



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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1. RSA-377-2014 (O&M)  
Date of decision: 24.03.2025

KISHAN CHAND ..Appellant

Versus

PUNEET GOYAL (DECEASED) THROUGH LRS. ..Respondent

2. RSA-988-2014 (O&M)

SHER SINGH & ANR. ..Appellants

Versus

PUNEET GOYAL (DECEASED) THROUGH LRS. ..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Sr. Advocate  
with Mr. Varun Parkash, Advocate  
Mr. M.K. Sood, Advocate for the appellants.

Mr. Samarth Sagar, Advocate for respondent.

**ANIL KSHETARPAL, J(Oral)**

1. **Brief Facts:-**

1.1 With the consent of learned counsel representing the parties, two connected regular second appeals shall stand disposed of by this common order.

1.2 The First Appellate Court has reversed the judgment and decree passed by the trial Court.

1.3 The execution of the agreement to sell by Sh. Kishan Chand on 02.02.2006 with respect to 15 kanals land on receipt of Rs.11,00,000/- as earnest money out of total sale consideration of Rs.1,10,92,500/- in favour of late Sh. Puneet Goyal is not in dispute. As per the agreement to sell, the sale deed was to be executed and registered on 01.05.2006, on payment of balance sale consideration of Rs.99,92,500/-.



1.4 The plaintiff filed the suit for possession by way of specific performance on 29.01.2007, claiming that he was always ready and willing to perform his part of the contract and he attended the office of Sub-Registrar and got his affidavit attested on 01.05.2006. The defendant claims that the plaintiff was never ready and willing and he never reached the office of the Sub-Registrar on 01.05.2006, whereas, the defendant attended the office of the Sub-Registrar and got his affidavit attested on 01.05.2006. He also sent a notice on 02.05.2006 to get the sale deed registered within a period of 10 days, however, there was no reply.

2. **Reasons recorded by the Courts below:-**

2.1 The trial Court found that the plaintiff failed to prove his readiness and willingness to honour the agreement to sell, however, ordered refund of earnest money.

2.2 The First Appellate Court reversed the judgment of the trial Court after arriving at the following conclusions:-

- i. The plaintiff was one of the Managing Directors of M/s Piyush Colonizers Pvt. Ltd., which had more than Rs.14,00,00,000/- in its account.
- ii. The plaintiff while filing the suit has paid a Court fee of Rs.4,48,170/-.
- iii. Proper cross-examination of the plaintiff has not been carried out.
- iv. The plaintiff has purchased the adjacent land.
- v. The plaintiff is a flourishing business man.



3. **Arguments addressed:-**

3.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the photocopy of the record, which has been produced by learned counsel for the appellant, correctness whereof is not disputed by learned counsel for respondent.

3.2 Learned Senior counsel for the appellant has submitted that the plaintiff was required to prove his readiness and willingness on 01.05.2006. He submits that the plaintiff apart from showing his presence on 01.05.2006 has not produced evidence that he was in possession of Rs.99,92,500/- for payment to the defendant on 01.05.2006. He further submits that the defendant sent notice to the plaintiff on 02.05.2006, but plaintiff did not reply.

3.3 Per contra, learned counsel for respondent has referred to the statement of plaintiff and his cross-examination. He has also brought to the notice of the Court the certificate issued by Punjab National Bank certifying that M/s Piyush Colonizers Pvt. Ltd. has more than Rs.14,00,00,000/- in its current account. He further submits that the plaintiff and his companies have already purchased the surrounding land and defendant has refused to execute the sale deed when offered in his cross-examination. Hence, the defendant is not entitled to relief. He further submits that the suit was filed within a period 7 months, hence, the plaintiff should be presumed to be ready and willing.

4. **Analysis and Discussion:-**

4.1 This Court has considered the submissions and analyzed the arguments of learned counsel for the parties.



4.2 The best case of the plaintiff is that he had brought cheques in favour of defendant for the balance sale consideration, however, neither the amount of cheques has been specified nor its copies have been produced nor there is any evidence to prove that any cheque was prepared in favour of the defendant. The plaintiff has only produced a certificate from the Punjab National Bank certifying that there was available balance of more than Rs.14,00,00,000/- in the bank account of M/s Piyush Colonizer Pvt. Ltd. The plaintiff has also not produced any resolution authorizing him to withdraw the amount.

4.3 The plaintiff was required to get the sale deed registered on 01.05.2006 by paying the requisite stamp duty, which is in the range of 6% to 7% of the total sale consideration. He has not taken any steps for purchase of the stamp duty before 01.05.2006 or on 01.05.2006.

4.4 The defendant sent notice to the plaintiff on 02.05.2006 through the speed post. It is not the case of the plaintiff that the notice was not sent to him on proper address. In fact, while filing the suit, the plaintiff has given the same address, however, he chose not to reply.

4.5 Moreover, there is no explanation for delay of nearly 7 months in filing the suit.

4.6 The refusal on the part of defendant to honour the agreement at the time of his cross-examination will not result in decreeing the plaintiff's suit. The plaintiff's case needs to stand on its own legs. *Sine qua non* for decreeing plaintiff's suit is his readiness and willingness, which is needed to be proved by the plaintiff. The onus could not be shifted upon the defendant in this regard.



4.7 The event of plaintiff purchasing the property within the vicinity of the disputed area does not prove his readiness and willingness to honour the present agreement to sell. The suit property is located in the National Capital Region near Delhi. The prices of the land are increasing every day. It was for the plaintiff to prove his readiness and willingness on 01.05.2006, however, he failed.

4.8 The First Appellate Court puts its reliance on the fact that the plaintiff was a flourishing business man. In the opinion of this Court, this was not a correct basis to decree the plaintiff's suit. He was required to prove that he was ready and willing to honour this particular agreement.

4.9 Similarly, the inability of the counsel representing the defendant to properly cross-examine the plaintiff does not result in decreeing the plaintiff's suit particularly when the onus primarily lay on the plaintiff to prove his readiness and willingness. It is pertinent to note that to prove readiness and willingness, the plaintiff is not required to display cash, however, he was required to prove that he was in a position to pay the amount to the defendant on 01.05.2006. It was not agreed that the balance sale consideration would be paid by way of cheques. Even if the plaintiff was in possession of the required amount in form of a cheque, the defendant could have refused to accept it because once the sale deed is executed, the position of owner becomes weak, unless it is recited in the sale deed that on dishonour of cheque, the sale deed would stand cancelled. It was not stipulated in the agreement that balance consideration will be paid by the cheque.



5. **Decision:-**

5.1 Keeping in view the aforesaid discussion, both the appeals are allowed. The judgment passed by the First Appellate Court is set aside.

5.2 Since, the plaintiff was not ready and willing, hence, he is not entitled to refund of earnest money.

5.3 All the pending miscellaneous applications, if any, are also disposed of.

**March 24<sup>th</sup>, 2025**

*Ayub*

**(ANIL KSHETARPAL)  
JUDGE**

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