit land then she shall return Rs.50,000/- more to the second party and get the agreement cancelled".***

24. A threadbare reading of agreement, Ex. PW-4/D, shows that it was incumbent upon the plaintiff-company to obtain permission qua purchase of the suit land on or before 05.01.2005 and in the event of delay, in obtaining such permission, the plaintiff-company had to make payment of balance sale consideration to defendant No. 1 on or before 05.01.2005 and then obtain her power of attorney. Ex. P1 is the copy of the application, which was submitted by the plaintiff-company for obtaining permission for purchase of the suit land. Now, as per the statement of PW-1 Shri Narinder

Kumar, application, Ex. P1 was received in the office of Deputy Commissioner, Solan on 09.05.2005. The plaintiff-company could not give any plausible reason as to why it did not apply for obtaining permission for purchase of the suit land before the date fixed in the agreement of sale for execution and registration of the sale deed, i.e., 05.01.2005. The fact that the plaintiff-company did not apply for permission before 05.01.2005, is sufficient to arrive at a conclusion that the plaintiff-company did not perform its part of the contract.

25. In the agreement, Ex. PW-4/D, it has been specifically mentioned therein that the vendee shall obtain permission from the Government of Himachal Pradesh and the sale deed shall be executed and registered between the parties on or before 05.01.2005 and in the event of delay in permission, the vendee shall obtain power of attorney from the vendor on payment of balance sale consideration. The terms and conditions of the agreement to sell demonstrate the intention of the parties to get the sale deed executed and registered within a reasonable time and only for this reason, the parties had provided a specific date for execution and registration of the sale deed. The plaintiff-company wanted

to purchase the suit land for the construction of a hotel, thus the agreement to sell was qua the immovable property, which had commercial value.

26. As observed earlier, firstly, the plaintiff-company pleaded and also adduced evidence that it was always ready and willing to perform its part of the agreement, but such plea and evidence to that effect do not seem to be true and trustworthy, for the reason that as per the terms of the agreement of sale, the plaintiff-company was required to get the sale deed executed and registered on payment of balance sale consideration on or before 05.01.2005, after obtaining necessary permission. Copy of application seeking permission, Ex. P1 demonstrates that the plaintiff-company did not apply under Section 118 of the H.P. Tenancy and Land Reforms Act before 05.01.2005 and it is fortified by the statement of PW-1 also. Secondly, in the agreement, Ex. PW-4/D, it was clearly mentioned that in case of delay in permission, the plaintiff-company, if it so desired, would make payment of the balance sale consideration and acquire power of attorney from defendant No. 1 (seller). The perusal of the record shows that the plaintiff-company neither made payment of the balance sale consideration to defendant

No.1on or before 05.01.2005 nor obtained power of attorney from defendant No. 1. Therefore, it can safely be concluded that the plaintiff-company was not willing and ready to perform its part of the contract. On the contrary, Ex. DW-3/B, is the affidavit of defendant No. 1, which clearly shows that defendant No. 1 was present in the office of Sub-Registrar, Nalagarh, for the execution and registration of the sale deed both on 05.01.2005 and 06.01.2005 and she also executed her affidavit to that effect. Thus, in the wake of the above facts, it can safely be held that defendant No. 1 was always ready and willing to perform her part of the agreement, but it was the plaintiff-company, who failed to perform its part of the agreement.

27. The perusal of agreement, Ex. PW-4/D, further shows that sale deed has to be executed on or before 05.01.2005, on payment of balance sale consideration of Rs.11,25,000/- by the plaintiff-company to defendant No. 1. The agreement further mentions that in case the second party, i.e., plaintiff-company does not like to purchase the suit land, then the first party, i.e., defendant No. 1, shall return the earnest money to the second party, i.e., plaintiff-company. In the agreement, it is also mentioned that in case the first party

does not like to sell the suit land to the second party, then the first party shall return the earnest money plus Rs.50,000/- more to the second party. Thus, the perusal of the terms and conditions of the agreement to sell shows that the parties not only intended to make the time as essence of the contract, but also incorporated the clauses giving liberty to the parties to get the contract cancelled. Since the plaintiff-company has failed to adhere to the agreed schedule of the payment, as such the plaintiff-company cannot be held entitled for the equitable relief of specific performance of the contract.

28. It is not in dispute that defendant No. 1 had received earnest money of Rs.3,00,000/- from the plaintiff-company at the time of the execution of agreement of sale, Ex. PW-4/D and as per the terms and conditions of the agreement to sell, defendant No. 1 was required to return the same to the plaintiff-company, only in case the parties wanted to get the agreement cancelled. Thus, the learned Trial Court rightly held the defendant liable to pay Rs.3,00,000/- to the plaintiff-company alongwith interest @ 9% per annum from the date of filing of the suit till final payment is made.

29. Indisputably, defendant No. 1 had sold the suit land to defendant No. 2 Shri Balwant Kumar, vide registered sale deed, Ex.DW-1/A, dated 30.06.2005. Shri Balwant Kumar (defendant No. 2), while appearing in the witness-box as DW-5 specifically deposed that he had purchased the suit land for a consideration without having any knowledge of the agreement to sell (Ex.PW-4/D) executed between the plaintiff-company and defendant No. 1. There is no material on record which could show that defendant No. 2, when he had purchased the suit land from defendant No. 1, had the knowledge about the agreement to sell executed between the plaintiff-company and defendant No. 1. As per the statement of defendant No. 2, he had purchased the suit land after making bonafide inquires. He was cross examined at length, however, nothing favourable could be elicited from his cross-examination. There is nothing to disbelieve or discredit the testimony of defendant No. 2. Thus, considering the statement of defendant No. 2 and also the fact that the plaintiff-company itself did not perform its part of the contract, it stands established on record that defendant No. 2 is the bonafide purchaser of the suit land for consideration.

30. No other point was urged before me.

31. In view of what has been discussed hereinabove, impugned judgment and decree passed by the learned Trial Court does not require any interference and the same is upheld. The instant appeal, which sans merits, deserves dismissal and is accordingly dismissed.

Pending application(s), if any, shall also stand(s) disposed of.

(Sushil Kukreja)
Judge

27th October, 2026
(virender)