



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

250 RSA-3026-2023 (O&M)
Date of decision: 04.05.2026

Ashok Kumar Gandhi and another ...Appellant(s)

Vs.

Shashi Prabha and others ...Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rajesh Bansal, Advocate
for the appellants.

Mr. Satyam Aneja, Advocate
for the respondent No.1 (on V.C.).

NIDHI GUPTA, J.

CM-10761/C-2023

Prayer in this application filed under Section 5 of the Limitation Act read with Section 151 CPC is for condonation of delay of 99 days in filing the accompanying appeal.

- 2. Heard.
- 3. For the reasons mentioned in the application, the same is allowed and delay of 99 days in filing the accompanying appeal is condoned.

RSA-3026-2023 (O&M)

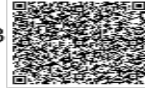
Defendants No.1 and 2 are in Second Appeal has been filed against the concurrent judgments and decrees of the learned District Courts, whereby the suit filed by the plaintiff/respondent No.1 herein for



possession by way of specific performance of Agreement to Sell dated 04.11.2011 and permanent injunction, has been partly decreed for recovery of earnest amount of Rs.9 lacs alongwith 6% interest thereupon.

2. Brief facts of the case as pleaded in the plaint are that the defendants no.1 and 2/appellants had proclaimed themselves to be the owners of the suit property and had expressed willingness to sell the same. Accordingly, defendants had executed an Agreement to Sell dated 04.11.2011 in favour of the plaintiff for total sale consideration of Rs.80 lacs. Defendants No. 1 and 2 had received Rs.9 lacs as earnest money and affixed their signatures in the presence of witnesses. Target date for execution of Sale Deed was fixed for 24.01.2012. On the said date, plaintiff had duly remained present in the office of Sub Registrar, Panipat alongwith balance sale consideration. However, defendants did not turn up. Plaintiff had requested defendants many times to get the Sale Deed executed but to no avail. Panchayat had also been convened twice in which assurance had been given by defendants No.1 and 2 to execute the Sale Deed but still the Sale Deed was not executed in her favour. Plaintiff had even served a legal notice dated 16.01.2015 upon defendants No.1 and 2 and target date was set for 22.01.2015, but still Sale Deed was not executed. Consequentially, present suit was filed on 27.01.2015.

3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Senior Division), Panipat had partly decreed the suit of the plaintiff as follows: -



“19. In view of the aforesaid discussion, a money decree of ₹9,00,000/- is hereby passed in favour of the plaintiff against the defendants no.1 and 2 along with simple interest at the rate of 6% per annum from the date of filing the suit till realization, with costs. Decree sheet be drawn accordingly. File be consigned to record room, after due compliance.”

4. The Civil Appeal filed by appellants was dismissed by the Id. Additional District Judge, Panipat vide judgment and decree dated 7.02.2023. Hence, present second appeal by the defendants No.1 and 2.

5. It is *inter alia* submitted by learned counsel for the appellants that the present suit is barred by limitation as target date for execution of Agreement to Sell was 24.01.2012. The said date has never been extended. However, Civil Suit has been filed only on 27.01.2015. Thus, suit is clearly barred by limitation. Learned counsel refers to the Trial Court judgment; wherein it is clearly recorded that date of institution of the Civil Suit is 27.01.2015. It is submitted that therefore, the Civil Suit is clearly barred by limitation as the plaintiff/respondent No.1 could have filed the suit only latest by 23.01.2015.

6. Learned counsel for the appellants further points out that a specific objection in this regard has been taken by the appellants in their written statement; and then again in their Grounds of Appeal before the learned First Appellate Court. However, despite the specific objection in this regard, the said issue has not been adjudicated upon or dealt with by both the District Courts.

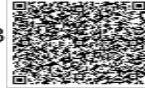


7. It is further submitted that in actual fact, the plaintiff was not ready and willing to purchase the suit land. It is for this reason that the Civil Suit was filed at the fag end after expiry of limitation. Even legal notice is stated to have been served upon the appellants only on 16.01.2015 i.e. at the fag end of expiry of limitation. It is contended that therefore, adverse inference is required to be drawn against the plaintiff as the said acts were so belatedly done only because the plaintiff was not ready and willing to perform the contract.

8. It is further submitted that keeping in view the above facts, in the meantime, appellants had sold the suit land to defendants No. 3 and 4 vide Sale Deed dated 23.05.2012. Even the said Sale Deed has not been challenged by the plaintiff in the present Civil Suit. This is so as the plaintiff was not ready and willing to purchase the suit property. It is submitted that therefore, the impugned judgments and decrees have been passed on an incorrect premise and, deserve to be set aside.

9. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the Id. District Courts be set aside.

10. *Per contra*, learned counsel for the plaintiff/respondent No.1 vehemently opposes submissions advanced on behalf of the appellants and submits that the suit was very much filed within limitation. It is submitted that perusal of the record of the case would indicate that the suit was duly filed on 23.01.2015 and was only registered on 27.01.2015 as indicated at



page No.1 of the judgment of the learned Trial Court. Therefore, contention of appellants that suit is barred by limitation, is factually incorrect.

11. It is further submitted that the appellants have admitted the execution of Agreement to Sell dated 04.11.2011. Appellants have also admitted receipt of Rs.9 lacs as earnest money. Plaintiff had duly proved her readiness and willingness to perform the contract by appearing before the Sub Registrar on target date of 24.01.2012. It is submitted that therefore, in actual fact, suit of the plaintiff ought to have been decreed for specific performance. However, relief of specific performance has been denied to the plaintiff only on the ground that appellants had hastily sold the suit land to defendants No.3 and 4 at the back of the plaintiff vide Sale Deed dated 23.05.2012, which was executed barely 4 months after the target date. He accordingly prays for dismissal of the present Appeal.

12. No other argument is raised on behalf of learned counsel for the parties. I have heard Id. counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of Id. counsel for the appellants.

13. No doubt at page 1 of the judgment dated 11.09.2018 passed by learned Civil Judge (Senior Division), Panipat, it is recorded that instant Civil Suit No. 08 of 2015 was instituted on 27.01.2015. However, learned counsel for the appellants is unable to dispute that as per the Case History of the present Civil Suit received from the ECourts Services website for the Civil Courts, Panipat, it is categorically mentioned therein as follows: -



ECourts Services

Add Case

Case History

Civil Courts, Panipat

Add Note

Case Details

Case Type	Cs
Filing Number	125/2015
Filing Date	23-01-2015
Registration Number	67/2015
Registration Date	27-01-2015
CNR Number	HRPP020001202015

14. From the above facts, it is clear that the Civil Suit was duly filed by the plaintiff within limitation.

15. Perusal of the judgment of learned Trial Court further reveals that learned Trial Court had duly framed an issue No.3 in respect of the limitation as follows:-

“3. Whether the suit of the plaintiff is barred by limitation or not? O.P.D.”

16. Finding of learned Trial Court in respect of issue No.3 is in para 18 of the judgment dated 11.09.2018, which reads as under:-

“18. The onus to prove these issues was upon the defendants. The learned counsel for the defendants has not pressed these



issues during the course of arguments. Hence, these issues are decided against the defendants.”

17. No doubt, the appellants in their Grounds of Appeal filed before the learned First Appellate Court, have duly taken objection with regard to limitation. However, from the above facts, it is clear that the said objection of the appellants is without merit as the suit is very much within limitation.

18. Contention of the appellants that suit was filed at the fag end of the limitation; thereby reflecting that plaintiff was not ready and willing to perform the contract, is also without merit as plaintiff has duly produced her Affidavits of Attendance showing her presence in the office of Sub Registrar on 24.01.2012 and 21.01.2015 Ex.P3 and Ex.P4 respectively. Moreover, learned counsel for the appellants is unable to deny that the appellants have admitted the execution of Agreement to Sell; they have also admitted receipt of Rs.9 lacs by way of earnest money. Readiness and willingness of the plaintiff already stands proved. As such, no error can be found in the money decree passed by the learned District Courts.

19. Relevant findings of learned Civil Judge (Senior Division), Panipat are contained in para 16 of the judgment dated 11.09.2018. The relevant extract of which reads as under: -

“16.....in the present case the defendant no.1 Ashok while stepping into the witness box has admitted about the execution of agreement to sell and the receiving of the earnest money. As the defendant no.1 is admitting qua the execution of agreement to sell, therefore, the plea of the learned counsel for



the plaintiff that in the absence of plaintiff the agreement to sell is not proved cannot be accepted. Further, the defendant no.1 while stepping into the witness box has also admitted that earnest money has been received by him qua the agreement to sell. Thus, there is admission regarding the execution of agreement to sell as well as the payment to the earnest money. Now, the question arises for consideration is whether the plaintiff was willing and ready to perform her part of the contract. To prove the same, the plaintiff has examined PW2 Ram Chander, Clerk and PW3 Meena, Computer Operator who has proved the affidavits Ex.P3 and Ex.P4 respectively which has been executed by the plaintiff to show her readiness and willingness to execute the agreement to sell. The defendant Ashok Kumar while stepping into the witness box as DW1 has also stated that he was also present in the Tehsil on the date 24.01.2012 for the purpose of execution of sale deed but there is no evidence on record to show that if he was present on that date then why he did not get his presence marked. Except for his own bald testimony there is no evidence on record to show that the defendant Ashok Kumar was present in the Tehsil on the date fixed for execution of sale deed. From the evidence brought on record by the plaintiff it is clearly established that she was always ready and willing to execute the sale deed and for this purpose, she has executed affidavits Ex.P3 and Ex.P4, therefore, the plea of the defendant that plaintiff was not ready and willing to execute the sale deed cannot be accepted.....”

20. Learned counsel for the appellants is unable to controvert or dispute the above said facts and findings.



21. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned District Courts below. The present Regular Second Appeal is hereby **dismissed**.
22. Pending applications, if any, stand disposed of.

04.05.2026
Divyanshi

(NIDHI GUPTA)
JUDGE

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