



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

**242**

**RSA-3845-2023 (O&M)  
Reserved on: 04.04.2025  
Pronounced on:20.05.2025**

**Surjit Singh and another**

**...Appellant(s)**

**Vs.**

**Shashi Bala and others**

**...Respondent(s)**

**CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Z.S. Chauhan, Advocate and  
Ms. Shreya Bublani, Advocate  
for the appellants.

Mr. Ivan Singh Khosa, Advocate and  
Mr. Aarjav Jain, Advocate for  
respondent No.1.

\*\*\*

**NIDHI GUPTA, J.**

**CM-4766-C-2024**

This is an application under Section 151 CPC for placing on record the copy of Agreement to Sell dated 24.07.2008 as Annexure A-1.

Heard.

Application is allowed; and the said document is taken on record as Annexure A-1, subject to all just exceptions. Registry is directed to tag the same at appropriate place.

**RSA-3845-2023 (O&M)**

The defendants No.1 and 2 are in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby



the suit of the plaintiff/ respondent no.1 herein, was partly allowed; and direction was issued to appellants/defendants No. 1 and 2, to refund the earnest money of Rs.35 lacs along with interest thereupon at the rate of 9% per annum from the date of filing of the suit till actual realisation of the amount. In the present appeal, the appellants are aggrieved of the impugned judgments and decrees only to the limited extent of imposition of interest @ 9% per annum upon the refund amount of Rs.35 lacs.

2. The brief facts of the case are that the plaintiff had filed a suit seeking specific performance of Agreement to Sell dated 24.07.2008 executed between the parties for total sale, consideration of about ₹1 crore 39 lakhs; with alternative prayer for refund of earnest money of Rs.35 lacs, plus Rs.35 lacs as damages. The suit was resisted by the defendants on various grounds. Replication was filed. On the basis of the pleadings of the parties, the learned trial Court framed the following issues: -

- “1. Whether the plaintiff is entitled to specific performance of agreement to sell dated 24.7.2008? OPP*
- 2. Whether plaintiff is entitled for permanent injunction as prayed for? OPP*
- 3. Whether the plaintiff is entitled to alternate relief of recovery of Rs.70 Lacs as prayed for? OPP*
- 4. Whether the suit is not maintainable in the present form? OPD*
- 5. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD*
- 6. Whether plaintiff has concealed the true and material facts from the Court? OPD*



*7. Whether the plaintiff is estopped by his her own act and conduct from filing the present suit? OPD*

*8. Whether the plaintiff has not paid the ad valorem court fee? OPD*

*9. Relief.”*

3. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court had decided issues No. 1 and 2 against the plaintiff and in favour of the defendants; issue No. 3 was partly decided in favour of the plaintiff and against the defendants; issues No. 4 and 5 were decided against the defendants and in favour of the plaintiff; issue No. 6 against the defendants and in favour of the plaintiff; issue No. 7 against the defendants and in favour of the plaintiff; issue No. 8 against the defendants and in favour of the plaintiff. Accordingly, vide judgment and decree dated 28.02.2019 the trial Court had declined relief of specific performance under Section 16 of the Specific Relief Act; however had allowed alternative relief of recovery of earnest money under Section 22 of the Act; and suit of the plaintiff was *“partly/alternatively decreed with costs to the effect that plaintiff is entitled to recovery of Rs.35,00,000/- from the defendants No.1 and 2 along with interest thereon at the rate of 9% per annum from the date of filing of the suit till actual realisation of the amount.”*

4. The plaintiff did not file any appeal against the above said judgment and decree date 28.2.2019. The appeal filed by defendants No. 1 and 2 was dismissed by the learned Additional District Judge, Ludhiana with costs vide judgment and decree dated 26.09.2023; thereby holding



that *“learned lower court has rightly decreed the suit of the plaintiff for the recovery of Rs.35 lakh along with interest.”* Hence, present second appeal by the defendants No.1 and 2.

5. It is submitted by learned counsel for the appellants upon instructions, that the dispute in the present appeal is only regarding the interest @ 9% imposed upon the appellant while awarding money decree. It is submitted that the appellants are not liable to pay interest of 9% per annum on the refunded amount of Rs.35 lakhs, as it is established on record that the plaintiff was unable to prove her readiness and willingness to perform the contract. It is contended that therefore, the appellants cannot be punished or held liable for non-performance of the contract, for no fault on their part. To bear out his contention, learned counsel for the appellants takes this Court through the voluminous record to demonstrate that the plaintiff had failed to prove her readiness and willingness.

6. Learned counsel also refers to the findings regarding readiness and willingness as recorded by the learned trial Court in paras 22 to 30 of its judgment dated 28.02.2019 - to the effect that plaintiff had admitted in her cross-examination that she had not produced any document to show that on the target date fixed for execution of Sale Deed i.e. 31.12.2008 she had the requisite amount of Rs.1,04,00,000/-. Even plaintiff had been unable to demonstrate that she had sufficient funds for registration of Sale Deed payable as stamp papers/duty which is 10% of the agreed amount of Sale Deed i.e. Rs.13,19,000/- what to talk of the principal amount. Even no other evidence was brought on record to show



availability of funds of Rs.1,04,00,000/-. All the documentary evidence produced by the plaintiff in the form of passbook, ledgers, copies of balance sheets etc. remained unproved, as no witness was examined to prove the said documents.

7. It is submitted that in fact, the son of the plaintiff Hitesh Kumar appearing as PW2 had admitted in his cross-examination that as per bank statements only amounts of Rs.6,315/-, and Rs.2,56,315 etc. were lying in the accounts of the plaintiff on and around the date in question. It is submitted that it was in this background that the learned trial Court had given the categorical finding that the plaintiff had been unable to demonstrate her readiness and willingness; and had therefore declined to grant relief of specific performance of the Agreement in question and had only allowed refund of earnest money. It is vehemently contended by learned counsel for the appellants that in the circumstances and in view of this categorical finding, punitive interest could not have been imposed upon the appellants. There was no reason to punish the appellant as it was the plaintiff herself, who had failed to prove her readiness and willingness to perform the contract.

8. Learned counsel for the appellants further submits that the Agreement to Sell (Annexure A-1) contained reciprocal clause stipulating that if the Sale Deed is not executed by the target date, then the earnest money shall be forfeited. It is submitted that in view of this clause, the appellants could not have been asked to refund even the earnest money; what to talk of imposing interest thereupon.



9. It is submitted that therefore the appellants are not liable to pay any interest on the refund of earnest money because there are concurrent findings of the learned Courts below recording that Plaintiff had failed to prove her readiness and willingness. In support, learned counsel relies upon ***“P. Meenakshisundaram vs. P. Vijayakumar & another” (SC), Law Finder Doc Id # 993597***, wherein it is held that *“record is completely silent about any communication sent towards completion of transaction rather first step was taken after six months after deadline by plaintiff. Thus, there is no readiness and willingness on part of plaintiff to perform his part of contract.”* Reliance is placed upon ***“Amolak Singh vs. Karnail Singh & others” (P&H), Law Finder Doc Id # 1492660***, holding that *“Plaintiff failed to prove his readiness and willingness-Trial Court was incorrect in ordering refund of the earnest money, same has been set aside by the learned first appellate court.”*

10. It is argued that in the present case, the plaintiff has not even crossed the stage of readiness and willingness, only after that the defence of the defendants was to be considered. In this regard, learned counsel refers to ***“Kullu Ram vs. Punjab Wakf Board, Ambala and others” (P&H), Law Finder Doc Id # 776090***, wherein it is held that *“plaintiff has to stand on its own legs. He cannot take the benefit of weakness in case of defendants.”* Ld. Counsel for the appellants further submits that the discretionary relief of interest is to be granted judiciously and not as a matter of course. Moreover, the Rate of interest although illegally granted has been granted on the very higher side. There is a huge disparity in view



of fact that in the present case, the fault of plaintiff has been proved in the form of finding regarding not having sufficient funds on the target date. Reliance is also placed upon latest Judgement of Hon'ble Apex Court in ***"M/s TomorrowLand Limited versus HUDC Limited and another"***, 2025 ***INSC 207, Law Finder Doc Id # 2694135***, where it is held that interest on the refunded amount may not be granted if the claimant approached the court with unclean hands.

11. Learned counsel submits that the plaintiff in her plaint has only claimed for damages to the tune of Rs.35,00,000/-. No Claim for interest has been made by the plaintiff. The damages have been denied by Courts below and no appeal has been filed against those findings. The relief of Specific performance under Section 21(2) for damages has been rightly denied. In fact, plaintiff was not even liable to be granted refund of the earnest money in view of the terms of Agreement to Sell. It is accordingly prayed that the present appeal be allowed; and the imposition of interest @ 9% be set aside.

12. The submissions made on behalf of the appellants are vehemently opposed by Id. counsel for respondent No.1 /plaintiff, who submits that it is irrevocably established on record that on the target date i.e. 31.12.2008, the appellants were not even owners of the suit property. As such, on the target date, the appellants had no valid title to transfer in favour of the plaintiff. Learned counsel argues that the key question to be determined is, as to why was Sale deed not executed on 31.12.2008? It is



contended that this was because the defendants were not owners of the suit land on 31.12.2008, that Sale Deed could not be executed.

13. Learned counsel further points out that in actual fact, all the parties are property dealers. The defendants No. 4 and 5 were the original owners of the suit property. The suit property was bought from them by defendant No.3 Mohinder Kumar Saggar; from whom the appellants had further bought the suit property. However, only an Agreement to Sell was executed between defendant No.3 and the appellants, and Sale Deed in favour of the appellants was never executed. As the appellants were not owners of the suit land, they could not execute Sale Deed on 31.12.2008 in favour of the plaintiff. It is pointed out that this fact has been admitted by defendant No.1 in his cross examination; which is reproduced by the learned lower appellate Court in para 18 of its judgment dated 26.09.2023; wherein defendant No.1 has deposed as follows: -

*“It is correct that we could not get the sale deed executed in favour of Shashi Bala from Mohinder Kumar as per agreement Ex.P1. It is correct that we did not return the amount of Rs.35 lakhs to Shashi Bala, It is correct that it is stated in the agreement that we are bound to pay the double the amount to Shashi Bala in case we fail to execute the sale deed in her favour. He has also stated that it is correct that till 31.12.2008 which was due date fixed for execution and registration of the sale deed in favour of Shashi Bala we have not become the owner of the property. We were unable to execute the sale deed in her favour. It is correct that we knew this fact that we were unable to get the sale deed executed on 25.12.2008 when we received Rs.5 lakhs from Shashi Bala.*



*It is correct that amount of Rs. 5 lakhs is still with them and they did not pay this amount to Mohinder Kumar. So far, defendant no.3 Mohinder Kumar is concerned he in his cross examination conducted by the counsel for the plaintiff has admitted that when the agreement to sell Ex.D1 was executed by him in favour of Amarjit Singh Gandhi and Surjit Singh, he was not the owner of the said property and admitted that he entered into an agreement to sell Ex.D1 dated 24.6.2008 on the basis of the agreement to sell Ex.D8 and that power was given to him in Ex.D8 that he can get the sale deed executed and registered in his favour and in favour of any person of his choice and similar power was given to Surjit Singh and Amarjit Singh Gandhi in the agreement to sell dated 24.6.2008 which is Ex.D1 on the file and in pursuance of agreement to sell Ex.D8 he got the sale deed executed and registered in his name and in the name of his wife.”*

14. Learned counsel contends that in this situation, Section 54 of the Indian Contract Act (hereinafter referred to as ‘the Act’); as also Section 52 and Section 34 of the Act would come into play as per which, when there is impossibility of performance of contract, promisor cannot claim. In this regard, learned counsel relies upon judgment passed by Coordinate Bench of this Court in **“Rajinder Singh and others vs. Ranjeet Singh”**, **Law Finder Doc Id # 2457002**, wherein in similar circumstances, this Court has held that *“redemption of mortgage against discharge of loan liability towards part of suit land was effected on 30.04.2013 and 09.05.2013; whereas exchange as obligated was got effected on 15.07.2013; which were all beyond target date for execution of sale deed*



*i.e. 15.04.2013 and thus, having failed to perform their obligations before relevant date, appellants/defendants had no right to enforce forfeiture of the earnest money-part sale consideration."*

15. It is submitted that specific performance of Agreement under Section 16 of the Specific Relief Act is not dependent upon the provisions of Section 22 of the said Act in respect of refund. It is contended that both the provisions are mutually exclusive. Learned counsel submits that in determining compensatory charges, the conduct of the parties is also relevant inasmuch as the appellants are not absolute owners of the suit land even till today; whereas, the appellants have kept the earnest money since 2008. The judgments relied upon by the appellants are distinguishable as provision of Section 54 is not attracted in the facts of those cases.

16. In support of his contentions, learned counsel for plaintiff relies upon the following judgments: -

- 1.Lokesh and others vs. Rameshwar Tyagi, (P&H), Law Finder Doc Id # 948900;***
- 2. Satish Kumar and another vs. Ram Singh (P&H), Law Finder Doc Id # 378240;***
- 3. Shankargouda and others vs. K. Tayikumari (Karnataka High Court), Law Finder Doc Id # 1769650;***
- 4. Santosh Paal and Ors. vs. Ramnarayan Tiwari and Ors., First Appeal No. 311 of 2015 with First Appeal No. 276 of 2015, (Chhattisgarh High Court), Law Finder Doc Id # 1667386;***
- 5. Namboori Janaki (died) through L.Rs. and Ors. vs. Gurram Hanumantha Rao, Appeal Suit No. 2361 and 2429 of 2001, (Telangana High Court), Law Finder Doc Id # 1943091;***



**6. K. Karuppuraj vs. M. Ganesan (SC), Law Finder Doc Id # 1888893; and**

**7. Urvashi Aggarwal (since deceased) through LRs and another vs. Kushagr Ansal and others, Law Finder Doc Id # 1386836.**

17. Learned counsel for the plaintiff also refers to the Agreement in question to submit that it is admitted by the appellants in the Agreement itself that they were not owners of the suit property. However, the appellants had undertaken that prior to target date of 31.12.2008, they will “get arranged from real owner the documents related to ownership and copy of jamabandi on our expenditure.” It is argued that from the above facts, it is clear that the appellants had failed to fulfil their part of contract which was a condition precedent to the plaintiff proving her readiness and willingness; and therefore, there is no error in the imposition of interest upon the appellants in granting refund of earnest money.

18. In rebuttal, learned counsel for the appellants submits that the appellants had only undertaken to arrange the documents from the original owner; and the appellants had duly done the needful in this regard. It is only thereafter that the appellants had come present in the office of Sub Registrar on 31.12.2008, and it was the plaintiff who had failed to put in appearance before the Sub-Registrar. It is further pointed out that there is no misrepresentation in the Agreement to Sell regarding ownership of the suit property, and the appellants have never misled the plaintiff at any stage. It is stated that the parties being property dealers, it is common practice that on the target date, the real owner comes at the time of



execution of Sale Deed; accordingly, on the target date, the appellants were duly present in the office of Sub Registrar along with real owner and the necessary documents. However, it was the plaintiff who did not come present before the Sub Registrar on 31.12.2008. It is contended that Section 54 of the Act will come into play only once the plaintiff has proven her case.

19. It is also argued that the question of the ownership of the property with defendants is immaterial because the Agreement to Sell mentions it to be ownership based upon previous agreement to sell.

20. It is further submitted by learned counsel for the appellants that the appellants will be put to great hardship, if the impugned rate of interest is not set aside as the interest payable will be almost the same if not more than the principal amount i.e. Rs.35 lacs.

21. Learned counsel for plaintiff further rebuts the submissions of the appellants and refers to the written statement to point out that the appellants had admitted therein that they were unable to execute the sale deed; and that the appellants shall execute the sale deed in favour of the plaintiff once sale deed is executed in their name. Learned counsel refers to the written statement dated 01.04.2016 filed by the defendants before the trial Court; wherein in para 3 they have admitted as follows: -

*“As and when the sale deed of the suit property shall be executed in the name of the answering defendants through the process of the court, then the answering defendants shall further execute the sale deed in the name of the present plaintiff as per the terms of the agreement of sale dated 24.7.2008 but before execution of such sale deed in the name of the answering defendants, the answering defendants are*



*not able to execute any such sale deed in the name of the plaintiff. So, at this stage suit of the plaintiff is not maintainable at all."*

22. It is submitted that therefore, the argument of the appellants is not just beyond the pleadings but is contrary to the stand taken by them in their written statement. It is accordingly reiterated that the present appeal be dismissed.

23. Learned counsel for the appellants clarifies by submitting that the averments in the written statement are regarding execution of previous sale deed in connection with the payment which was to be made by the plaintiff to the owner through the defendant. Only if the payment would come, then only the appellants would pass it on to Mohinder Sagar and get sale deed executed. In fact, the averments have been mentioned in connection with parallel litigation. Relies upon "***Smt. Somaria Devi wife of Shri Bhagan Rai (dead) and others vs. Shri Mahadeo Gope and others***" (Patna High Court), Law Finder Doc Id # 1592459, wherein it is held that "*Plaintiff has to stand on her own leg to prove her case as pleaded in the plaint-Plaintiff cannot get any benefit on account of non-proving of the pleading raised by defendant in the written statement.*"

24. No other argument is raised on behalf of the parties

25. I have heard learned counsel for the parties and perused the case file in great detail and given my very thoughtful consideration to the rival contentions raised on behalf of both the parties.

26. The defendants No.4 and 5 are the original owners of the suit property by way of registered Sale Deed No. 8124 dated 25.9.2002.



Defendants No.4 and 5 sold the suit property to defendant No.3 by way of Agreement to Sell dated 24.6.2008; who further sold the suit property to the appellants vide another Agreement to Sell dated 24.6.2008 itself. By way of the present Agreement to Sell dated 24.07.2008 Ex.P1, the appellants had further sold the suit property to the plaintiff “*on the basis of Agreement to Sell dated 24.06.2008 entered with Mohinder Kumar Saggar*” i.e. defendant No.3. The appellants had agreed to sell the suit property to the plaintiff for total sale consideration of Rs.1,39,00,000/- of which Rs.35 lacs was paid to them as earnest money. As per the terms and conditions of the Agreement to Sell dated 24.07.2008, target date for execution of sale deed was set for 31.12.2008.

27. Thus, at the time of entering into present agreement with the appellants, the plaintiff was aware that appellants only had Agreement to Sell dated 24.6.2008 executed by defendant No.3 in their favour. Accordingly, in the present Agreement dated 24.7.2008 it was stipulated that before the target date of 31.12.2008, the appellants:

*“..... will get arranged from real owner the documents related to ownership and copy of Jamabandi on our expenditure. The expenditure on sale deed of any kind will be paid by Purchaser. The purchaser can get sale deed executed on anyone's name and as many sale deeds. If we back out and do not get sale deed executed within target date then purchaser can get the sale deed executed through court, the total expenditure of case be deducted from our remaining payment or can recover double the amount paid to us. But if the purchaser back out and do not get the sale deed executed*



*within the target date then the earnest money paid will be forfeited and deal will be cancelled.”*

28. From the above facts, it is firstly clear that the plaintiff was not kept in the dark, and the above chronology of title was well within her knowledge. Yet, she had entered into contract with the appellants with her eyes wide open.

29. Further, the parties being property dealers, the appellants had only undertaken to *‘get arranged from real owner the documents related to ownership and copy of Jamabandi on our expenditure’*; whereafter it was open to the plaintiff to get the sale deed registered in *‘anyone’s name and as many sale deeds.’* Needless to say, these clauses were included in the contract as the parties were property dealers, and therefore, plaintiff, upon proving her readiness and willingness, could have got the sale registered in the name of whomsoever she further sells the property to. Is not denied by the plaintiff that this was common practice.

30. Further, upon failure of the appellants to get the sale deed executed, it was left open to the plaintiff to get the same executed through court. However, to do the same, and to resort to this clause of the Agreement, it was necessary for the plaintiff to demonstrate her readiness and willingness to perform the contract. It is undisputed that on the target date, plaintiff did not have the necessary funds. The categoric, undisputed, and unchallenged findings of the learned trial Court in this regard are contained in para 22 to para 28 of the judgment dated 28.2.2019 passed by the learned trial court, which read as follows: –



*“22. She admitted in her cross-examination that she has not produced any document on record to who showing the amount of Rs. 1,04,00,000/- as cash in hand on the date of execution of sale deed dated 31.12.2008. Though, she voluntarily mentioned that she had the money as she had sold two properties, however, she neither disclosed the details of selling of the above said properties in her affidavit nor produced any document on which which may show the same. She, also, failed to show her income from her partnership concern, namely, Guru Nanak Foundary. No record of any bank account was produced by her before the Court. Clearly, with her own testimony, plaintiff failed to establish her readiness and willingness to purchase the suit property.*

*23. Further, the plaintiff got examined Hitesh Kumar, her son, as PW2. He asserted that the plaintiff is a Partner in M/s Guru Nanak Foundary, B-63, Phase-V, Focal Point, Ludhiana along with him and his father Shri Tilak Raj. He brought forth the copies of balance sheet as Ex.PW2/A to Ex.PW2/B, copies of passbook as Ex.PW2/C and Ex.PW2/D, copies of Ledger from 1.4.2008 to 31.3.2009 as Ex.PW2/E and the copy of account statement provided by the Bank for the period for 1.1.2009 to 3.2.2009 as Ex.PW2/F.*

*24. All the above said documents have been objected on the mode of proof and clearly the said objection is duly maintainable and apt as the documents produced are the photostated documents and no witness has been examined from the Bank to prove the authenticity of the same. It cannot be said, therefore, that the said documents have been proved by the plaintiff.*

*25. Even otherwise, the same do not in any manner show the amount of Rs. 1,04,00,000/- or more than that pending with*



*the plaintiff in excess as a saving for purchasing the suit property.*

*26. Further, PW2 in his cross-examination, admitted that as per Ex.PW2/C, there is an amount of Rs.6315/- as on 19.8.2008 and Rs.2,56,315/- as on 27.12.2008 and Rs.6315/- as on 17.1.2009. He, also, admitted that in Ex.PW2/D, there is an amount of Rs.2,85,030/-as on 29.12.2008 and an amount of Rs.3394/- as on 27.12.2008. Also, he admitted that he has not brought or placed on record the Partnership Deed of M/s Guru Nanak Foundary. The fact that 10% of agreed amount of registration of sale deed was to be payable as stamp papers/duty i.e. Rs. 13,90,000/- and that total amount of Rs. 1,17,90,000/- was payable at the time of execution of the sale deed. By plaintiff was, also, admitted.*

*27. Clearly, the whole admissions made by the witness PW2 and the plaintiff and the documents produced on record lack the proof with regard to the financial capacity of the plaintiff to purchase the suit property at the time when the sale deed was to be executed and registered as per the agreement to sell dated 24.7.2008 and even till date. No other evidence or document has been led by the plaintiff.*

*28. On that note, therefore, it cannot be said that plaintiff has been ready and willing to purchase the suit property and get the sale deed executed and registered in her favour.”*

31. Thus, from the facts and findings as narrated above, it is clear that there is default on part of both parties, inasmuch as the appellants did not have valid title on target date; and simultaneously plaintiff did not have the requisite funds on target date. It has been argued by learned counsel for the plaintiff that *prior to proving her readiness and willingness, it was a*



condition precedent for the appellants to have sale deed in their favour. I find the said argument to be misconceived. It is my considered view that the two incidences cannot be divorced from each other. There can be no 'before' and 'after'. As it was incumbent upon the appellants to have valid title to transfer on target date of 31.12.2008, it was equally incumbent upon the plaintiff to demonstrate possession of necessary funds on said target date of 31.12.2008 itself. In recent judgment of "***R. Shama Naik v. G. Srinivasiah (SC)***": ***Law Finder Doc Id # 2670489 d/d 28.11.2024***, the Hon'ble Supreme Court has held that two specific ingredients are required to establish readiness and willingness: (a) presence in the Tehsil; (b) demonstrate availability of funds. It has been held that "*Plaintiff must not only make specific averments in the plaint but also adduce oral and documentary evidence to show availability of funds and capacity to perform the contract **in time**. ..... Readiness and willingness - Distinction - Readiness refers to financial capacity and ability to perform the contract, while willingness relates to the conduct of the plaintiff.*" (Emphasis added).

32. In terms of the above pronouncement, it is incorrect to state that plaintiff had to demonstrate readiness and willingness *subsequent to* the appellants arranging the documents from the real owners. As stipulated in ***R. Shama Naik (supra)***, plaintiff was required to prove her readiness and willingness "*in time*" that is *on the date in question* viz 31.12.2008. Admittedly, in the present case, the plaintiff had failed to demonstrate her 'readiness' due to lack of funds *in time*; and she had failed to prove her 'willingness' as she was not present in the Tehsil office on 31.12.2008. It is



my considered view that in these circumstances, she cannot be held entitled to interest upon refund of earnest money. To be eligible for grant of interest, it was incumbent upon the plaintiff to prove her readiness and willingness.

33. The issue of grant of interest has been considered in depth by a Large Bench of the Hon'ble Supreme Court in case of "**Central Bank of India v. Ravindra**", (SC) : Law Finder Doc Id # 5386. The enunciations of Law of their Lordships in the aforesaid judgment relevant to the present case are as follows: –

*"37. Black's Law Dictionary (7th Edition) defines "interest" inter alia as the compensation fixed by agreement or allowed by law for the use or detention of money, or for the loss of money by one who is entitled to its use; especially, the amount owed to a lender in return for the use of the borrowed money. According to Stroud's Judicial Dictionary of Words and Phrases (5th Edition) interest means, inter alia, compensation paid by the borrower to the lender for deprivation of the use of his money. In **Secretary, Irrigation Department, Government of Orissa and others v. G.C. Roy, 1992(1) SCC 508**, the Constitution Bench opined that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages..... this is the principles of Section 34, Civil Procedure Code. In **Dr. Shamlal Narula v. C.I.T., Punjab, 1964(7) SCR 668, 472**, this Court held that interest is paid for the deprivation of the use of the money. The essence of interest in the opinion of Lord Wright, in **Riches v. Westminster Bank Ltd., 1947(1) All England Reporter 469, 472**, is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had the*



*use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation; the money due to creditor was not paid, or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation whether the compensation was liquidated under an agreement or statute. A Division Bench of the High Court of Punjab speaking through Tek Chand, J. in **C.I.T., Punjab v. Dr. Sham Lal Narula, AIR 1963 Punjab 411** thus articulated the concept of interest - "the words "interest" and "compensation" are sometimes used interchangeably and on other occasions they have distinct connotation. "Interest" in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, "interest" is understood to mean the amount which one has contracted to pay for use of borrowed money..... In whatever category "interest" in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable." It is the appeal against this decision of Punjab High Court which was dismissed by Supreme Court in **Dr. Shamlal Narula's** case (supra).*

*38. However, 'penal interest' has to be distinguished from 'interest'. Penal interest is an extraordinary liability incurred by a debtor on account of his being a wrong-doer by having committed the wrong of not making the payment when it should have been made, in favour of the person wronged and it is neither related with nor limited to the damages suffered. Thus, while liability to pay interest is founded on the doctrine of compensation, penal interest is a penalty founded on the doctrine of penal action. Penal interest can be charged only once*



*for one period of default and therefore cannot be permitted to be capitalised.*

*39. Mulla on the Civil Procedure Code (1995 Edition) sets out three divisions of interest as dealt in Section 34 of CPC. The division is according to the period for which interest is allowed by the Court, namely - (1) interest accrued due prior to the institution of the suit on the principal sum adjudged; (2) additional interest on the principal sum adjudged, from the date of the suit to the date of the decree, at such rate as the Court deems reasonable; (3) further interest on the principal sum adjudged, from the date of the decree to the date of the payment or to such earlier date as the Court thinks fit, at a rate not exceeding 6 per cent per annum. Popularly the three interests are called pre-suit interest, interest pendente lite and interest post-decree or future interest. Interest for the period anterior to institution of suit is not a matter of procedure; interest pendente lite is not a matter of substantive law. .... Interest from the date of suit to date of decree is in the discretion of the Court. Interest from the date of the decree to the date of payment or any other earlier date appointed by the Court is again in the discretion of the Court - to award or not to award as also the rate at which to award. ....*

*XXX XXX XXX*

*55. ....*

*(8) Award of interest pendente lite and post decree is discretionary with the Court as it is essentially governed by Section 34 of the Civil Procedure Code de hors the contract between the parties. In a given case if the Court finds that in the principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the Court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner.*



(Emphasis added)

34. In another recent judgment in "***I.K. Merchants Pvt. Ltd. v. State of Rajasthan***", (SC) : ***Law Finder Doc Id # 2713786***, the Hon'ble Supreme Court has held that:

*"13. Pertinently, it is to be pointed out at this juncture that there was no agreement between the parties relating to grant of interest for the delayed payment. Even the exchange of communications between the parties remains silent on this aspect. In the absence of any agreement or contract, the provisions of section 34 of the Code of Civil Procedure dealing with 'interest' would come into play, and the same is extracted below, for ready reference:*

*"34. Interest.-(1) Where and insofar as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the court thinks fit.*

*Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.*

*(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have refused such interest, and a separate suit therefor shall not lie."*

*13.1. The above provision empowers the court to grant interest at three different stages of a money decree viz., (i) the court may award interest on the principal sum claimed at a rate it deems reas-*



*onable, for the period before the suit was filed. Such interest is generally governed by agreements between the parties; (ii) The court may award interest on the principal amount from the date of filing the suit until the date of the decree, at a reasonable rate. Here, the court has full discretion to determine the interest rate based on fairness, commercial usage and equity; and (iii) the court may grant interest on the total decretal amount (principal + interest before decree) from the date of the decree until payment, at a rate not exceeding 6% per annum unless otherwise specified in contractual agreements or statutory provisions. However, if the claim arises from a commercial transaction, courts may allow interest at a higher rate based on agreements between the parties.”*

35. Thereafter, after comprehensively considering the substantial case law on the subject, their Lordships concluded, as follows:

*“14. .... Thus, it is abundantly clear that the Courts have the authority to determine the appropriate interest rate, considering the totality of the facts and circumstances in accordance with law. That apart, the Courts have the discretion to decide whether the interest is payable from the date of institution of the suit, a period prior to that, or from the date of the decree, depending on the specific facts of each case.*

XXX XXX XXX

*16. Be it noted, while the discretion to award interest, whether pendente lite or post-decree, is well recognized, its exercise must be guided by equitable considerations. The rate and period of interest cannot be applied mechanically or at an unreasonably high rate without any rationale. Though it is not possible to arrive at the actual value of improvement or the inflation on the fair consideration, if paid at the relevant point of time, it is just and necessary that the rate of interest must be a reparation for the appellant. The Court*



*must ensure that while the claimant is fairly compensated, the award does not become punitive or unduly burdensome on the Judgement Debtor. Therefore, the rate of interest should be determined in a manner that balances both fairness and financial impact, taking into account the "loss of use" principle and economic prudence, in the specific facts of each case.*

*17. Considering the prolonged pendency of the dispute regarding the valuation of shares, which has only been determined recently, and the substantial share amount involved, and also keeping in mind that this is a commercial transaction, and the entire burden of interest along with principal value falls upon the Government, it is necessary in the present case to award reasonable interest, in order to strike a balance between the parties. Thus, in these peculiar facts and circumstances, we deem it fit, just and appropriate to award simple interest at the rate of 6% per annum from 8th July 1975, on the enhanced valuation of shares till the date of decree and interest at the rate of 9% per annum from the date of decree till the date of realisation. The interest shall be paid along with the amount due towards the enhanced value of the shares, after adjusting the amount already paid, to the appellants, within a period of two months from today."*

36. From the above discussion, the legal position that is culled out is that interest is payable as 'compensation' upon wrongful denial or loss of use of money to one entitled to use of said money; and 'penal interest' is payable by wrong doer in making delayed payment to the one so entitled to use of said money. Further, the grant of interest is: a) at the discretion of the Court; b) it has to be equitable and fair after striking a balance between the parties; c) it cannot be punitive; and d) has to be awarded after taking into consideration the entire facts and circumstances of the case.



37. It is my considered view that in the entire facts and circumstances noted above, the plaintiff cannot claim any 'entitlement' to the interest so granted by the learned Courts below either by way of compensation or by way of penal interest. Entitlement, if any at all, would have accrued to the plaintiff, only if there was complete compliance on her part with the contract. In the admitted position that plaintiff was not ready and willing to perform the contract on date so fixed, no 'entitlement' to interest by way of 'compensation' let alone penal interest, can be claimed by the plaintiff. At the risk of repetition, it is re-emphasised that the question of entitlement of the plaintiff to any compensation/payment of interest would arise only if the plaintiff had also proved her readiness and willingness to perform the contract. In the proven, and unchallenged, absence of readiness and willingness of the plaintiff to perform the contract, she cannot lay claim interest. It is perhaps, for this reason that even no prayer for grant of interest, along with alternative prayer for refund of earnest money and damages, was made by the plaintiff in the suit.

38. The argument of learned counsel for the plaintiff even in respect of Section 54 of the Indian Contract Act is liable to be rejected for these reasons. Section 54 stipulates that in case a party that is required to first perform a contract, fails to do so, then the first party cannot claim performance of the reciprocal promise; and should compensate the other party for any loss caused by the breach. However, as already noted above, there is no first and second in the present case in terms of judgment of the Hon'ble Supreme Court in ***R. Shama Naik's case (supra)***; or even in terms of



the present Agreement to Sell dated 24.7.2008. For refreshment of memory, I harken back to the relevant extract of the Agreement in question reproduced above.

39. Even as per the Agreement, both requirements of the contract were required to be complied with simultaneously. Needless to say, terms and conditions of the Agreement will prevail over any other statements made by the appellants. In these circumstances, question of 'compensation' does not arise. The plaintiff was required to demonstrate availability of necessary funds on the target date. In the admitted fact that the plaintiff was not ready and willing to perform the contract, she cannot be held entitled to any interest on refund of earnest money. It is also admitted fact and finding on record that plaintiff was not present in Tehsil on target date. Plaintiff has to prove her readiness and willingness when contract has to be executed, and it is at that point Section 54 will come into picture. Plaintiff without proving her own case for specific performance cannot be allowed to rely upon the defence of the defendants to prove her case. Further, for the aforesaid reasons, all the judgments relied upon by learned counsel for the plaintiff are not applicable to the present case being distinguishable on facts and law.

40. Moreover, award of interest is at the discretion of the Court. The same cannot be claimed as a matter of right by the plaintiff. In awarding interest, the entire facts of the case have to be kept in mind. It is to be borne in mind that the parties are property dealers. As such it is common practice for sale deeds to be registered in favour of the purchaser in the



presence of the original owner. It has not been denied by learned Counsel for the plaintiff that on the target date, appellants were present in the Tehsil office along with defendant no. 3 to register the sale deed. It is also not denied by the plaintiff that this is normal practice amongst property dealers. Thus, in these circumstances, it would be inequitable to inflict payment of interest upon the appellants; especially in view of the fact that interest amount would be almost equal to if not more than the principal amount of Rs.35 lakhs. It has come on record that pursuant to the orders of this Court, the appellants have paid principal amount of Rs.35 lacs and the interest thereupon is yet to be paid subject to the decision of this Court. It is also correct that interest @9% on the refund money of ₹35 lakhs in the intervening period would be almost as much if not more than the principal amount itself. As already noted above, it has been held by the Hon'ble Supreme Court in *I.K. Merchants's case (supra)* that payment of interest has to '*be guided by equitable considerations*' and should '*not become punitive or unduly burdensome on the judgement debtor.*'

41. Thus, keeping in view the entire facts and circumstances of the case, as also to strike a balance of equities between the parties, the present appeal is **partly allowed**, to the extent that imposition of interest @ 9% upon refund of earnest money is set aside.

42. Pending applications, if any, stand disposed of.

**20.05.2025**

Divyanshi

**(NIDHI GUPTA)  
JUDGE**

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