

2025:PHHC:040772



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

123

RSA-2217-2023 (O&M)

Date of Decision : 25.03.2025

ISHWAR

.... Appellant

VERSUS

BALJEET AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ravinder Rana, Advocate for the appellant.

ALKA SARIN, J. (ORAL)

CM-7549-C-2023

1. This is an application for condonation of delay of 111 days in refiling the main appeal.

2. For the reasons stated in the application, the same is allowed and the delay of 111 days in refiling the main appeal is condoned.

CM-7550-C-2023

3. This is an application for condonation of delay of 13 days in filing the main appeal.

4. For the reasons stated in the application, the same is allowed and the delay of 13 days in filing the main appeal is condoned.

RSA-2217-2023

5. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 25.09.2017 passed by the Trial Court and the judgment and decree dated 26.10.2022 passed by the First Appellate Court.

6. Brief facts relevant to the present *lis* are that a suit for specific performance of agreement to sell dated 27.12.2007 was filed by the plaintiff-appellant averring therein that the defendant-respondents are the owner in possession of land comprised in Khewat No.3689 Min, Khatoni No.4234 Min, Rect. No.122, Killa No.11/3(1-11), 12/2(1-3), 19/1(6-16) total land measuring 9 Kanal 10 Marla to the extent of 57/190 share which comes to 2 Kanal 17 Marla i.e. 1744.77 square yards situated in the Revenue Estate of Jhajjar, Tehsil and District Jhajjar, Haryana. It was averred in the plaint that the defendant-respondents were in *bonafide* financial requirement and legal need and they offered to sell their property to the plaintiff-appellant. After negotiations the deal was finalized whereby the defendant-respondents agreed to sell the property to the plaintiff-appellant @ ₹1,175 per square yard. The terms were reduced into writing and accordingly an agreement to sell dated 27.12.2007 was entered into for purchase of the aforesaid property by the plaintiff-appellant. Out of the sale consideration of ₹20,50,104.75, a sum of ₹2,85,000 was paid in cash as earnest money in the presence of the witnesses. The target date was fixed on or before 15.04.2008 and it was agreed that the balance amount of ₹17,65,104.75 would be paid to the defendant-respondents at the time of execution and registration of the sale deed. It was further averred that the plaintiff-appellant requested the defendant-respondents to receive the balance sale consideration but the defendant-respondents had been avoiding the plaintiff-appellant on one pretext or the other and did not turn up to execute and register the sale deed in favour of the plaintiff-appellant. It was further averred that on 15.04.2008,

the plaintiff-appellant appeared before the Sub-Registrar concerned and got his presence marked. It was further the case set up that the plaintiff-appellant was always ready and willing to perform his part of the contract and subsequently a legal notice was issued to the defendant-respondents on 28.11.2009. Hence, the suit.

7. On notice the defendant-respondent No.1 appeared and filed his written statement raising various preliminary objections regarding maintainability, *locus standi*, estoppel and concealment of true facts. On merits it was denied that the plaintiff-appellant had requested the defendant-respondents to receive the balance sale consideration. It was the stand taken by defendant-respondent No.1 that the plaintiff-appellant did not turn up to execute the sale deed. It was further the stand that the defendant-respondents were always ready and willing to perform their part of the contract. It was averred that the defendant-respondents had also appeared before the Sub-Registrar concerned on 15.04.2008 and remained present there but the sale deed could not be executed due to the fault of the plaintiff-appellant. Defendant-respondent No.2 through his legal representatives and defendant-respondent No.3 also filed their written statement averring therein that the plaintiff-appellant was not ready and willing to execute the sale deed although the defendant-respondents were present in the Office of the Sub-Registrar concerned. It was further the stand taken that since the plaintiff-appellant did not appear on the target date, he had assured the defendant-respondents that he would destroy the agreement to sell in dispute. It was further the stand taken that the defendant-respondents were always ready and

willing to perform their part of the contract. Defendant-respondents also stated in their written statement that the plaintiff-appellant was a property dealer and had played a fraud as he had got the agreement executed on the assurance that the same would be executed on 15.04.2008. It was denied that the plaintiff-appellant had the remaining balance sale consideration.

8. Replication was not filed. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the defendants are owner in possession of land as mentioned in para No.1 of the plaint ? OPP
2. Whether defendants agreed to sell the land to the plaintiff at the rate of ₹1,175 per square yard, as per agreement to sell dated 27.12.2007 ? OPP
3. Whether defendants received amount of ₹2,85,000 from the plaintiff as earnest money ? OPP
4. Whether decree for specific performance of contract dated 27.12.2007 is liable to be passed in favour of plaintiff against defendants ? OPP
5. Whether plaintiff has no *locus standi* to file the present suit ? OPD
6. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
7. Whether the plaintiff has no cause of action to file the present suit ? OPD
8. Relief.

9. The Trial Court vide judgment and decree dated 25.09.2017 dismissed the suit. Aggrieved by the same an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 26.10.2022. Hence, the present regular second appeal by the plaintiff-appellant.

10. Learned counsel for the plaintiff-appellant would contend that both the Courts have erred in dismissing his suit. It is urged that the agreement to sell and the receipt of the earnest money were not denied. It is further the contention of the learned counsel for the plaintiff-appellant that once the agreement to sell was not denied and the plaintiff-appellant remained ready and willing to perform his part of the contract, the suit ought to have been decreed. Learned counsel has relied upon the application and the affidavit (Ex.P-4 and Ex.P-5) which were produced in evidence to contend that the plaintiff-appellant was present before the Sub-Registrar concerned and that a legal notice (Ex.P-6) was also issued. However, the defendant-respondents failed to perform their part of the contract.

11. Heard.

12. In the present case even if it is to be believed that the plaintiff-appellant remained present on 15.04.2008, though it has been held by the Trial Court that the application and the affidavit were not proved in accordance with law, however, the plaintiff-appellant has woefully failed to lead any evidence on the record to show that he had the balance sale consideration of ₹17,65,104.75 with him on the target date i.e. 15.04.2008.

Learned counsel for the plaintiff-appellant has candidly admitted that no evidence was led in this regard.

13. The Hon'ble Supreme Court in the case of **R. Shama Naik Vs. G. Srinivasiah [2024 SCC Online SC 3586]** has reiterated the well settled principle of law that not only is it obligatory for the plaintiff to make specific statement and averments in the plaint but he is also obliged to adduce necessary oral and documentary evidence to show the availability of funds to make payment in terms of the contract in time.

14. In view of the above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

25.03.2025
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No