



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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1. RSA-4949-2019 (O&M)
Shivjot Developers and Builders Ltd. Appellant
Versus
Sarup Singh Respondent
2. RSA-3938-2019 (O&M)
Shivjot Developers and Builders Ltd. Appellant
Versus
Sarup Singh Respondent

Date of Decision: 17.01.2025

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Munish Kumar Garg, Advocate for the appellant.

NIDHI GUPTA, J. (ORAL)

1. The plaintiff is in second appeal before this Court laying challenge to the judgment and decree dated 17.8.2015 passed by the learned Trial Court whereby decree for specific performance was declined, but refund of earnest money was ordered; **and** judgment and decree dated 5.3.2019 passed by the Id. 1st Appellate Court, whereby refund of earnest money was set aside; and thus praying for decretal of the suit in *toto*.
2. By way of this common judgment the 02 aforementioned appeals are being disposed of, as both appeals have arisen out of common impugned judgments of both the Courts below dated 17.08.2015 (trial Court) and 05.03.2019 (1st Appellate Court) and similar facts are involved therein. For brevity, the facts are being extracted from RSA-4949-2019.



3. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is being referred to as the plaintiff whereas the respondent as defendant.

4. Brief facts of the case are that the plaintiff had filed a suit for joint possession as owner by way of specific performance of agreement to sell dated 03.08.2005 and 19.09.2005 regarding the suit land measuring 16 kanals-4³/₄ marlas as described in the head note of the plaint; **And** suit for permanent injunction restraining the defendant, its agent servants and representative from selling, mortgaging, transferring alienating in any manner the land as described in the second head note of the plaint; **And** directing the defendant to execute the sale deed in favour of the plaintiff or his nominee for Rs.17,97,65,600/- after the adjustment of Rs.23,96,000/- given as earnest money to the defendant. The plaintiff had exhibited his readiness and willingness to perform his part of contract.

5. The facts as set out in the plaint are that the plaintiff and defendant entered into agreement on 03.08.2005 for sale of joint land measuring 16 kanals 4³/₄ marlas as fully described in the head note of the plaint situated in the revenue estate of village Aujla Hadhbast No 182, Tehsil Kharar Distt. SAS Nagar. The rate as settled between plaintiff and the defendant initially was ₹93,50,000 per acre. In total six sale deeds were agreed to be executed with regard to this land. It was agreed between the parties that plaintiff would obtain the requisite permission from PUDA/Town Planner Department and for the purpose Defendant would furnish a consent deed in favour of plaintiff, for enabling plaintiff to apply to PUDA/Town Planner Department for obtaining requisite permission



with respect to this land for building an infrastructure with respect to developing residential colony. A total amount of ₹ 23,96,000/- was paid by plaintiff towards the earnest money. The total land agreed to be sold was equally divided into six parts in order to affect six sale deeds at an interval of four months each. Subsequently a fresh agreement dated 19.9.2005 was executed between defendant and plaintiff through which, the basic terms and conditions as incorporated in the earlier agreement to sell dated 3.8.2005 were retained. However, substitution in the agreement dated 19.9.2005 were made and the rate of land was mutually agreed at ₹88,50,000 per acre, as it came to notice that this land agreed to be sold through earlier agreement to sell dated 3.8.2005, was not within the Municipal Limit of Municipal Council, Kharar. The date for effecting the first registered sale deed would be within a period of four months, from the date the Govt. issues necessary notification for bringing the land within the Municipal of Municipal Council, Kharar. The rest of the terms and conditions of earlier agreement to sell dated 3.8.2005 were kept intact. The substituted/amended agreement to sell dated 3.8.2005 bears the signature of the defendant as well as the signature on behalf of plaintiff and other marginal witnesses. The notification was issued by the Govt. of Punjab on 20.2.2006. Plaintiff on the basis of 'consent deed' furnished by the defendant applied to Chief Town Planner Govt. of Punjab for obtaining required technical clearance of the building plans. Along with the said application, plaintiff also appended the letter of consent which had been prepared as per Section (2) (a) of the Punjab Apartment and Property Regulation Act 1995 for a total 58 kanals 7 marlas of land. But



in actual defendant had not handed over the physical possession of the suit land. Baldev Singh who is also a co-sharer has already executed and registered sale deed measuring 8 Kanal in favour of plaintiff on 25.5.2006 vide vasika No 845 with respect to his exclusive holding, after receiving the full sale consideration money. The actual physical possession has also been handed over to plaintiff by Baldev Singh with respect to his land holding on execution of the registered sale deed by said Baldev Singh in favour of plaintiff. Earlier there were various correspondence between the defendant and plaintiff. Keeping all these correspondences in abeyance and in view of the fact that sufficient time has already lost after the issuance of the notification by the Govt. of Punjab on 20.2.2006 through which the land agreed to be sold by the defendant, in favour of plaintiff has come within the municipal limits of Municipal Council, Kharar, Distt. Mohali. Plaintiff in order to assert its bonafide called upon the defendant that he is ready to execute the sale deed in its favour regarding the remaining land. Plaintiff further asserted that it is ready with the entire sale consideration money and is willing to execute the registered sale deed for the remaining land. Plaintiff has neither ever intended to prolong the execution of the registered sale deed in its favour any further, nor it is ever interested in any delay and time-consuming litigations in court of law, in the larger interest of itself, as well as the defendant. The plaintiff intends to build up the requisite infrastructure on the land. Plaintiff has already suffered enormous loss and damages for the undue delay in execution of registered sale deed in its favour. The plaintiff has served a legal notice dated 17.5.2007 upon the defendant for the purpose of



execution the registered sale deed on 4.7.2007 in favour of plaintiff. The plaintiff also remained present in the office of Sub Registrar Tehsil Complex on 20.6.2007 and 20.2.2008. It is pleaded that the plaintiff has been throughout ready and willing and even now ready and willing to perform his part of contract, but the contract has failed only because of fault on the part of the defendants. With these pleadings, the suit was filed.

6. Upon notice, defendant/respondent herein had put in appearance and resisted the suit of the plaintiff on various grounds.

7. The plaintiff had filed replication reiterating the assertions made in the plaint.

8. On the basis of the pleadings of the parties, following issues were framed by the learned trial Court: -

- “1. *Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*
2. *Whether the plaintiff is entitled for joint possession as owner by way of specific performance of the agreement to sell dated 03.08.2005 and 19.09.2005 in the suit land as prayed for OPP*
- 2a. *Whether plaintiff company has always remained ready and willing to perform their part of contract? OPP*
3. *Whether the suit is not maintainable in the present form? OPD*
4. *Whether the suit is bad for delay and laches as prayed for? OPD*
5. *Whether the plaintiff is estopped by his act and conduct to file the present suit? OPD*
3. *Relief.”*

9. On the basis of oral and documentary evidence adduced by the parties, the learned trial Court decided issue Nos.1, 2 and 2A in



favour of the plaintiff and against the defendant; and issues No. 3 to 5 were not pressed during the course of arguments and as such those issues were decided against the defendant and in favour of the plaintiff. However, the learned trial Court decreed the suit of the plaintiff in alternative for refund of earnest/advance money to the tune of Rs.23,96,000/- with proportionate costs, while relief of specific performance and permanent injunction was denied. The learned trial Court also granted the plaintiff pre-institution, *pendente lite* and future interest @ 6% on the said amount from the date of its advance till realization.

10. The said judgment and decree dated 17.08.2015 of the learned trial Court was challenged by both the parties i.e. plaintiff and the defendant by way of two separate appeals before the learned Additional District Judge, SAS Nagar (Mohali) bearing Civil Appeal No. RT-318/21.09.2015/18.08.2016 filed by the defendant; and Civil Appeal No. RT-271/24.09.2015/27.07.2016 filed by the appellant; and vide common judgment and decree dated 05.03.2019, the appeal filed by the defendant was allowed and the appeal filed by the plaintiff was dismissed while setting aside the relief of recovery of earnest money to the plaintiff. Hence, the present second appeals.

11. Learned counsel for the appellant-plaintiff, *inter alia*, submits that both the agreements dated 3.8.2005 and 19.9.2005 have been duly proven on record. Even readiness and willingness on part of the plaintiff to perform the contract was proven before the learned trial court. Despite this the learned lower Appellate Court has erred in



drawing an adverse inference against the plaintiff as it is clear from the record that the plaintiff had appeared to execute the sale deed and had therefore, exhibited his readiness and willingness to perform the contract. Moreover, the plaintiff was happy with the refund of earnest money as granted to it by the learned trial Court. However, the learned lower Appellate Court has set aside the money decree in favour of the plaintiff only on the ground that the plaintiff had failed to demonstrate his readiness and willingness to perform his part of contract and the same is contrary to the evidence on record. In holding as above, the learned lower Appellate Court has failed to appreciate that the plaintiff had also sent a notice to the defendant to come to the Tehsil Office and it is the defendant who had failed to put in appearance. Accordingly, it is it prayed that the judgment of the learned 1st Appellate Court be set aside.

12. No other argument is raised on behalf of the appellant.

13. I have heard learned counsel for the appellant and perused the case file in great detail.

14. The learned trial court vide judgment and decree dated 17.8.2015 had denied the relief of specific performance and permanent injunction to the plaintiff. The reasoning in this regard is contained in para 19 of the trial court judgment dated 17.8.2015, to the effect that DW2 Director of the plaintiff company had deposed that the plaintiff company was running short of funds because of which sale deed could not be executed. It was further found that the contract between the parties could not be concluded because of default and breach committed



by plaintiff company. However, as payment of earnest money was found to have been made, the suit was decreed in the alternative for refund of earnest/advance money of ₹23,96,000/- along with pre-institution, *pendente lite* and future interest at the rate of 6% on the said amount.

15. In appeal, vide the impugned judgment and decree dated 05.03.2019 the learned lower Appellate Court has dismissed the plaintiff's suit holding that the plaintiff was not entitled to recovery of the earnest money as he had failed to prove his readiness and willingness to perform his part of contract, despite the fact that defendant had sent a notice to the plaintiff to come present in the Tehsil Office on 24.07.2006. It was found that on 24.7.2006, the plaintiff did not turn up in the office of the Sub-Registrar, whereas the defendant appeared in the Tehsil and got marked his presence through Affidavit Ex. D-4; and further held that from Ex. D1 to D3 it was clear that the plaintiff was not ready and willing to perform his part of the contract. Learned Appellate Court further returned the finding that there was no evidence by plaintiff to show that he was having sufficient amount to get the sale deed executed. Moreover, refund of earnest money was declined on account of a definite recital in the agreement in question to the effect that failure to execute the sale deed would automatically entail cancellation and forfeiture of earnest money. The relevant findings of the learned Ist Appellate Court are contained in para-Nos. 17 and 18 of the impugned judgment and Decree dated 5.3.2019, and the same are reproduced as under:-

“17. Now the question is whether the respondent was ready and willing to perform its part of the contract or not.



It is settled principle of law that mere filing of suit does not prove the readiness of a party to perform his part of the contract but readiness and willingness is to be inferred by the Court through the act and conduct of a party as well as other surrounding circumstances. In order to prove his readiness and willingness, the respondent has merely placed on record affidavits Ex.P11/1 and Ex.P12/1 sworn by the representatives of respondent before the Executive Magistrate on 20.06.2007 and 22.02.2008 respectively. In this regard, a perusal of record shows that the appellant had issued a legal notice dated 22.06.2006 Ex.D1 calling upon the respondent to get the sale deed executed from him as per the terms and conditions of agreement dated 03.08.2005. In reply to above legal notice, the respondent sent a legal notice Ex.D2 wherein it was averred that in addition to agreement dated 03.08.2005, a new agreement dated 19.09.2005 was executed between the parties and as per above agreement, the appellant agreed to sell his land to respondent at the rate of ₹88,50,000/- per acre. In the above legal notice, it was also mentioned that the parties also agreed that the appellant will execute first sale deed in favour of the respondent after four months from the date of issuance of notification by the government regarding the addition of the land of appellant in the limits of municipal council, Kharar. In the above legal notice, it was also mentioned by the respondent that the government has already issued notice qua land in dispute on 20.02.2006 in respect of the land measuring 2 Kanal 14 marlas. The appellant sent a rejoinder dated 12.07.2006 Ex.D3 to the respondent wherein it was stated that he has received additional amount of ₹3,96,000/- which was to be adjusted in the first sale deed whereas the remaining earnest money of ₹20 lacs was to be adjusted in the last sale deed since there was no such condition in the agreement. The appellant also stated that the total price of land measuring 2 kanal – 14 marla comes out to be ₹30,05,285/- out of which ₹3,96,000/- have already been received by him as additional amount and he is ready to execute the sale deed after receiving 26,04,000/- from the respondent. He also stated that he is in dire need of money for getting the sale deed executed from the persons with whom he has entered into an agreement to sell for purchasing land and under these circumstances, without admitting the execution of agreement dated 19.09.2005, he is ready to sell his land to



respondent at the rate of ₹88,50,000/- per acre. In the above notice, the appellant also requested the respondent to come present in the Tehsil Complex, Kharar on 24.07.2006 alongwith balance sale consideration for execution and registration of first sale deed and it was also mentioned in the above notice that in case, the respondent failed to come present in the above office on 24.07.2006, agreement dated 03.08.2005 and 19.09.2005 shall stand cancelled and earnest money will be forfeited. Thereafter, on 24.7.2006, the respondent did not turn up in the office of the Sub Registrar, Kharar whereas the appellant appeared in the above office and got marked his presence through affidavit Ex.D4. From documents Ex.D1 to Ex.D3, it becomes clear that respondent was not ready and willing to perform his part of the contract. He has not produced any evidence on record to establish that he was having sufficient amount to get the sale deed executed from the appellant. On the other hand, the appellant has examined DW2 Jaiteg Singh, who was Director of respondent company in the year 2005 and through whom the suit was filed by the respondent in the year 2008. Above witness clearly stated that after the execution of agreement to sell in question, the sale deed could not be executed because there was slump in market and respondent company had no money. The statement of above witness clearly shows that the respondent company was not having sufficient funds to get the sale deed executed.

18. *The respondent got presence of its representative marked in the office of the Executive Magistrate through affidavit Ex.P11/1 on 20.06.2007 and on 20.02.2008 through affidavit Ex.P12/1. As respondent failed to get the sale deed executed on 24.07.2006 i.e. the date fixed in the reminder Ex.D3, the appellant was not required to appear in the office of the Sub Registrar either on 20.06.2007 or on 20.02.2008 and in view the express terms of agreement dated 03.08.2005 and 19.09.2005, above agreements got automatically cancelled and the earnest money got forfeited. On the one hand, the learned trial court has observed that the respondent was not ready and willing to perform its part of the contract, as such, the relief of specific performance was not granted to the respondent but on the other hand, the relief of recovery of earnest money has been granted to the respondent. As the respondent was not ready and willing to perform its part of the contract, in*



*view of the express provisions of agreement to sell dated 03.08.2005 and 19.09.2005, the earnest money was liable to be forfeited. Moreover, in the plaint, the respondent has not claimed the alternative relief, so the learned trial court was not competent to grant above relief to the respondent. Reliance in this regard placed on cases titled as **Surmukh Singh Vs. Swaran Singh (supra)** and **Harish Kumar and others Vs. Mohinder Singh and others (supra).**”*

16. Learned counsel for the plaintiff has very candidly admitted before this Court that there were specific terms and conditions in the agreements in question as per which failure to execute the sale deed would automatically entail cancellation and forfeiture of earnest money. Learned counsel for the appellant-plaintiff is also unable to dispute or controvert the above said evidence/findings or give any satisfactory explanation for the same.

17. In view of the above facts and irrefutable evidence on record, I find that there is no infirmity in the impugned judgment and decree dated 5.3.2019 passed by the learned 1st Appellate Court.

18. As such, the present appeals are **dismissed**.

19. Pending application(s) if any also stand(s) disposed of.

20. A photocopy of this order be placed on the file of other connected case.

17.01.2025
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No