



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

CM-6015-C-2019 in/and
RSA-2244-2019 (O&M)
Date of decision : 20.01.2026

Rano Thaman

....Appellant

Versus

Gian Chand Mehta (deceased) thr. His LRs

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present :- Mr. Rakesh Gupta, Advocate
for the appellant.
(Through video conferencing)

Mr. Yagsimant Attri, Advocate
for the respondent No.1 (a) to 1 (c).

PANKAJ JAIN, J.(ORAL)

CM-6015-C-2019

This is an application seeking condonation of delay of 215 days
in filing the present appeal.

For the reasons recorded in the application, this Court is satisfied
that the applicant-appellant has shown sufficient cause to condone the delay
in filing the appeal.

Application is allowed. Delay of 215 days in filing the appeal is
condoned.

Main case

1 Appellant-plaintiff is in second appeal aggrieved of the



judgment and decree passed by both the Courts below whereby suit filed by the plaintiff seeking decree of specific performance *qua* agreement to sell dated 20.04.2004 stands dismissed. For convenience, parties hereinafter are referred to by their original position in the suit i.e. the appellant as plaintiff and the respondents as defendants.

2 Plaintiff filed suit claiming agreement to sell *qua* plot measuring 350 sq. yards in her favour executed by defendant-Gian Chand Mehta dated 20.04.2004. As per plaintiff, Gian Chand Mehta agreed to sell the suit property for a valuable consideration of Rs.13,82,500/- in her favour. On receipt of the earnest money of Rs.2,50,000/- in front of witnesses he executed agreement in writing. Parties agreed to get the sale deed executed on or before 30.08.2004. Plaintiff claims that she later on came to know of a *lis* pending *qua* suit property before Punjab & Haryana High Court. Accordingly, the date for execution of sale deed was further extended to 25.09.2004 vide writing dated 28.08.2004 and thereafter to 26.10.2004 vide writing dated 24.09.2004. As per the plaintiff, she remained present before the office of Sub Registrar on 26.10.2004 along with balance sale consideration and expenses. Defendant having failed to turn up to execute the sale deed, plaintiff served legal notice dated 04.02.2005 calling upon the defendant to come present before the office of Sub Registrar and execute sale deed on 24.02.2005. As per plaintiff, she appeared before the office Sub Registrar on 25.02.2005 as 24.02.2005 was declared as public holiday. Defendant having failed to come present to execute the sale deed, she is entitled for grant of decree of specific performance.



3 Suit was contested by the defendant. Defendant admitted the execution of agreement to sell dated 20.04.2004 and receipt of earnest money of Rs.2,50,000/-. Defendant, however, disputed readiness and willingness of the plaintiff. As per defendant, he remained present in the office of Sub Registrar on 26.10.2004 but it was the plaintiff who was absent. Defendant in order to prove his presence produced copy of affidavit attested by Sub-Registrar. As per defendant, he served legal notice dated 07.01.2005 calling upon the plaintiff to get the sale deed executed on or before 15.02.2005. Plaintiff however failed to get the sale deed executed as she was neither ready nor willing to perform her part of contract.

4 Suit was put to trial by the Court of the First Instance framing following issues :-

- “1-Whether plaintiff is entitled for possession by way of specific performance of contract dated 20.4.2004 as prayed for? OPP*
- 2- Whether plaintiff is entitled for permanent injunction as prayed for? OPP*
- 3-Whether plaintiff was/ is ready and willing to perform his part of contract? OPP*
- 4-Whether plaintiff has not approached the court with clean hands and misstated the true facts of case? OPD*
- 5-Relief.”*

5 Both the Courts below found plaintiff neither willing nor ready to perform her part and denied her main relief of specific performance and decreed the suit for alternate relief directing the defendant to refund earnest money of Rs.2,50,000/- along with interest.



6 Mr. Rakesh Gupta, Advocate for the plaintiff has assailed the findings recorded by the Courts below. He submits that the Courts below have misread the evidence on record and have been wrongly swayed away by legal notice dated 07.01.2005 (Ex. D2) which in fact remained unproved. He refers to the statement of DW4 Surjit Singh, Clerk of Sh.Bhagwant Singh, Advocate under whose signatures legal notice dated 07.01.2005 was claimed to have been issued by defendant. He submits that in the absence of any postal receipt and in view of the statement made by the Clerk, it is evident that the legal notice remained unserved and, therefore, ought not to have been relied upon by the Courts below. Mr. Rakesh Gupta, Advocate further submits that the fact that the husband of the plaintiff remained present before the office of the Sub Registrar on 26.10.2004 shows that the plaintiff was always ready and willing to perform her part. Defendant having evaded the contract, the plaintiff is entitled for decree of specific performance. He further submits that even before the Appellate Court statement of the plaintiff was recorded on 18.04.2018 wherein the plaintiff agreed to relinquish her right *qua* the disputed portion of the suit property pending before High Court and agreed to get the sale deed executed *qua* the remaining part by paying entire sale consideration. He submits that from the records of the case, it is evident that plaintiff always remained ready and willing to perform her part and in view thereof, the findings recorded by the Courts below cannot be sustained.

7 *Per contra* learned counsel for the defendants has brought to the notice of this Court the statement made by the plaintiff-Rano Thaman,



who appeared as PW5 and her husband-Vishavjeet Thaman, who deposed as PW4. He contends that there are contradictions between the statement of the two with respect to the source of funds. Both agreed that plaintiff-Rano Thaman never appeared before the office of Sub Registrar on 26.10.2004. In view thereof, he submits that the Courts below have rightly exercised their discretion declining main relief to the plaintiff.

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

9 Execution of agreement to sell and payment of earnest money is not in dispute. It is settled proposition of law that grant of decree of specific performance is a discretionary relief and the same is subject to clearing bar as contemplated under Section 16(c) of the Specific Relief Act, 1963. Plaintiff in order to claim decree of specific performance is required to prove continuous readiness and willingness. The parties are in unison that the date of execution of the contract stood extended from 30.08.2004 to 26.10.2004. Both the parties claimed their presence before the office of Sub Registrar on 26.10.2004. Even if the plea raised by Mr. Rakesh Gupta, Advocate, is taken on its face value and is assumed to be correct that the plaintiff remained present on 26.10.2004 through her husband it only shows her willingness. Plaintiff under law is obligated to show her readiness as well. On the said date, plaintiff was required to pay balance sale consideration which was more than Rs.11,00,000/-. Plaintiff while appearing as PW5 claimed that she received Rs.8.00 lakhs from her father. Her husband while appearing as PW4 claimed that Rs.8.00 lakhs was available in their house.



To a specific question with respect to source, he claimed that neither the same was withdrawn from the bank nor was sourced from any other person. In the considered opinion of this Court, the evidence to demonstrate readiness of the plaintiff is discrepant and in view thereof, the Courts below have rightly denied the main relief to the plaintiff. The Courts correctly decreed the suit for alternate relief.

10 In view of above, finding no merits in the present appeal, the same is ordered to be dismissed.

11 Pending miscellaneous application, if any, also stands disposed off.

20.01.2026
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

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