



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

RSA-2076-1997 (O&M)

Reserved on :-13.05.2026

Date of Pronouncement:-20.05.2026

Uploaded on:-21.05.2026

Deepak Kumar Khullar

... Appellant

Versus

Bhagu

... Respondent

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Sanjay Majithia, Senior Advocate with
Mr. R.P. Daaria, Advocate and
Ms. Divya Mohan, Advocate
for the appellant.

Mr. Manish Dadwal, Advocate
for the respondent.

VIRINDER AGGARWAL, J.

1. The present Regular Second Appeal (hereinafter referred to as the “RSA” for short) has been instituted by the appellant–plaintiff assailing the decree and judgment dated 04.03.1997 passed by the learned Additional District Judge, Hoshiarpur, whereby the findings recorded by the learned trial Court were affirmed in toto.

1.1. The learned Senior Sub-Judge, Hoshiarpur, vide decree and judgment dated 06.10.1993, while declining the relief of specific performance of the agreement to sell dated 28.02.1989, had nevertheless



granted recovery of a sum of ₹5,000/-, being the earnest money paid by the appellant–plaintiff to the respondent–defendant at the time of execution of the aforesaid agreement.

1.2. Aggrieved against the concurrent findings recorded by the learned Courts below, particularly insofar as the denial of the equitable relief of specific performance is concerned, the appellant–plaintiff has invoked the appellate jurisdiction of this Court on the premise that the impugned decrees and judgments suffer from patent illegality, misappreciation of evidence, and erroneous application of settled principles governing enforcement of contracts relating to immovable property.

2. The case of the appellant–plaintiff, as pleaded in the plaint, is that the defendant, being owner of the suit land, entered into an agreement to sell dated 28.02.1989 in favour of the appellant at the rate of ₹7,500/- per kanal and received a sum of ₹5,000/- as earnest money. It was agreed that the sale deed would be executed on or before 31.05.1989 upon payment of the balance sale consideration.

2.1. The appellant asserted that he had always been ready and willing to perform his part of the contract and, accordingly, remained present in the Court complex on the stipulated date along with the balance sale consideration and attesting witnesses for execution and registration of the sale deed. However, despite repeated requests, the defendant avoided performance of the agreement on one pretext or another and ultimately failed to execute the sale deed, thereby committing breach of the



contractual obligations. The appellant thereafter got his presence recorded by swearing an affidavit before the Sub Registrar.

2.2. On the basis of the aforesaid averments, the appellant instituted the suit seeking specific performance of the agreement to sell dated 28.02.1989 and, in the alternative, recovery of ₹20,000/- along with all consequential reliefs permissible in law.

3. Upon service of notice, the defendant entered appearance and contested the suit by filing a written statement raising preliminary objections, *inter alia*, with regard to the maintainability of the suit in its present form and alleging that the plaintiff, by his own act and conduct, was estopped from instituting the present proceedings.

3.1. On merits, the defendant admitted the execution of the agreement to sell dated 28.05.1989 in respect of the suit land in favour of the plaintiff at the rate of ₹7,500/- per kanal, as well as the receipt of ₹5,000/- towards earnest money. However, it was specifically pleaded that on the stipulated date fixed for execution and registration of the sale deed, i.e. 31.05.1989, the plaintiff was neither ready nor willing to perform his part of the contract, allegedly on account of lack of requisite funds. Although the defendant admitted that he had sold his tractor to one Rajinder Kumar on the said date and that the relevant transaction documents were attested by Balbir Raj and Kewal Krishan, it was asserted that the plaintiff never approached him with the balance sale consideration nor demonstrated any genuine intention to get the sale deed executed in terms of the agreement. It was further averred that, owing to the plaintiff's



failure to perform his contractual obligations within the stipulated period, he had forfeited and lost all rights flowing from the agreement in question.

4. Upon a comprehensive examination of the pleadings and the rival assertions advanced by the parties, the learned trial Court framed the following issues for determination in order to effectively adjudicate the controversy involved in the present suit:-

1. Whether the plaintiff has been ready and willing to perform his part of the agreement ?OPP.
2. Whether the plaintiff is entitled to specific performance?OPP.
3. If issue No.2 is not proved, whether the plaintiff is entitled to damages. If so, to what amount ?OPP.
4. Whether the suit is not maintainable in the present form? OPD.
5. Whether the plaintiff is estopped by his act and conduct to file the present suit?OPD.
6. Relief.

5. After the settlement of issues, adequate and effective opportunities were afforded to both parties to lead their respective oral as well as documentary evidence. Upon an exhaustive appraisal of the pleadings, evidence, and material available on record, the learned trial Court declined the relief of specific performance of the agreement to sell dated 28.02.1989. However, the learned trial Court granted the alternative relief by directing refund of the earnest money amounting to `5,000/-, which had been paid by the plaintiff to the defendant at the time of execution of the agreement.

5.1. Aggrieved by the aforesaid findings, the appellant/plaintiff preferred an appeal before the learned First Appellate Court. The learned First Appellate Court, after reappreciating the entire evidence and



examining the findings returned by the learned trial Court, dismissed the appeal while observing that the learned trial Court had rightly adjudicated the controversy in accordance with the evidence and circumstances brought on record and that the judgment and decree under challenge did not suffer from any illegality, perversity, or material infirmity warranting interference. Consequently, the findings recorded by the learned trial Court were affirmed in toto.

5.2. Dissatisfied with the concurrent findings recorded by both the learned Courts below, the appellant/plaintiff has instituted the present RSA before this Court.

6. The present appeal was admitted for regular hearing vide order dated **20.11.1997**, whereupon notice was issued to the respondent, who entered appearance through counsel and contested the appeal. For the purpose of effective and comprehensive adjudication of the controversy involved, the complete record of the Courts below was requisitioned and the same is available on the DMS for consideration.

7. I have heard learned counsel for the parties at considerable length and have bestowed my thoughtful and anxious consideration upon their respective submissions in the light of the pleadings, evidence adduced on record, and the concurrent findings returned by the learned Courts below.

8. So far as the scope and ambit of the present Regular Second Appeal is concerned, it is now a settled proposition of law that second appeals arising within the States of Punjab and Haryana are governed by Section 41 of the Punjab Courts Act, 1918 and are not confined to the



restrictive parameters of Section 100 of the Code of Civil Procedure, 1908. Reference in this regard may be made to the authoritative pronouncement of the Hon'ble Supreme Court in ***Pankajakshi (Dead) through LRs and others vs. Chandrika and others, (2016) 6 SCC 157***, which has subsequently been followed in ***Kirodi (since deceased) through LRs vs. Ram Parkash and others, (2019) 11 SCC 317*** and ***Satender and others vs. Saroj and others, 2022(12) Scale 92***. In view of the law laid down in the aforesaid judgments, formulation of a substantial question of law is not a sine qua non for adjudication of the present appeal.

9. Learned counsel for the appellant has contended that the learned Courts below have erroneously placed reliance upon a judgment of this Court wherein it was held that failure on the part of the plaintiff to tender the balance sale consideration on the stipulated date, coupled with the absence of any offer to purchase stamp papers, would constitute non-compliance with the mandatory requirements of Section 16 of the Specific Relief Act, thereby disentitling the plaintiff from seeking the equitable relief of specific performance on account of lack of readiness and willingness to perform his part of the contract. It is argued that the learned First Appellate Court has misconstrued the settled principles governing Section 16 of the Specific Relief Act and has misread as well as misappreciated the evidence available on record while returning findings regarding the readiness and willingness of the appellant-plaintiff. Learned counsel submits that sufficient and cogent evidence exists on record to establish the continuous readiness and willingness of the appellant-plaintiff to discharge his contractual obligations. It has been argued that the



appellant-plaintiff had reached the office of the Sub-Registrar on the stipulated date along with the requisite balance sale consideration, remained present there till 4:00 p.m., and in order to substantiate his presence, got an affidavit duly attested. Thereafter, he also caused a legal notice to be issued calling upon the respondent-defendant to execute the sale deed in terms of the agreement, thereby unequivocally demonstrating his bona fide intention and consistent willingness to perform his part of the contract.

10. Per contra, learned counsel appearing on behalf of the respondent has contended that no illegality, infirmity, perversity, or jurisdictional error can be attributed to the findings concurrently recorded by the learned Courts below. It is submitted that both the learned Courts, upon a proper appreciation of the pleadings, oral evidence, and documentary material available on record, have rightly arrived at the conclusion that the appellant-plaintiff failed to establish the essential requirement of continuous readiness and willingness to perform his contractual obligations, which is a sine qua non for grant of the equitable relief of specific performance. It is further argued that mere presence at the office of the Sub-Registrar or the subsequent issuance of a legal notice, by itself, cannot constitute conclusive proof of readiness and willingness unless supported by convincing evidence demonstrating financial capacity and genuine preparedness to complete the transaction. Learned counsel thus submits that the findings returned by the learned Courts below are based upon a sound and lawful appreciation of the material on record and do not warrant interference by this Court.



11. The findings recorded by the learned First Appellate Court are contained in paragraph No.10 of the impugned judgment, which reads as under:-

*10. Evidence of the appellant also shows that appellant or his witnesses failed to disclose as to how much amount was with the appellant. Appellant did not state a word that he had tendered the money to the vendor i.e. respondent. No doubt, appellant served notice dated 1.6.89 alleging that he was present before the sub Registrar on 31.5.89 but the other side did not turn to execute the sale deed but in the affidavit exact or approximate amount was 'not mentioned which the app- 11 ant was carrying with him on 31.5.89. In the reply there is clear cut allegation that appellant was not ready with the money. No evidence on the file that after 31.5.89 appellant ever contacted the respondent personally for getting the sale deed executed. Appellant kept on issuing notices and sending rejoinder to the reply. Relief of specific performance is discretionary one. Appellant as a matter of right cannot claim that he was ready and willing to perform his part of the contract. Discretion is with the court and discretion is to be exercised judiciously by taking into consideration facts and changed circumstances as held in **P.V. Joseph' sen Mathew V. N.Kuruuila's son All India Land Laws Reporter Vel-17 Page 363.***

12. The appellant-plaintiff, namely Deepak Kumar, stepped into the witness box as PW-4 and categorically deposed that on 31.05.1989 he had gone to the Court complex for the purpose of getting the sale deed executed in accordance with the terms of the agreement to sell. He further stated that at the Court complex he met Balbir Raj, Kewal Krishan, Bhagoo and Rajinder Kumar. It was deposed that Bhagoo had to receive



consideration in relation to the sale of his tractor to Rajinder Kumar and, in that regard, a written document was executed between them, wherein the plaintiff himself, along with Balbir Raj and Kewal Krishan, had acted as attesting witnesses. A copy of the said document was exhibited as Ex.P2.

12.1. The plaintiff further deposed that he requested Bhagoo to execute the sale deed in terms of the agreement; however, Bhagoo informed him that he would first visit the bank and thereafter complete the requisite formalities. It has been stated that Bhagoo, thereafter, did not return. The plaintiff further testified that he, along with Balbir Raj and Kewal Krishan, remained present in the Court complex awaiting the arrival of the defendant, who failed to appear despite waiting till about 5:00 p.m. He specifically deposed that he was fully prepared and possessed the requisite financial resources necessary for execution of the sale deed on the stipulated date. In order to substantiate his presence at the relevant time and place, after waiting for a considerable period, he got an affidavit prepared and presented the same before the Sub-Registrar-cum-Executive Magistrate, who duly attested it. The said affidavit stands exhibited as Ex.P4.

12.2. During his cross-examination, the plaintiff categorically stated that he was required to incur expenses towards stamp duty and registration charges and had asked Bhagoo to receive the amount from him and procure the requisite stamp papers. However, Bhagoo requested him to wait for some time. Significantly, the plaintiff was not effectively cross-examined with regard to his categorical assertion made during examination-in-chief



that he possessed the requisite amount on the stipulated date and was financially capable of completing the transaction.

12.3. Despite the aforesaid evidence, both the learned Courts below non-suited the appellant-plaintiff solely on the premise that he had failed to formally tender the balance sale consideration to the defendant and, therefore, did not satisfy the requirement of readiness and willingness under Section 16 of the Specific Relief Act. Such an approach, however, does not appear to be in consonance with the settled legal position. Tendering of money to the defendant is not an inflexible or mandatory precondition for establishing readiness and willingness to perform one's contractual obligations. Rather, what is required to be demonstrated is the continuous conduct and bona fide intention of the plaintiff evidencing his preparedness to perform his part of the contract. In this regard, this Court in ***Basheshar Nath v. Radha Kishan, 1993(2) PLR 56***, has held as under:-

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It has been mentioned in paragraphs 5 and 6 of the plaint that on 1.2.1974 the plaintiff-respondent waited for the defendant-appellant in the office of Sub- Registrar Kaithal, along with the balance of sale-price and the necessary amount required for other expenses but the defendant-appellant did not deliberately meet the plaintiff-respondent either in the bazar or in the office of Sub-Registrar, Kaithal, that the plaintiff-respondent then got his presence marked before the Sub-Registrar, Kaithal, through an affidavit duly attested to this effect by the Sub-Registrar, Kaithal, in his capacity as Executive Magistrate IIInd Class, Kaithal, and that the defendant-appellant has deliberately committed the breach of agreement and he is not ready and willing to perform his part on the contract. From



all the pleas, it is evident that the plaintiff-respondent was alleging that he was always ready and willing to perform his part of the agreement. Therefore, it cannot be held that a plea has not been taken by the plaintiff-respondent that he was ready and willing to perform his part of the agreement. Similarly, in his statement he has stated all the above-said facts. The inference is that he was always ready and willing to perform his part of the agreement. As stated above, the plaintiff- respondent has alleged in the plaintiff that he is still ready and willing to perform his part of the agreement and he has also made the same statement. The judgment in Dhanna Singh's case (supra) was rendered in ignorance of the law and, therefore, the said judgment is per incuriam.

14. The judgment rendered in ***Dhanna Singh and another v. Malkiat Singh and another, 1983 PLR 275***, was subsequently held to be *per incuriam* and, therefore, incapable of constituting a binding precedent on the issue under consideration. Furthermore, the Hon'ble Apex Court in ***P. Daivasigamani v. S. Sambandan, 2022 INSC 1070***, while elucidating the principles governing readiness and willingness under the Specific Relief Act, reiterated the settled position of law and observed in paragraph No.18 as under:-

18. *In: Sukhbir Singh v. Brij Pal Singh (1997) 2 SCC 200 this Court had laid down that Law is not in doubt and it is not a condition that the respondents (Plaintiffs) should have ready cash with them. It is sufficient for the respondents to establish that they had the capacity to pay the sale consideration. It is not necessary that they should always carry the money with them from the date of the suit till the date of the decree. The said principle was followed in case of A.*



Kanthamani v. Nasreen Ahmed (2017) 4 SCC 654, in case of C.S.

Venkatesh v. A.S.C. Murthy (2020) 3 SCC 280.

15. It has further been held that the requirement of establishing readiness and willingness is to be construed in its true spirit and substance and not in a rigid or hyper-technical manner based merely upon form or phraseology. In terms of the Explanation appended to Section 16(c) of the Specific Relief Act, the plaintiff is neither required to actually tender the amount to the defendant nor deposit the same before the Court; rather, what is essential is a specific averment and proof demonstrating his performance of, or readiness and willingness to perform, the contract in accordance with its true tenor and legal import.

15.1. In the present case, the appellant-plaintiff has categorically deposed that on the stipulated date he was carrying the requisite amount and remained present at the office of the Sub-Registrar for the execution and registration of the sale deed. As already noticed here-in-above, this material aspect of his testimony remained substantially unchallenged in cross-examination. In such circumstances, there exists no justifiable basis to cast doubt upon the *bona fides* of the appellant-plaintiff or on his continuous readiness and willingness to perform his contractual obligations. The learned Courts below, while recording findings to the contrary, have evidently misread the evidence available on record and have also misapplied the settled legal principles governing Section 16(c) of the Specific Relief Act by treating the formal tender of balance sale consideration as a mandatory prerequisite for establishing readiness and willingness.



15.2. Consequently, the findings recorded by the learned Courts below, particularly those of the learned First Appellate Court regarding the alleged failure of the appellant-plaintiff to prove his readiness and willingness, cannot be sustained in the eyes of law and are accordingly set aside. As a necessary corollary, the present appeal deserves acceptance and is hereby **allowed**. The suit instituted by the appellant-plaintiff seeking possession of the suit property by way of specific performance of the agreement to sell dated 28.02.1989, pertaining to land measuring 05 kanals 05 marlas out of the total land measuring 08 kanals, fully detailed and described in the head-note of the plaint, is hereby decreed, subject to the appellant-plaintiff depositing the balance sale consideration along with interest at the rate of 12% per annum within a period of two months from the date of this decree. Upon such payment, the respondent-defendant shall execute the sale deed in favour of the appellant-plaintiff within a period of one month thereafter and shall also deliver symbolic possession of the suit property in accordance with law.

16. Consequent upon the final adjudication of the principal controversy involved in the present proceedings, all pending miscellaneous applications, if any, shall also stand disposed of by necessary implication. In view of the conclusions arrived at here-in-above, no separate orders are required to be passed in respect thereof, as the same have been rendered infructuous and academic in nature.

(**VIRINDER AGGARWAL**)
JUDGE

20.05.2026
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No