



RSA-4468-2018 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4468-2018(O&M)

Avtar Singh

...Appellant(s)

Vs.

Padam Bhushan

...Respondent(s)

The date when the judgment is reserved	13.02.2026
The date when the judgment is pronounced	18.02.2026
The date when the judgment is uploaded on the website	
Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full Judgment

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Argued by:- Mr. Vijay Lath, Advocate
for the appellant.

Mr. Rajesh Sethi, Advocate
Mr. K.K. Saini, Advocate
Mr. Arun Kumar Biriwal, Advocate
Mr. Anshuman Sethi, Advocate
for the respondent.

NIDHI GUPTA, J.

The defendant is in second appeal against the concurrent judgments and decrees of the learned Courts below whereby suit filed by the plaintiff/respondent for possession as owner by way of specific



performance of the Agreement to Sell dated 11.02.2009 with consequential relief of permanent injunction, has been decreed by both the Courts below.

2. Brief facts of the case as pleaded in the plaint are that the defendant was owner in possession of the house as described in the head note of the plaint. The defendant had entered into an Agreement to Sell dated 11.02.2009 with the plaintiff for total sale consideration of Rs.3,80,000/-; of which earnest amount of Rs.2,25,000/- was admittedly paid to the appellant in the presence of attesting witnesses at the time of execution of Agreement. The target date for execution of Sale Deed was 25.03.2009. It was alleged in the plaint that at the request of the defendant, the date for execution of Sale Deed was extended on 25.03.2009 to 08.06.2009 and Endorsement to this effect was made on the back page of the Agreement. On 08.06.2009 again, at request of the defendant, date of execution of the Sale Deed was further extended to 10.08.2009 in the presence of witnesses. Extension Notes to this effect were got typed on the second page of the Original Agreement. The plaintiff had duly remained present in the office of the Sub-Registrar at Chamkaur Sahib on 10.08.2009 with balance sale consideration, registration expenses and other miscellaneous expenses. However, after making request for extension of agreement to 10.12.2009, the defendant had suddenly slipped away from Tehsil Chamkaur Sahib on the excuse that he would return after answering



call of nature, but he did not turn up whereas the witnesses of the plaintiff were present till 5 pm. As per the clause in Agreement, in case the defendant fails to execute Sale Deed then the plaintiff had right to get the Sale Deed executed through Court. It was further averred that in the Agreement there was a clause that if defendant fails to perform the contract, then he will pay double the amount of earnest money; and if plaintiff fails to perform his part of the Agreement, then earnest money shall stand forfeited. It was further averred that the plaintiff is ready and willing to perform his part of the Agreement and in future also he would be ready and willing to perform his part of the Agreement. Prayer for alternative relief for refund of double the earnest money in terms of the Agreement was also made. It was further pleaded that the plaintiff had approached the defendant on 10.08.2009 and requested him to execute the Sale Deed. However, the defendant had failed to do so. With these pleadings, present suit was filed on 28.08.2010.

3. Upon appraisal of pleadings and oral and documentary evidence adduced by the parties, the learned Civil Judge (Senior Division), Rupnagar had decreed the suit of the plaintiff for specific performance vide judgment and decree dated 08.08.2017, as follows: -

“18. Thus, in view of the above discussion and as a corollary to the findings returned, the suit of the plaintiff stands Decreed and plaintiff is held entitled to the specific performance of the



contract dated 11-02- 2009 executed by the defendant and further defendant is directed to execute the sale deed in favour of the plaintiff within two months from the date of this order after getting the balance sale consideration and adjustment of the earnest money already received, failing which plaintiff shall be entitled to get the sale deed executed in his favour through the process of Court. Further, defendant is permanently restrained from alienating the suit property in any manner. Decree Sheet be prepared and file be consigned to the judicial record room."

4. The Civil Appeal filed by the defendant was dismissed with costs by the learned District Judge, Rupnagar vide judgment and decree dated 17.02.2018. Hence, present Second Appeal by the defendant.

5. It is inter alia submitted by learned counsel for the appellant that it is admitted that the appellant/defendant had entered into an Agreement to Sell dated 11.02.2009 to sell his house to the plaintiff/respondent for total sale consideration of Rs.3,80,000/-; of which Rs.2,25,000/- was received as earnest money on 11.02.2009. It is also admitted that target date for execution of Sale Deed was fixed for 25.03.2009 on which date balance sale consideration of Rs.1,55,000/- was to be paid. Learned counsel submits that however, it is vehemently denied that the execution of Sale Deed was extended up to 08.06.2009 or thereafter at the request of the appellant. It is submitted that it is the clear



case of the appellant that on target date of 25.03.2009, the appellant had gone to office of Sub-Registrar for execution of Sale Deed. The appellant had duly got his presence marked before the Sub-Registrar and his Sworn Affidavit to that effect is on record as Mark A. However, it was the respondent who had failed to reach there with balance sale consideration. It is submitted that the correct facts are that it was only in the evening when he was returning from the office of Sub-Registrar that the plaintiff met him and told him that he was not having balance sale consideration and requisite expenses for stamps etc. for execution of Sale Deed, so he requested for extension of time; but the appellant had vehemently and emphatically refused to extend the date. It is contended that therefore, as respondent failed to pay the balance sale consideration and to get the Sale Deed executed, the suit could not have been decreed.

6. Ld. counsel further submits that it is the case of the plaintiff that on 25.03.2009, extension for execution of Sale Deed to 08.06.2009 was written in the Tehsil Complex. Ld. counsel argues that if the appellant was present in Tehsil Office then what prevented the plaintiff to get the Sale Deed executed after paying balance sale consideration of Rs.1,55,000/-. It is contended that from this fact it is proved that the plaintiff was not having ready balance sale consideration to pay to the defendant on 25.03.2009. It is submitted that the same is true for all the dates of extension from



08.06.2009 to 10.08.2009 to 10.12.2009. It is further pointed out that the alleged extension dated 10.08.2009 does not bear the signatures of the defendant or any other witness. The story concocted by the plaintiff that defendant had slipped away, is untrue and without basis. It is submitted that in any event, the above-said pleas raised by the plaintiff are in contradiction of the averments made by him in the plaint.

7. Ld. Counsel for the appellant further submits that in the written statement the appellant has set up the defence that when on 25.03.2009 after getting his presence marked before the Sub Registrar, the appellant-defendant was proceeding towards his house when respondent-plaintiff met him and requested him (defendant) to extend the date for execution of sale deed, but the appellant refused to extend the date. Thereafter the respondent used the police force by conniving with Satnam Singh Station House Officer (S.H.O.), Chamkaur Sahib and Maninder Singh, Deputy Superintendent of Police (D.S.P.), Chamkaur Sahib and the appellant was called in the police station, therein he was pressurized to return the sum of Rs.2,25,000/- to the respondent, but the appellant refused to pay the same as respondent had failed to execute the sale deed and his earnest money therefore, stood forfeited in terms of the Agreement. The police threatened the appellant and under threat coercion the respondent in connivance with Satnam Singh Station House Officer, Chamkaur Sahib and



Maninder Singh, Deputy Superintendent of Police, Chamkaur Sahib obtained signatures of the appellant on back side of the stamp papers of Agreement to sell and those signatures have been converted into alleged extension of period for execution of sale deed by the respondent-plaintiff.

8. Ld. Counsel for the appellant further submits that the plaint of the respondent shows that he claims his right on the basis of extension of target date, which according to him were endorsed by the parties on the back of Agreement to Sell (Ex.P-1). But on the other hand the appellant-defendant in the written statement has specifically pleaded that the respondent failed to get executed the sale deed on the target date i.e. 25.03.2009 and the alleged signatures on the endorsement with regard to extension of time of target date were obtained by the respondent by conniving with Satnam Singh, Station House Officer (S.H.O.), Chamkaur Sahib and Maninder Singh, Deputy Superintendent of Police (D.S.P.), Chamkaur Sahib by using threat and force. The matter was also reported to Human Rights Commission, in view of apprehension of his arrest, the appellant also filed an application for bail before the Id. Additional Sessions Judge. Rupnagar and he has also filed a Civil Suit against the respondent as well as Station House Officer (S.H.O.), Chamkaur Sahib and Deputy Superintendent of Police (D.S.P.), Chamkaur Sahib by making them parties.



9. Learned counsel for the appellant further submits that suit of the plaintiff could not be decreed also on the ground that plaintiff has not tendered the relied-upon documents as required as per provisions of Sections 61 and 62 of the Indian Evidence Act read with Order 13 Rule 4 CPC. It is contended that PW1 attesting witness Harmeet Singh; PW2 attesting witness Bawa Singh; and PW3 plaintiff himself, have duly tendered in their respective Affidavits of examination-in-chief. However, as per the above-said provisions, it was incumbent upon the plaintiff and the said witnesses to produce the Agreement as required under Section 62 of the Indian Evidence Act and show the original to the Court; whereupon the Court has to record that the said Agreement has been seen, and returned. It is submitted that this legal requirement has not been complied with as all the above-said three witnesses have not produced either the Agreement to Sell or the alleged Extensions as required as per law, and therefore, suit of the plaintiff could not have been decreed.

10. It is further submitted that the alleged Extensions are not written by a registered Deed Writer; and therefore, there is no entry in the Register of the Deed Writer regarding the said extensions. In this regard, learned counsel relies upon judgment of this Court in **Gurkaran Singh v. Jaspal Singh, (Punjab and Haryana) : Law Finder Doc ID # 1293178**, wherein it is held that:-



“D. Specific Relief Act, 1963 Sections 16 and 20 Specific performance - Execution of alleged agreement to sell from a typist - Determination and duty of typist - Held, though a typist is not required to maintain a register, but however, once a typist is scribing documents, then such typist is performing the duties/functions of a professional scribe and hence, the typist ought to have maintained a register which a licensed professional scribe is required to maintain.”

11. It is further submitted that the plaintiff has abysmally failed to prove his readiness and willingness to perform the contract; inasmuch as no legal notice was served upon the defendant for one year. Furthermore, even as per the plaintiff, the last target date was 10.08.2009, however, suit has been filed more than one year thereafter on 19.08.2010. Ld. counsel contends that all of the above-said factors in themselves, go to prove that the plaintiff did not possess the balance sale consideration to perform the contract. Furthermore, plaintiff has failed to demonstrate availability of balance sale consideration. What is more the plaintiff himself while appearing as PW3 has admitted that there was no amount in his bank account on the dates when the target date was extended. PW3 plaintiff has stated that *“when the target date was extended on those dates also I was having no money in my bank account”* (at page 126 of the LCR).

12. Learned counsel further elaborates to submit that to show his readiness and willingness, the plaintiff has failed to prove any bank statement,



register or bank book showing that the balance amount was available with him on target date of 25.03.2009. The plaintiff has therefore failed to show his readiness to perform the Agreement. It is submitted that in **Shenbagam v. K.K. Rathinavel (SC) : Law Finder Doc ID # 1934930**, wherein it is held that:-

*“15. Similarly, in **His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar, (1996) 4 SCC 526**, a two-judge Bench of this Court observed that ‘readiness’ means the capacity of the plaintiff to perform the contract which would include the financial position to pay the purchase price. To ascertain ‘willingness’, the conduct of the plaintiff has to be properly scrutinised. The Court noted:*

"2. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform his part of the contract, the conduct has to be properly scrutinised. [...] The factum of readiness and willingness to perform the plaintiff's part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract. The facts of this case would amply demonstrate that the petitioner/plaintiff was not ready nor had the capacity to perform his part of the contract as he had no financial capacity to pay the



consideration in cash as contracted and intended to bid for the time which disentitles him as time is of the essence of the contract."

(emphasis supplied)"

13. On the other hand, readiness and willingness of the appellant to perform the contract, has been admitted to by PW1 Harmeet Singh himself, who has stated in his cross-examination that (at page 103 of the LCR) *"it is correct that as per Agreement on 25.03.2009 after paying the balance amount Sale Deed was to be executed on 25.03.2009. Avtar Singh went to Tehsil Complex to execute the Sale Deed."*

14. It is submitted that the contention of the respondent that it was the appellant who was not ready and willing to perform the Agreement, is ludicrous as the appellant was in need of money. In actual fact, the appellant had visited the house of the plaintiff many times. This has been admitted by the plaintiff in his cross-examination (at page 191 of the LCR) wherein the plaintiff has admitted that he had gone to the house of the appellant for extension of time. It is accordingly prayed that in view of the above facts primarily on the ground that the plaintiff had miserably failed to prove availability of balance sale consideration and had therefore, failed to prove his readiness and willingness as required as per law, the suit of the plaintiff could not have been decreed for specific performance.



15. Learned counsel further submits that in Para 2 of his written statement, the appellant had clearly raised all of the above objections. However, the same have not been considered by the Id. District Courts even though no replication was filed by the plaintiff. It is contended that in terms of Order 8 Rule 5 CPC, when an averment is made by a party and the same is not denied by the opposite party, then same is deemed to be admitted.

16. Per contra, learned counsel for the respondent vehemently opposes the submissions made on behalf of the appellant and submits that in civil proceedings, the Court is to examine the entire journey from the inception of the dispute till culmination, on the preponderance of probabilities. In this exercise, the endeavour of the Court is to reach the Truth. It is submitted that Truth is to be deciphered from the pleadings of the parties, the evidence brought on record by the parties, and from the conduct of the parties. It is reiterated that there is no dispute with regard to the Agreement to Sell and the earnest money received. As regards, extension of time, learned counsel submits that the correct facts are that the appellant was constructing his house and the earnest amount given by the plaintiff was used by the appellant for that purpose. The appellant has admitted in his cross-examination that construction of his house was ongoing and therefore, extension of time was required. Learned counsel points out that if the buyer/plaintiff wants extension of time, the



defendant/seller will not permit it unless additional amount is also given to the appellant. However, in the present case, admittedly, no such amount was sought by the appellant on the three extensions sought by him. It is also submitted that all statements made by the appellant about being coerced into putting his signatures on the extension of time are manufactured and concocted. It is pointed out that even no Handwriting Expert was got examined by the appellant to prove his said contention.

17. In regard to the readiness and willingness, Id. counsel argues that total sale consideration was admittedly Rs.3,80,000/- of which the plaintiff had paid Rs.2,25,000/- in cash on date of Agreement itself. Thus, the plaintiff had paid a major part of the earnest amount 'in cash' to the defendant on the date of Agreement itself which fact is not disputed. Learned counsel further submits that as regards availability of balance sale consideration, proof of same was not required as admittedly, the plaintiff had paid the earnest amount also in cash. In any event, no such suggestion was put by the appellant to the respondent at any stage. Moreover, the respondent has two sons and only minimal amount of only about Rs.1,55,000/- was remaining, which would have been paid by the respondent at the time of execution of Sale Deed. Furthermore, in cross-examination, the respondent had put question to the appellant that is the appellant ready to execute the Sale Deed to which the appellant had



categorically refused. Learned counsel contends that this clearly establishes that in actual fact, it was the appellant who was not ready and willing to perform the contract.

18. It is further submitted that the fact that the appellant was not ready and willing to perform the contract, is also proven from the fact that the Affidavit of Attendance (Mark A) produced by the appellant, is not an exhibited document. On the contrary, the respondent has duly placed on record the Affidavit of Attendance dated 10.08.2009 as Ex.P2. It is submitted that it is also to be noted that the stamp paper for execution of Sale Deed was admittedly purchased by the defendant on 24.03.2009; and not on the target date of 25.03.2009. It is contended that from this fact, also it can be deciphered that the appellant was not ready and willing to perform the contract.

19. It is further submitted that in any event, conduct of the parties is also to be seen while granting discretionary relief of specific performance. In the present case, no weightage can be given to any statement made by the appellant on account of the fact that the appellant has even denied his signatures on the written statement. It is further submitted that the plea taken by the appellant in regard to Sections 61 and 62 of the Indian Evidence Act, etc. were not taken by the appellant either before the learned trial Court or before the First Appellate Court or even in the Grounds of



Appeal herein. It is argued that there is a distinction between a legal objection and legal plea. It is submitted that it is only a legal plea that can be taken at any stage based on the material already on record; whereas a legal objection cannot be taken at any stage. In the present case, the appellant had failed to raise any objection to this effect before the District Courts. As such, this objection is not available to the appellant at this stage.

20. It is lastly submitted that concurrent findings of fact have been returned by both the Courts below which cannot be interfered with by this Court in Second Appeal. Accordingly, dismissal of the appeal is prayed for.

21. Learned counsel for the appellant rebuts the submissions of the respondent by submitting that the appellant is not residing in the suit house therefore, inability to vacate the same and to seek extension of time does not arise. It is further submitted that cross-examination of the appellant was in 2015, which is more than six years after the execution of the Agreement to Sell and therefore, at that stage, the appellant was not willing to perform the contract and no adverse inference can be drawn against the appellant on that account. It is also argued that the respondent has failed to pinpoint any pleading or argument to show his readiness to perform the contract. It is reiterated that present appeal be allowed and impugned judgments and decrees of both the District Courts be set aside.



22. No other argument is made on behalf of the parties. I have heard learned counsel and given my thoughtful consideration to the rival submissions advanced on behalf learned counsel for the parties; and examined the District Court records in minute detail.

23. The execution of Agreement to Sell dated 11.02.2009 (Ex.P1); as also receipt of earnest amount of Rs.2,25,000/- in cash out of the total sale consideration of Rs.3,80,000/- have been admitted by the defendant. The target date for execution of sale deed was set for 25.3.2009. It is the contention of the appellant that on the said date he was present before the Sub-Registrar for execution of sale deed; and in actual fact, it was the plaintiff who had sought extension of time as he did not have the balance sale consideration.

24. However, the above said plea of the appellant is falsified as both the District Courts have returned concurrent findings of fact to the effect that the appellant has been unable to prove his presence before this Sub Registrar on 25.3.2009. The claim of appellant-defendant of marking his presence on 25.03.2009 at Sub-registrar's Office stands falsified by the fact that stamp papers were purchased on 24.03.2009, thereby establishing his pre-planning. The defendant in his cross-examination has admitted that he had purchased the stamp papers on 24.03.2009 and that he did not get scribed the stamp papers on 24.03.2009. DW3 Paramjit, Stamp Vendor had



duly produced Stamp Paper Issuing Register from 24.06.2008 to 02.07.2009 in which at entry bearing serial No.2317 dated 24.03.2009 defendant was shown to have purchased stamp paper where the defendant had also put his signatures in English and identified the same as Ex.D1.

25. The fact that defendant was not present before the Sub Registrar on 25.3.2009 is also established from the evidence of DW-2 Jaspal Kaur, Clerk in Office of Tehsildar, who had produced official record/ Register showing Affidavit entries from 25.8.2008 till 12.10.2009 and the same showed no affidavit entry of the appellant on that date. Hence, presence of the defendant in the Tehsil office on 25.03.2009 is not proved.

26. On the other hand, it is the plea of the respondent/plaintiff that the extension of time was sought by the appellant as he was constructing his house which was not yet complete on 25.3.2009. Therefore, appellant could not vacate the suit premises by said date and had sought extension of time. This plea of the plaintiff is proved from the fact that the defendant has admitted in his cross-examination that on 25.3.2009, his house was under construction. As per the record, the original date for execution and registration of sale deed was extended from 25.03.2009 to 08.06.2009 by way of written endorsement Ex.P1/B made by defendant on the back of the Agreement. Most importantly, defendant has admitted his signatures not just on the Agreement (Ex.P1); but he has also admitted his



signatures on the Endorsement dated 25.03.2009 Ex.P-1/B, whereby date for execution of Sale Deed was extended to 08.06.2009. Thus, the plea of the appellant that sale deed could not be registered on 25.3.2009 despite his presence in the Tehsil (shown to be disproved above), as plaintiff did not have balance sale, consideration, is proved to be incorrect.

27. Again on 08.06.2009, the date for execution of sale deed was extended to 10.08.2009 at the asking of the defendant. An endorsement Ex.P1/A to that effect was made on back side of the Agreement signed by both the parties. On 10.08.2009 the plaintiff remained present before the Sub-registrar, Chamkaur Sahib along with the balance sale consideration, registration expenses and other miscellaneous expenses and remained present there from the opening hour of the office of Sub-registrar. It is the case of the plaintiff that the defendant again approached the plaintiff to further extend the time till 10.12.2009. Accordingly, an extension note was typed on the second page of the agreement in the presence of witnesses namely Sohan Singh and Harmit Singh. The defendant went outside the premises to attend to a call of nature; however, he never returned to the registering authority's office at Tehsil Chamkaur Sahib. The witnesses and the plaintiff were present there till 5 p.m. However, the defendant never returned to the said premises. Therefore, the extension note could not be duly signed by the defendant.



28. The correctness of the above version of events as given by the plaintiff is proved from the fact that on apprehending the mala-fide intention of the defendant due to his sudden disappearance, the plaintiff had sworn an affidavit (Ex-P-2) on the same day i.e. 10.08.2009 for marking his presence at the office of Sub-Registrar Chamkaur Sahib. The said affidavit was duly attested by the Executive Magistrate-cum-Tehsildar. Thus, it is clear that the plaintiff always remained ready and willing to perform his part of contract.

29. It is to be noted that the above extensions were at the instance of the defendant is also proved from the evidence of PW-1 Harmeet Singh who is an attesting witness to the Agreement to Sell. He is also a witness to the endorsements extending the dates on 25.03.2009, 08.06.2009 and 10.08.2009. His testimony supports the plaintiff's version consistently. PW-2 Bawa Singh is the marginal witness to the affidavit dated 10.08.2009. Though he made inconsistent statements in cross-examination, his evidence does not demolish the plaintiff's case, particularly when documentary evidence and PW-1 prove the date extensions. It is my view that this issue stands clinched from the factum of Ex.P-2 i.e. the Affidavit dated 10.08.2009 executed by the plaintiff and duly attested by the Tehsildar which corroborates the plaintiff's presence and readiness on the stipulated date. It is again the concurrent finding of fact on record that on



10.08.2009, the respondent-plaintiff remained present before the Sub-Registrar, Chamkaur Sahib with balance sale consideration. This is proved from the sworn Affidavit (Ex.P2) executed by the plaintiff on the same day, duly attested by the Tehsildar, marking his presence and readiness. As noted above, appellant has failed to produce any such affidavit proving his presence before Sub Registrar on the stipulated date.

30. There is also merit in the contention of the respondent that if the extensions had indeed been sought by the respondent, then appellant being seller, would have demanded that some more payment be made to him each time. Admittedly, there is nothing on record to show that any such demand was made by the appellant at any stage. It is but trite that no seller would accede to so many extensions without demur and without demanding some more payment.

31. The allegations of the appellant in his written statement to the effect that the above said signatures of the appellant on the endorsements were obtained by the respondent under police pressure does not inspire the confidence of this Court as, appellant in his evidence has denied his signature on the written statement itself. The record is replete with the mutually destructive pleas taken by the defendant from time to time. For instance, at one stage, defendant has denied all signatures; and at another stage, he admits signatures on the writing dated 25.03.2009 extending the



time. He even denies his own signatures on pleadings and Court statements. Such inconsistent and shifting stands render the defendant's testimony unreliable and unworthy of credence. It is therefore clear that the appellant has not come clean before the Courts; and has changed his story from time to time merely with the view to avoid execution of the sale deed; and therefore, his version cannot be relied upon. Moreover, although Defendant has alleged police pressure but has also simultaneously admitted that he withdrew the civil suit filed by him against the police and plaintiff. He failed to explain the reason for such withdrawal. Defendant has also admitted that he took no further action after an adverse SSP report on his Human Rights complaint. Thus, this plea of the appellant is also falsified.

32. Plaintiff as PW-3 proved that no bank withdrawal or Tehsil appearance on 25.03.2009 occurred because the defendant himself sought extension due to ongoing construction of his Kothi. This explanation stands corroborated by the defendant's own admission in cross-examination that his Kothi was under construction on 25.03.2009. Defendant himself also admitted that construction of his new kothi delayed execution, thereby supporting the plaintiff's version.

33. From the above discussion, it is clear that the respondent-plaintiff conclusively proved the aforesaid extensions of time; as also his readiness and willing through: PW-1 Harmeet Singh, attesting witness to



agreement and endorsements; Documentary endorsements Ex. P1/A & Ex. P1/B; Affidavit Ex. P2 dated 10.08.2009; admissions of defendant himself that his kothi was under construction necessitating extension of time; and receipt of substantial amount of sale consideration as earnest money.

34. On the other hand, appellant-defendant failed to show his readiness & willingness to get the sale deed executed in favor of respondent-plaintiff. Appellant-defendant failed to prove the alleged coercion and undue pressure upon him.

35. I am in agreement with the submission of learned counsel for the respondent that all attendant circumstances including conduct of the parties have to be taken into consideration while deciding disputes such as the present one. In the present case, the case set up by the appellant, and all arguments raised by the appellant have to be considered in the background of the/are rendered nugatory in view of the findings of the learned Civil Judge in Para 16 of the judgment dated 08.08.2017, which reads as follows:-

“16. Now, putting into brief, it comes out that agreement between the parties executed on 11-02-2009 and receipt of the earnest money to the tune of Rs.2.25 lacs is not denied by the defendant. The bone of the contention between the parties is that the plaintiff claims that on 25-03-2009, the date was extended to 08-06-2009 for the registration of the sale deed and thereafter, from 08-06-2009 to 10-08-2009 regarding



which there are endorsements signed by the defendant on the back side of the agreement in question and while on 10-08-2009, the date was extended to 10-12-2009 but the defendant ran away from the spot and did not sign the last noting. While the defendant has taken a stand that date was never extended from 25-03-2009, he never met the plaintiff after 25-03-2009, his signatures were taken on the blank papers under the pressure of the police and the noting regarding the extension of the dates are forged and fabricated later on by the plaintiff. Now, the plaintiff has examined Harmeet Singh as PW-1 who is witness to the agreement to sell as well as the noting whereby dates were extended from 25-03-2009, 08-06-2009 and 10-08-2009. Further, the plaintiff has also produced the affidavit got attested by him from Tehsildar on 10-08-2009. Further, the plaintiff has examined PW-2 Bawa Singh who is stated to be the marginal witness of the affidavit dated 10-08-2009 but he has been shattered in the cross examination because he has stated on entirely new terms contending that the agreement was executed in front of him and he went with the plaintiff on 25-03-2009 for getting the presence marked while he is giving the evidence regarding the marking of the presence of plaintiff on 10-08-2009. The plaintiff, further, examined himself as PW-3 and in the cross-examination, he has been asked as to whether he withdrew any amount on 25-03-2009 and further whether he is income tax assessee but there is explanation by the plaintiff to the effect that on 25-03-2009, he did not withdraw the amount from bank nor marked his presence in the Tehsil because the defendant requested for the extension



of the time because of the construction of his kothi and the writing was effected and date was extended to 08-06-2009. The defendant has also admitted in his cross-examination that on the said date, his kothi was under construction. Now, coming to the other aspect of the matter whereby it has been alleged that due to the police pressure, the defendant was forced to sign the writing/unwritten papers which were later on misused. Now, first of all, it is pertinent to mention that the defendant in his cross-examination, which is contradictory in nature, has stated that he has withdrawn the case filed against the police and the plaintiff but he cannot tell as to why he has withdrawn the said suit. Further, he did not initiate any other action against the police or the plaintiff after the withdrawal of that suit. The application filed by him before the Human Rights Commission against the plaintiff and police was marked to SSP, which has given his report against the defendant. No further action was taken by the defendant after this report of the SSP. Interestingly, the defendant has tried to prove that he got marked his presence on 25-03-2009 but he purchased the stamp papers for the same on 24-03-2009 itself and more so, the defendant has admitted that the construction of his kothi was going on. The defendant has even denied his signatures on the written statement dated 27-09-2010 at point-A and B and even on his statement at point-C dated 09-01-2017. In one part of his cross-examination, he has denied all his signatures including signatures under the noting/writings for extension of time and on the another part of his cross-examination, he has admitted his signatures on the writing for extension of the time



executed on 25-03-2009. He has admitted his signatures at page No.3 of the agreement. He volunteered that police got his signatures on some written/unwritten papers. He is not ready to execute the sale deed even, after getting the sale consideration. Now, on the one hand, the witness is denying his all the signatures on the agreement dated 11-02-2009 and on the other side, he has taken a stance that his signatures taken on the written/unwritten papers were later on forged for the purpose of extending the time and on the third hand he is taking the stance that signatures under the writing for extension of time on 25-03-2009 are his signatures. Thus, the stances of the defendant are contradictory in nature. It appears that he is beating about bush to wriggle out himself from the agreement in question, even after getting the amount of Rs.2.25 lacs. Even, DW-2 Jaspal Kaur who brought the summoned record regarding the affidavit entry from 25-08-2008 to 12-10-2009 would show that there is no entry in the register of affidavit of Avtar Singh according to the record. That would show that story of the defendant having got marked his presence in the office of Sub-Registrar on 25-03-2009 is not proved. Now, the second aspect is whether the plaintiff was ready and willing to perform his part of the agreement. Now, first of all, it comes out that as per the record, the date has been extended twice, once on 25-03-2009 and then to 08-06-2009 and further from 08-06-2009 to 10-08-2009. It has been also alleged that on 10-08-2009, the date was extended to 10-12-2009 but the defendant ran away from the spot and did not sign the same. But as far as the period from 25-03-2009 to 10-



08-2009 is concerned, that has been duly proved to have been extended by examination of witnesses. Now, although, Bawa Singh who is stated to be the witness of the affidavit of the plaintiff executed on 10-08-2009 could not depose properly but still even, if the affidavit dated 10-08-2009 is proved, yet there is one writing although unsigned which shows that even on 10-08-2009, the date was to be extended to 10-12-2009 and the defendant was not ready even on that day. Moreso, the defendant himself admitted in his cross-examination that the construction of his new kothi took long time and due to the reason of the construction of kothi, as per plaintiff, the date was extended from 25-03-2009 on the request of defendant. Even, otherwise, the plaintiff having been paid major chunk of the consideration amount, there was no reason for him to back out for the meager amount left behind for the completion of the agreement in question. As such, the agreement to sell is admitted one and the story of taking of the signatures of the defendant on the blank papers having been found unbelievable and further the plaintiff being ready and willing to perform his part and getting sale deed executed in his favour, issues No. 1 to 3 are decided in favour of the plaintiff.”

36. Learned counsel for the appellant has argued that no doubt, the appellant has denied his signature on the written statement. However, it has been further argued that even if that be so and even assuming that defendant had not filed any written statement, it was incumbent upon the plaintiff to prove his own case; and case of the plaintiff has to stand on its



own legs as held by the Hon'ble Supreme Court in **State of Madhya Pradesh v. Nomi Singh (SC) : Law Finder Doc ID # 659373.**

37. However, in the present case, it is established from the discussion above the plaintiff has succeeded in proving his case. Admittedly, there are concurrent findings of both the District Courts to the effect that: the Extensions of time from 25.03.2009 to 10.08.2009 stand duly proved by endorsements, oral evidence and affidavit dated 10.08.2009; Time was extended repeatedly at the defendant's request; Readiness and willingness of the plaintiff is fully established; Plaintiff had already paid a substantial portion of consideration; There was no reason for the plaintiff to back out from the agreement. Thus, defendant deliberately avoided execution after receiving earnest money.

38. Last but not the least, the findings regarding execution of agreement to sell, extension of time, readiness and willingness of the plaintiff, and breach by the defendant are concurrent findings of fact, not warranting interference of this Court under Section 100 CPC. It is settled law that in Regular Second Appeal, the High Court should not interfere with concurrent findings of fact, even if the appellant alleges erroneous appreciation. I find support in this view from the judgment of the Hon'ble Supreme Court in **M/s. Shivali Enterprises v. Godawari (Deceased) (SC) : Law Finder Doc ID # 2034559**, wherein it is held that:-



“15. It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force.

XXX

17. It would thus be clear that this Court has held that, though it is not necessary to formulate a substantial question of law, the jurisdiction under Section 41 of the Punjab Act would permit only such decisions to be considered in second appeal which are contrary to law or to some custom or usage having the force of law, or when the courts below have failed to determine some material issue of law or custom or usage having the force of law. The Court held that second appeal is not a forum where the court is to re-examine or re-appreciate the question of fact settled by the trial court or the Appellate Court. It could thus clearly be seen that though in view of Section 41 of the Punjab Act, it is not necessary to frame a substantial question of law, the jurisdiction of the High Court under second appeal cannot be exercised for re-appreciation of evidence.”



39. Reliance may be placed upon judgment of Hon'ble Supreme Court in **Randhir Kaur v. Prithvi Pal Singh (SC) : Law Finder Doc ID # 1544810**, wherein it is held that:-

"16. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact."

40. Reliance may further be placed upon judgment of this Court in **Smt. Naraini Devi v. Manoj Kumar, (Punjab And Haryana) : Law Finder Doc ID # 2723337**, wherein it is held that:-

"10. Thus, the defendant has admitted the Agreement to Sell; and has also admitted receipt (Ex.P2) of Rs.10 lakh advance payment and only balance amount of Rs.11,50,000/- remained to be paid by the plaintiff on or before agreed date on 10.04.2008. In the face of these admissions, the only question that remained to be determined by the Courts below was the readiness and willingness of the parties to perform the contract.

11. As noted above, the target date was mutually set by the parties for 10.04.2008. Record reveals that defendant failed to produce any evidence to prove that she was present in the



office of the Sub-Registrar on 10.04.2008. On the contrary, the defendant has admitted in her cross-examination that on 10.04.2008, she did not go to the office of the Sub-Registrar for execution of the Sale Deed because plaintiff had made a complaint against her to the Police. It has also been admitted by the defendant in her cross-examination that permission to sell the suit property was granted to her by HUDA after 10.04.2008 and that after getting the said permission, she had not given any notice to the plaintiff.

12. On the other hand, the plaintiff proved his presence in the office of the Sub-Registrar on the target date on 10.04.2008. A perusal of Ex.P7, affidavit sworn by plaintiff on 10.04.2008, duly attested by Executive Magistrate reveals that vendee/plaintiff remained present in the office of concerned Sub-Registrar for execution and registration of Sale Deed. Since the time for performance was admittedly mutually enlarged, therefore, vendor/defendant was under an obligation to execute requisite Sale Deed in favour of plaintiff, after receiving remaining sale consideration. However, as noted above, the defendant did not visit office of Sub-Registrar. She has further conceded in cross-examination that she cannot say whether vendee had visited office of Sub-Registrar on 10.04.2008 or not. She also conceded that after 10.04.2008, vendee filed a complaint against her. From the above, it is clear that vendee did whatever he could for performance of Agreement to Sell in dispute. He visited office of Sub-Registrar, got his affidavit attested, filed a complaint against vendor for not honouring her contractual obligations and got legal notice



(Ex.P8) which shows that legal notice was sent to defendant on 29.07.2008, and served upon her through counsel. Thereafter, suit was also promptly filed on 21.08.2008. Admittedly, Plaintiff has also paid sum of Rs.10 lakh out of sale consideration of Rs.21,50,000/-. Plaintiff appeared in the office of Sub-Registrar whereas defendant failed to appear on 10.04.2008. Defendant has also admitted in cross-examination that on 10.04.2008 she did not go to office of Sub-Registrar for execution of Sale Deed because plaintiff had made complaint against her to Police. It is therefore, proved that it was the defendant who breached Agreement to Sell; whereas Plaintiff filed the suit 4 months 11 days after the date fixed for execution of Sale Deed by affixing Court fees of Rs.90,000/- approximately, which shows that he was ready and willing to perform his part of contract.

XXX

15. In view of the above undisputed facts and findings on record, present appeal is dismissed.”

40. In view of the above discussion, the present regular second appeal stands **dismissed**.

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

18.02.2026
Sunena

(Nidhi Gupta)
Judge

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