

2026:PHHC:059986



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

RSA-3627-2025 (O&M)
Reserved on: 17.02.2026
Pronounced on: 21.04.2026
Uploaded on: 21.04.2026

Bimla Devi and others

...Appellants

Versus

Manoj Kumar Jindal and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Naveen S. Bhardwaj, Advocate and
Mr. Shivam Sachdeva, Advocate,
for the appellants.

Mr. Jagdish Manchanda, Senior Advocate with
Mr. Nischal Chetanya Manchanda, Advocate,
Mr. Tarun Sharma, Advocate,
Mr. Jatin Sardana, Advocate and
Mr. Vipul Thakur, Advocate,
for the respondents.

VIKRAM AGGARWAL, J.

This is defendants' appeal against the judgment and decree dated 20.09.2025 passed by the Court of Additional District Judge, Sonapat, whereby, while allowing the appeal filed by the plaintiff against the judgment and decree dated 29.05.2023 passed by the Court of Civil Judge (Jr. Division), Ganaur, the suit filed by the plaintiff was decreed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiff (Manoj Kumar Jindal) instituted a suit for specific performance of agreement to sell dated 03.04.2017 (Ex.P-1) along with consequential relief of permanent injunction.

3.1 The case of the plaintiff was that the defendants (Bimla Devi and others) had executed an agreement to sell on 03.04.2017 qua land measuring 27 kanals 09 marlas (fully described in the plaint), situated within the revenue estate of village Pipli Khera, Tehsil Ganaur, District Sonapat (hereinafter referred to as 'the suit land').

3.2 As per the agreement to sell, the total sale consideration was fixed as Rs.2,51,00,000/- (Two Crores and Fifty One Lakhs). A sum of Rs.51,00,000/- (Fifty One Lakhs) was stated to have been paid as earnest money in cash, in the presence of witnesses. A receipt (Ex.P-2) was also executed in this regard. The date for execution of the sale deed was fixed as 03.10.2017.

3.3 It was averred that on 03.05.2017, a further sum of Rs.50,00,000/- (Fifty Lakhs) was paid in cash qua which also a receipt (Ex.P-3) was executed.

3.4 It was averred that on 03.10.2017, the plaintiff went to the office of the Sub-Registrar, Ganaur and kept on waiting for the defendants with the balance sale consideration and expenses for registration of the sale deed, but they did not come present.

3.5 It was averred that the plaintiff had always been ready and willing to perform his part of the contract, but the defendants had backed out.

3.6 A legal notice dated 15.03.2018 was issued by the plaintiff to the defendants, requesting them to execute the sale deed. However, a reply was given to the said legal notice that the agreement stood cancelled and the earnest money stood forfeited. The defendants also stated in the said reply that they had remained present at the Tehsil Complex, Ganaur, on 03.10.2017.

3.7 Since the defendants did not get the sale deed executed, the suit was instituted on 11.02.2019.

4. Defendant Nos.1 and 3 filed an evasive written statement. Certain preliminary objections as regards maintainability, *locus-standi*, cause of action, the suit being barred by limitation etc., were raised. On merits, vague denials were made. The stand taken was that the defendants had always been ready and willing to perform their part of the contract, whereas, it was the plaintiff, who was not ready and willing to perform his part of the contract.

4.1 Defendant No.2 filed a separate written statement, raising certain preliminary objections. It was averred that as per the provisions of Income Tax Act, after 01.06.2015, cash beyond Rs.20,000/- could not be given or taken. It was alleged that under the circumstances, the alleged transaction of Rs.1,01,00,000/- was neither legal nor had it taken place. The stand taken was that the agreement to sell had been

executed, but the earnest money or the subsequent amount, had never been paid. It was averred that the plaintiff had not been ready and willing to perform his part of the contract whereas the defendants had always been ready and willing to perform their part of the contract. A stand was also taken that the plaintiff was not in possession of the requisite funds for execution of the sale deed.

5. From the pleadings of the parties the following issues were framed:-

- “1. Whether the defendants executed a agreement to sell dated 03.04.2017 and obtained the entire sale consideration of Rs.2,51,00,000/- from the plaintiff and issued two receipts regarding the same?OPP**
- 2. Whether the plaintiff is always ready and willing to perform part of contract?OPP**
- 3. Whether the plaintiff is entitled for the relief of specific performance of contract/ agreement?OPP**
- 4. Whether the plaintiff is entitled for a decree for permanent injunction restraining the defendants from selling out/alienating/ mortgage/transfer or create any third party interest over the suit property illegally and forcibly, as prayed for?OPP**
- 5. Whether the suit of the plaintiff is not maintainable in the present form?OPD**
- 6. Relief.”**

6. Parties led their respective evidence.

7. The trial Court, while holding that the execution of the agreement to sell and receipt of Rs.1,01,00,000/- was admitted, dismissed the suit by holding that the plaintiff had not been able to prove that he had been ready and willing to perform his part of the contract or that he was in possession of the requisite funds for the execution of the sale deed. The

plaintiff preferred an appeal, which was allowed by the first Appellate Court and the suit was decreed. The first Appellate Court held that the plaintiff had been able to prove that he was in possession of the requisite funds and was, therefore, ready and willing to perform his part of the contract. Aggrieved by the said decision, the defendants have instituted the present appeal.

8. Learned counsel for the parties were heard.

9. It was strenuously urged by learned counsel for the appellants that the first Appellate Court erred in decreeing the suit. It was submitted that the plaintiff had miserably failed to prove that he had been ready and willing to perform his part of the contract. Learned counsel referred to the entire oral and documentary evidence led on the record of the case. It was argued that the account statement (Ex.P-13) could not have been taken into consideration as the firm had no connection with the plaintiff nor was the plaintiff able to prove that he had some connection with the said firm. It was argued that under the circumstances, the first Appellate Court erred in holding that the plaintiff was in possession of the requisite funds.

10. *Per contra*, it was submitted by learned Senior Counsel appearing for the respondents that there is no illegality in the findings recorded by the first Appellate Court because the plaintiff had been able to prove that he had been ready and willing to perform his part of the contract as he had sufficient funds at his disposal for the execution of the

sale deed. It was submitted by learned Senior Counsel that once the plaintiff had parted with a sum of more than Rs.1.00 crore (one crore), there was no occasion for him to have not been ready with the balance sale consideration. Learned Senior Counsel also referred to the entire oral and documentary evidence led on the record of the case.

11. I have considered the submissions made by learned counsel for the parties.

12. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the cases of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317*** and ***Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

13. The execution of the agreement to sell dated 03.04.2017 (Ex.P-1) was admitted. The receipt of earnest money of Rs.50,00,000/- and another sum of Rs.51,00,000/- was also admitted. Even otherwise, the plaintiff duly proved the same by leading cogent evidence. In fact, parties are not at variance as regards the execution of the agreement to sell

and payment of Rs.1,01,00,000/-. The only bone of contention is the issue of readiness and willingness of the plaintiff. Since it is a judgment of reversal, it would be essential for this Court to refer to the oral and documentary evidence brought on the record of the case.

14. The plaintiff stepped into the witness box as PW-1. In his affidavit, submitted in the examination-in-chief, he simply averred that on 03.10.2017, he kept on waiting for the defendants in the office of Sub-Registrar, Ganaur with the balance sale consideration and expenses for the sale deed. However, in the said affidavit, there was absolutely no reference to the availability of funds in some account. Even in the legal notice (Ex.P-8), there was no reference to the availability of funds in some specific account.

15. Not only this, the examination-in-chief also does not give any details of the funds or cheques/drafts in possession of the plaintiff qua the balance sale consideration. The affidavit, which was stated to have been sworn before the Sub-Registrar, also only states that the plaintiff was present along with the balance sale consideration and expenses, but no details were given. The relevant part of the said affidavit is as under:-

“3. That on dated 03.10.2017 the deponent waited for the defendants in Office of Sub-Registrar, Ganaur at Tehsil Complex Ganaur along with balance sale consideration and expenses of the sale deed in favour of the deponent, but the defendants did not come in the Office of Sub-Registrar, Ganaur for the execution of the sale deed in favour of the deponent. After this, the

deponent marked his presence in the Office of Sub-Registrar, Ganaur. The copy of application and affidavit are Ex-P.7 and Ex. Mark-I.

4. That thereafter, the deponent approached to the defendants and requested to execute the sale deed in favour of the deponent after receiving the balance sale consideration amount as per agreement to sell dated 03-04-2017, but the defendants paid no heed and avoided the same on one pretext or other.

5. That the deponent was/is always ready and willing and still ready to perform his part of contract i.e., agreement to sell dated 03.04.2017 as per terms and conditions of the same. The defendants failed to perform their part of contract and the defendants also wanted to grab the earnest money of the deponent.”

16. Even in the legal notice dated 15.03.2018 (Ex.P.8), issued by the plaintiff, there was no reference to the availability of funds in some particular account and there was only a generalized statement that the plaintiff was present in the office of Sub Registrar with the balance sale consideration and expenses and that he had always been ready and willing to perform his part of the contract. The relevant portion of the legal notice is as under:-

“3. That on dated 03.10.2017 my client waited for you in Tehsil Complex Ganaur with balance sale consideration and expenses of the registration for execution of the sale deed in favour of my client, but you did not come in the Tehsil Complex Ganaur for the execution of the sale deed in favour of my client. After this my client marked his presence in the office of Sub-Registrar, Ganaur.

4. That thereafter my client approached to you and requested to execute the sale deed in favour of the my client after receiving of balance sale

consideration amount as per agreement to sell dt. 03.10.2017. But you avoided the same on one pretext or other.

5. That my client was/is always ready and willing and still ready to perform his part of contract i.e. agreement to sell dt.03.10.2017 as per terms and conditions of the same.”

17. Upon perusal of the record, it emerges that the account statement (Ex.P-13) was never produced by the plaintiff in his examination-in-chief or by any of the witnesses in their statements. In fact, the same was simply tendered in evidence by Sh. Chetan Sharma, learned counsel for the plaintiff, before the trial Court on 03.02.2023 in rebuttal evidence. It was, therefore, never proved in accordance with law. The observation of the first Appellate Court that no objection had been raised at the time of tendering the said document in evidence and, therefore, it could not be said to have not been proved, is erroneous. A document has to be proved in accordance with law and merely because it is exhibited without any objection, would not dispense with the requirement of proving the same in accordance with law. The order dated 03.02.2023 passed by the trial Court, is as under:-

**“Present: Sh. Chetan Sharma, Advocate,
for plaintiff.
Defendant No.2 already *ex-parte*
vide order dated 04.05.2022.
Sh. Sushil Kaushik, Advocate
for defendant No.1.**

“-”

Today case was fixed for rebuttal evidence, if any otherwise for arguments. Sh. Chetan Sharma, Advocate for plaintiff has appeared and tendered documents Ex. P.11 to P.14 vide his statement recorded separately. Adjournment

sought. Heard. Request allowed. Now, case is adjourned to 21.02.2023 for rebuttal evidence, if any otherwise for arguments.

**Sd/-
(Puneet Limbha)
CJ(JD), Ganaur
03.02.2023.”**

18. Coming to the account statement (Ex.P-13), the name of the account holder is mentioned as `Shree Ji Fabs` and the address is mentioned as `HU-6, Pitampura, Delhi`. It nowhere mentions the name of the plaintiff. Absolutely no evidence was brought on record to prove that Shree Ji Fabs had anything to do with the plaintiff. In fact, along with the account statement, a certificate from ICICI Bank was also produced, stating therein that M/s Shree Ji Fabs was maintaining a current account with the said Bank and its proprietor was one Vinod Kumar Jindal. There is no reference to the name of the plaintiff i.e., Manoj Kumar Jindal. No evidence was led to prove whether there was any relation between the plaintiff and Vinod Kumar Jindal. There was no averment in the plaint, in the affidavit, in the examination-in-chief or even in the legal notice that the plaintiff was a proprietor or a partner of a firm or that he would have borrowed the name from the proprietor of the firm.

19. In the case of **C.S. Venkatesh Vs. A.S.C. Murthy (D) by LRs and others, 2020 AIR SC 930**, the Apex Court, while discussing the issue of readiness and willingness, held that right from the date of execution of the contract till the date of decree, the plaintiff must prove that he was ready and

willing to perform his part of the contract. It was also held that continuous readiness and willingness is a condition precedent. The Apex Court held that the amount which has to be paid must be proved to be available. The relevant observations from the judgment of the Apex Court read as under:-

“15. The words ‘ready and willing’ imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of performance. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of contract, 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. The amount which he has to pay the defendant must be of necessity to be proved to be available. Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.

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20. In the instant case, the plaintiff has alleged that he was ready to pay L 35,000/- to the defendants and called upon them to execute the reconveyance deed. However, in para 11 of the plaint it is pleaded that the plaintiff was running contract business wherein he suffered heavy loss and as such he gave up the business. It is also pleaded that at present the plaintiff has no business or profession and has no source of

income. He has no property, either movable or immovable. Mere plea that he is ready to pay the consideration, without any material to substantiate this plea, cannot be accepted. It is not necessary for the plaintiff to produce ready money, but it is mandatory on his part to prove that he has the means to generate the consideration amount. Except the statement of PW-1, there is absolutely no evidence to show that the plaintiff has the means to make arrangements for payment of consideration under the reconveyance agreement.

22. The deed of re-conveyance, contains a clause for payment of interest on the consideration amount of L 35,000/-. However, the plaintiff has pleaded that there is no agreement to pay the interest. This shows that the plaintiff was not ready to perform his part of the obligation as per the agreement. Further, the plaintiff had mortgaged the property with the bank and the bank had obtained an award against the plaintiff. When the suit property was put up for auction, the defendants paid the entire amount to the bank which was payable by the plaintiff under this award. This aspect also indicates the conduct of the plaintiff.

xx xx xx

23. Taking an overall view of the matter, the trial court has rightly held that the plaintiff was not ready and willing to perform his part of the contract. The High Court, *in our view*, *was not justified in reversing the well-reasoned judgment of the trial court.*”

20. Reverting to the facts of the present case, not only was the plaintiff unable to show that he was in possession of the requisite funds, strangely he issued the legal notice months after the target date and filed the suit in February,

2019. A person, who had parted with more than a sum of Rs.1.00 crore (one crore), was expected to be very swift in pursuing his legal remedies. No doubt, he could have instituted the suit within the period of limitation i.e., three years, but the very fact that he did not institute the suit from October, 2017 to January, 2019, somewhere does show that he was not in possession of the balance funds, and was, therefore, not ready and willing to perform his part of the contract.

21. The first Appellate Court, therefore, erred in allowing the appeal. However, it did rightly refer the matter to the Income Tax authorities keeping in view the judgment of the Apex Court in **The Correspondence Rbanms Educational Institution Vs. B Gunashekar & Anr., 2025 AIR SC 2065** since there was a transaction of Rs.1,01,00,000/- in cash.

22. In view of the aforesaid discussion, this Court finds that the judgment and decree of the first Appellate Court is not sustainable.

23. The plaintiff did not make any prayer for refund of the earnest money as well. Under the circumstances, the trial Court gave liberty to file a recovery suit. This Court was set thinking on the lines of moulding the relief and at least grant refund of the earnest money. However, at no point of time, was any request made for amendment in the plaint in terms of the provisions of Section 22 of the Specific Relief Act, 1963. Further, it is well settled that in the absence of such a prayer,

refund of earnest money cannot be ordered. Reference may be made to the judgment of the Apex Court in **K.R. Suresh Vs. R. Poornima & Ors., 2025(3) RCR (Civil) 43**, wherein it was held that the relief of refund of earnest money cannot be granted unless specifically claimed in the plaint or sought through amendment:-

“61. Applying these principles to the facts of the case at hand, we find ourselves unable to accept the submissions of the appellant that, in the absence of a specific prayer for the refund of advance money paid by them, Prayer (c) of the plaint which specifies the grant of "such other relief(s) as the Hon'ble Court deems fit in the facts and circumstances of the case in the interest of justice", can be construed to include a prayer for such an alternative relief.

62. The reasoning set forth in the case of Manickam (supra) as regards the relief of possession under Section 22(1)(a) of the 1963 Act, can be appropriately imported in the present case to say that the relief of refund of earnest money under Section 22(1)(b) is not a relief that automatically flows from a decree for specific performance of a sale agreement and must, therefore, be explicitly sought.

63. In our considered opinion, the law contained under Section 22(2) of the 1963 Act is adequately broad and flexible to allow the appellant to seek an amendment of the plaint for the said relief, even at the appellate stage. However, no such application for an amendment of the plaint was moved either before the trial court or during the course of the first appeal before the High Court. That is to say, the appellant never prayed for the refund of the advance money. Here, it would be redundant to state that the law aids the vigilant, not those who sleep over their rights.”

24. That being so, the instant appeal is allowed. The judgment and decree dated 20.09.2025 passed by the first Appellate Court, is set aside and as a consequence thereof, the judgment and decree dated 29.05.2023 passed by the trial Court, is restored. The matter be, however, referred to the concerned Income Tax Authorities in terms of the findings of the first Appellate Court in para 17 of its judgment.

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

(VIKRAM AGGARWAL)
JUDGE

April 21, 2026
ds

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