

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****Reserved on: April 25, 2025****Pronounced on: April 28, 2025****RSA No.2716 of 2014 (O&M)****Smt. Meenu****. . . . Appellant**

Vs.

Sanjay Khanagwal

. . . . Respondent

* * * *

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**Present:-** Mr. S.S. Mor, Advocate for the appellant.

Mr. Ajit Singh, Advocate for the respondent.

DEEPAK GUPTA, J.

Suit for specific performance filed by plaintiff – Smt. Meenu (*appellant herein*) was decreed by learned Civil Judge (Sr. Divn.), Bhiwani vide his judgment dated 02.05.2012. However, the appeal filed by the defendant – Sanjay Khanagwal (*respondent herein*) was though dismissed, but the appellate Court of learned Addl. District Judge, Bhiwani vide his judgment dated 18.02.2014, while modifying the relief, declined the relief of specific performance, and ordered the defendant to pay double the earnest money to the plaintiff in terms of the agreement (Ex.P1), along with interest. Against this reversal qua the relief of specific performance, plaintiff has approached this Court by way of the present regular second appeal.

2. Trial Court record was called. The same has been perused. In order to avoid any confusion, parties shall be referred as per their status before the trial Court.

3.1 As per the case pleaded by the plaintiff, the defendant is the owner of the disputed house measuring 70 square yards, situated in Bhiwani, and fully detailed & described in the headnote of the plaint. The plaintiff as-

serts that the defendant agreed to sell the property to her through an agreement dated 05.10.2006 (Ex.P1) for a sale consideration of ₹75,000/-. Out of this amount, ₹50,000/- was received by the defendant as earnest money in the presence of witnesses, and the sale deed was agreed to be executed on 05.01.2007. The agreement also contained the usual default clauses. The plaintiff claims that since 05.01.2007 was a holiday, she approached the defendant beforehand, requesting that the sale deed either be executed on 04.01.2007 or on 08.01.2007, after the holiday. On 04.01.2007, the plaintiff, along with the balance consideration of ₹25,000/- and other necessary expenses, remained present at the office of the Sub-Registrar, Bhiwani; however, the defendant failed to appear. The plaintiff marked her presence through an affidavit. Again, on 08.01.2007, she waited at the Sub-Registrar's office, but the defendant did not show up, and she once again recorded her presence by affidavit. Despite several subsequent requests, the defendant refused to execute the sale deed. Consequently, the plaintiff served him with a legal notice dated 08.02.2007, to which he did not respond. The plaintiff claims that she has always been, and continues to be, ready and willing to perform her part of the contract. Accordingly, she prayed for a decree of specific performance of the agreement dated 05.10.2006.

3.2 In his written statement, the defendant raised preliminary objections regarding the maintainability of the suit, estoppel, locus standi, and cause of action for the plaintiff to file the suit. On merits, the defendant contended that the plaintiff is his paternal aunt (*Bua*) and that he had great faith in her and her husband, Satyawan. According to the defendant, the plaintiff and her husband had approached him, asking him to stand as a surety for a loan they intended to take. Trusting them, he signed 4–5 blank papers, which, he alleges, were later misused by the plaintiff and her husband to fabricate the impugned agreement. The defendant claimed that the said agreement was forged and obtained through fraud and misrepresentation, and thus, is not binding on his rights. He also denied having received any earnest money and prayed for dismissal of the suit.

3.3 Necessary issues were framed. Evidence produced by the parties was taken on record.

Findings of the Trial Court

4.1 Trial Court came to the conclusion that execution of the agreement dated 05.10.2006 (Ex.P1) was duly proved on record and that defendant had received an amount of ₹50,000/- as earnest money out of the total sale consideration of ₹75,000/-. Trial Court also found that the plaintiff had always been ready and was still ready and willing to perform her part of contract. The story of fraud as pleaded by the defendant was not believed. With these findings on material issues, the suit for specific performance of the agreement to sell (Ex.P1) was decreed in favour of the plaintiff vide judgment dated 02.05.2012.

Findings of the First Appellate Court

4.2 In the appeal preferred by the defendant against the judgment and decree of the Trial Court, the First Appellate Court upheld the findings of the Trial Court to the extent that the due execution of the agreement to sell dated 05.10.2006 (Ex.P1) stood duly proved by the cogent evidence led by the plaintiff. The First Appellate Court also concurred with the Trial Court's finding that the defendant had failed to substantiate his plea of fraud or misrepresentation. The First Appellate Court also affirmed that the plaintiff had always been ready and willing and continued to be ready and willing to perform her part of the contract. However, the First Appellate Court was of the view that decreeing the suit for specific performance would result in the defendant becoming houseless and would cause him grave inconvenience and hardship. The First Appellate Court further observed that the agreement to sell (Ex.P1) itself contained a stipulation that in the event of failure by the defendant to perform his part of the contract, the plaintiff would be entitled to double the amount of earnest money received. In view of this stipulation and considering the hardship likely to be caused to the defendant, the First Appellate Court reversed the relief of specific performance granted by the Trial

Court. Instead, the First Appellate Court ordered refund of double the earnest money to the plaintiff, along with interest @ 7% per annum, payable from the expiry of two months from the date of the judgment till the date of actual realization. Subject to this modification in the relief granted, the judgment and decree of the Trial Court were affirmed and the appeal was dismissed vide judgment dated 18.02.2014.

Submissions on behalf of the Plaintiff-Appellant

5. Assailing the judgment of the First Appellate Court, learned counsel for the plaintiff-appellant contended that there are concurrent findings of fact returned by both the Courts below to the effect that the agreement to sell (Ex.P1) stood duly proved and that the plaintiff had always been, and continues to be, ready and willing to perform her part of the contract. Learned counsel submitted that the defendant-respondent, in his written statement, had never pleaded that execution of the sale deed would cause him any hardship. It was argued that the Appellate Court, based on conjectures and assumptions, held that decreeing the suit for specific performance would cause hardship to the defendant, without there being any pleading or evidence to that effect. It was thus prayed that the judgment of the First Appellate Court be set aside to the extent it declines the relief of specific performance and that the decree passed by the Trial Court for specific performance be restored.

Submissions on Behalf of the Defendant-Respondent

6. Refuting the above submissions, learned counsel for the defendant-respondent contended that the property in question measures merely 70 square yards, and decreeing the suit for specific performance would indeed result in grave hardship to the defendant, as rightly observed by the First Appellate Court. It was submitted that the hardship likely to be caused to the defendant was a relevant consideration and that the Appellate Court rightly exercised its discretion to decline the relief of specific performance. Accordingly, it was prayed that the present appeal be dismissed.

7. This Court has considered submissions of both the sides and have appraised the record carefully.

Findings and analysis by this court:

8. The execution of the agreement to sell dated 05.10.2006 (Ex.P1) by the defendant in favour of the plaintiff has not been disputed before this Court. Furthermore, there are concurrent findings of fact by both the Courts below regarding the execution of the said agreement, which findings have not been challenged before this Court. Even otherwise, the execution of the agreement (Ex.P1) stands duly proved not only by the testimony of the plaintiff, Smt. Meenu, but also by one of the attesting witnesses, Narain Singh Nambardar. In addition, two other witnesses, namely, Promila and Parmeshwari, also supported the plaintiff's case by testifying to the execution of the agreement in their presence.

9. A perusal of the agreement (Ex.P1) and the evidence on record further establishes that the total sale consideration agreed between the parties was ₹75,000/-, out of which the defendant had already received ₹50,000/- as earnest money. Although 05.01.2007 was stipulated as the date for execution and registration of the sale deed, it is borne out from the record that the said date was a holiday. The plaintiff, accordingly, approached the defendant and appeared before the Sub-Registrar, Bhiwani, on 04.01.2007. However, the defendant failed to turn up. The plaintiff again appeared before the Sub-Registrar on 08.01.2007, but the defendant once again did not appear. On both occasions, the plaintiff marked her presence by getting affidavits (Ex.P2 and Ex.P3) attested.

10. The plaintiff thereafter issued a legal notice dated 08.02.2007 (Mark 'A') to the defendant, sent through registered post. In the said notice, the plaintiff categorically pleaded the execution of the agreement and the failure of the defendant to perform his obligations. Despite receipt of the notice, the defendant did not respond nor deny the execution of the agreement or assert any plea of fraud at that stage. As such, both the Courts below have

rightly rejected the defendant's plea of fraud, finding no merit in the allegations raised belatedly in the written statement.

11. From the evidence on record, it stands established that the plaintiff was always ready and willing, and continues to be ready and willing, to perform her part of the contract. The concurrent findings of the Trial Court and the First Appellate Court on this aspect are affirmed.

12. The agreement (Ex.P1) contains a stipulation that in the event of the vendor's failure to execute the sale deed, the vendee would be entitled to recover double the earnest money. However, merely because of the existence of this default clause, the plaintiff cannot be denied the relief of specific performance, particularly when the execution of the agreement and the plaintiff's readiness and willingness to perform her part stand duly proved.

13. In this regard, reliance is placed upon the decision of the Hon'ble Supreme Court in ***Manzoor Ahmed Margray v. Gulam Hassan Aram and Ors., AIR 2000 SC 191***, wherein it was held that such a clause is merely in the nature of a penalty to secure performance of the contract and does not confer an option upon the vendor to pay damages in lieu of specific performance.

14. Thus, the execution of the agreement (Ex.P1) having been proved, and the plaintiff's continuous readiness and willingness being established, there existed no valid ground for denial of the relief of specific performance.

15. The First Appellate Court declined the relief for specific performance on the ground of purported hardship to the defendant. However, a perusal of the written statement reveals that no such plea was ever taken by the defendant. Neither in the pleadings nor in the evidence was it asserted that the house in question was the only residence available to the defendant or that its sale would cause hardship. In the absence of any specific pleading

or evidence, the finding of hardship recorded by the First Appellate Court is based merely on conjectures and surmises and cannot be sustained.

16. In ***“Diwan Chand v. Kuldip Kumar Mehta 2008(1) PLR 358,*** a similar plea of hardship besides the escalation of price of the real estate was raised. Negating the plea, it was held by this Court as under:-

“The argument that the plaintiff is not entitled to a decree for specific performance in view of the comparative hardship suffered by the appellant, is again not tenable. The defendant has denied even the execution of the agreement. There is no pleading in respect of hardship in the written statement. It is for the defendant to plead and prove the circumstance to decline the relief of specific performance in terms of [Section 20\(2\)](#) of the Specific Relief Act, 1963. Though it is well settled that the jurisdiction to grant decree of specific performance is discretionary and the Court is not bound to grant such relief merely because it is lawful to do so, but the discretion of the court is not arbitrary and is based upon judicial principles. The hardship is a question of fact. *The escalation of price of the real estate, reference Govind Ram v. Gian Chand (2000) 7 S.C.C. 548; inadequacy of consideration or the mere fact that the contract is onerous to the defendant or improvident in its nature, Reference 'K. Narendra v. Riviera Apartments P. Ltd. 1999(5) S.C.C.77 ' and 'Sargunam (Dead) by LRs. v. Chidambaram 2004 (4) RCR Civil 721 (SC)' have not been considered as sufficient grounds to decline the decree for the specific performance of the agreement.”*

[italicized portion emphasized by this court]

17. Hon’ble Supreme Court has also held in ***“K. Narendra v. Riviera Apartments Pvt. Ltd.” 1999 (5) SCC 77*** that mere inadequacy of consideration; or the mere fact that contract is onerous to the defendant; or improvident in its nature, shall not constitute an unfair advantage to the plaintiff over the defendant or unforeseeable hardship on the defendant.

18. In view of the aforesaid discussion, it is held that the First Appellate Court committed grave error in declining the relief for specific performance by holding that the relief of specific performance will cause

hardship to the defendant, in the absence of any pleading or evidence to this effect on the part of the defendant.

19. Consequently, the judgment and decree passed by the Appellate Court to the extent of declining the relief of specific performance are hereby set aside. The judgment & decree as passed by the trial Court are hereby restored, whereby the relief of specific performance in terms of the agreement to sell dated 05.10.2006 was granted in favour of the plaintiff-appellant.

Present appeal is accepted accordingly.

April 28, 2025
Sarita

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No