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**PUNJAB AND HARYANA HIGH COURT**

SINGLE BENCH

( Before : Pankaj Jain, J. )

# MANOJ KUMAR

Vs.

# AMI LAL AND OTHERS

RSA No.1017 of 2019 (O&M) and RSA No.2839 of 2019 (O&M)

Decided on : 16-07-2026

**A. Specific Relief Act, 1963 — Section 16(c) — Readiness and willingness — Burden on plaintiff, independent of defendant's conduct — A plaintiff seeking specific performance must clear the statutory bar under Section 16(c) by proving continuous readiness and willingness to perform the essential terms of the contract, dehors the defence raised by the defendant — Mere purchase of stamp paper and an affidavit of willingness, without proof of financial capacity to pay the balance sale consideration on the agreed date, does not satisfy this burden. [Paras 13-15, 23]**

**B. Evidence — Proof of financial capacity — Sale deeds executed after the agreed date insufficient — Where the plaintiff relies on subsequent sale deeds to demonstrate the source of funds for payment of balance consideration, but such deeds are executed after the date fixed for performance and their aggregate proceeds fall short of the amount required to be paid, they do not establish that the plaintiff possessed the financial capacity to perform his part on the stipulated date. [Paras 15-16]**

**C. Contract — Reciprocal promises — Vendor's incapacity to perform excuses corresponding forfeiture consequence — Where the agreement to sell obliges the vendor to hand over possession of a specified undivided share (3/4th of the frontage) at the time of registration, and the vendor admittedly failed to get that share demarcated or obtain the co-sharer's consent till date, the vendor is equally not ready and willing to perform; such incapacity on the vendor's part disentitles it from resisting the purchaser's claim for refund of consideration paid, with interest. [Paras 17-19, 23]**

**Counsel for Appearing Parties**

*Mr. Kabir Sarin, Advocate for the appellant in RSA No.1017 of 2019 and for respondent No.l in RSA No.2839 of 2019 Mr. Ranjit Saini, Advocate for the appellant in RSA No.2839 of 2019 and for respondent No.l in RSA No.1017 of 2019.*

**JUDGMENT**

**Pankaj Jain, J. - CM-7881-C-2019 in RSA-2839-2019**

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 16 days in filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 16 days in filing the instant appeal bearing RSA No.2839 of 2019 is hereby condoned.

**Main cases**

By way of instant judgement, I intend to dispose off above captioned two regular second appeals. These two appeals arise out of the same suit. The facts are being taken from RSA No. 1017 of 2019 for the sake of convenience. The parties shall be referred to by their original status in the suit, i.e., the appellant in RSA No. 1017 of 2019 shall be referred to as the "plaintiff" and the respondents therein as the "defendants." Appeal bearing RSA No.1017 of 2019 has been filed by plaintiff-Manoj Kumar to restore the judgment and decree passed by the Court of First Instance and appeal bearing RSA No.2839 of 2019 has been filed by defendant No.1-Ami Lal to modify the judgment and decree passed by Lower Appellate Court setting aside grant of refund of earnest money to plaintiff.

2. Plaintiff is in appeal aggrieved of judgment and decree passed by the Lower Appellate Court reversing the judgment and decree passed by the Court of First Instance and dismissing the suit filed by plaintiff.

3. Plaintiff filed suit for possession by way of specific performance of agreement to sell dated 29.01.2011. As per the plaintiff, defendants agreed to sell the suit land measuring 33 Kanals in his favour for valuable consideration of Rs.76,50,000/- per acre vide written agreement to sell dated 29.01.2011. Rs.10 lakhs was received by defendants on the date of execution of agreement as earnest money. As per the agreed terms and conditions, Rs.22 lakhs further was to be paid on or before 11.02.2011 and the remaining sale consideration was to be paid at the time of registration of sale deed which was to be executed on or before 11.05.2011. As per the plaintiff, defendants agreed to handover possession of 3/4th front portion of the disputed land and thereafter to execute sale deed in favour of plaintiff. Plaintiff performed his part and paid a sum of Rs.22 lakhs to the defendants on 11.02.2011 as per the agreement. A writing to the said effect was made on the reverse side of the agreement to sell. Plaintiff claims that he always remained ready and willing to perform his part and to get the sale deed executed. He remained present in the office of the Sub-Registrar on 11.05.2011 after purchasing stamp of Rs.15,79,605/-. Defendants, however, failed to turn up, which led to institution of present suit on 15.06.2011.

4. Defendants contested the suit. Execution of agreement to sell is admitted. Receipt of earnest money and further payment of amount of Rs.22 lakhs on 11.02.2011 is not disputed. Defendants, however, claim that they appeared before the Sub-Registrar on 11.05.2011, but the plaintiff failed to turn up. As per the terms of agreement to sell, the same stands cancelled and the earnest money stands forfeited. Defendants claim to have served legal notice dated 26.05.2011 upon plaintiff through registered post, calling upon him to come present and to get the sale deed executed on 02.06.2011. As per the defendants, plaintiff still failed to appear on 02.06.2011 before the Sub-Registrar. Another notice dated 03.06.2011 was served upon the plaintiff calling upon him to get the sale deed executed on 13.06.2011. Plaintiff again failed to appear. Finally, a public notice was published in the newspaper "Punjab Kesri" on 22.06.2011. As per the defendants, they never assured plaintiff to handover possession of 3/4th portion of front area of the suit land. Defendants, thus, claim that plaintiff was himself neither ready nor willing to perform his part of contract and the suit deserves to be dismissed.

5. Suit filed by the plaintiff was put to trial by the Court of First Instance framing following issues:

> 1. Whether the plaintiff was always ready and willing to perform his part of contract while defendant Nos.1 & 2 failed to execute the sale deed? OPP
>
> 2. Whether the plaintiff is entitled to relief of specific performance of contract or in the alternative relief of recovery of Rs.32 lakhs with interest @ 24% per annum? OPP
>
> 3. Whether the present suit is not maintainable in the present form? OPD
>
> 4. Relief.

6. While deciding issue Nos.1 & 2, the Court of First Instance found that the plaintiff proved his readiness and willingness by way of affidavit dated 11.05.2011. In order to prove the same, he examined Raj Kumar Numberdar as PW3 and Notary Public as PW4. The purchase of stamp paper of Rs.15,79,605/- demonstrates the intent of plaintiff to get the sale deed executed. The legal notices dated 26.05.2011 and 03.06.2011 claim to have been served by defendants upon the plaintiff could not be proved. The prompt filing of the present suit further shows readiness and willingness of the plaintiff. The Court of First Instance accordingly decreed the suit filed by plaintiff holding him entitled for the main relief of specific performance.

7. In the appeal preferred by defendants No.1 & 2, the Lower Appellate Court has reversed the findings recorded by the Court of First Instance holding that the plaintiff failed to show his financial capacity to perform his part on the agreed date i.e. 11.05.2011. The sale deeds, vide which the plaintiff claims to have arranged funds by selling his properties, i.e. Ex.PW5/1 to Ex.PW5/13, were executed during the period from 03.11.2011 to 29.03.2013. Consequently, the said documents do not advance the plaintiff's case. Mere purchase of stamp papers, by itself, cannot be held sufficient to establish that the plaintiff was ready and willing to perform his part of the contract.

8. The Lower Appellate Court accordingly altered the relief holding the plaintiff entitled to recovery of Rs.32 lakhs along with interest @ 9% per annum from the date of execution of agreement to sell till the date of actual realization.

9. Counsel for the appellant/plaintiff has assailed the finding recorded by the Lower Appellate Court to contend that the Lower Appellate Court erred in ignoring the covenants contained in the agreement to sell, whereby defendants agreed to handover 3/4th share of the front portion of land. He refers to testimony of DW8-Ami Lal who admitted that 1/4th share of Kishori Lal has not been separated from 3/4th share of the defendants from the front portion of land and consent of Kishori Lal has not been obtained by defendants till date. He submits that once the agreement to sell specifically provided that the defendants shall handover 3/4th share out of the front portion of land, it was their duty to get the same separated. In the absence of any such separation in share, the defendants themselves were neither willing nor ready to perform their part. The Lower Appellate Court ignored the aforesaid vital fact and erred in denying the main relief of specific performance to the plaintiff despite the fact it stands proved that plaintiff purchased stamp duty worth about Rs.16 lakhs on the date of execution of sale deed and the present suit was instituted within one month of the agreed date of execution of sale deed. To support his contentions, Mr. Sarin relies upon the judgment of Coordinate Bench of this Court in the case of **Tej Singh vs. Trilok Chand, 2025(2) RCR(Civil) 503**.

10. Per contra, Mr. Ranjit Saini, counsel for respondent No.1/defendant No.1, submits that plaintiff had no financial capacity to honour his commitment on the agreed date. His specific case as pleaded and proved on record is that finances were raised by way of sale deeds Ex.PW5/1 to Ex.PW5/13. There being no evidence on record to prove the financial capacity of plaintiff, the Lower Appellate Court rightly returned finding qua issue of readiness and willingness against the plaintiff and in favour of defendants. He further submits that defendants have also preferred separate appeal. Once plaintiff failed to prove his readiness and willingness to perform his part of contract, he cannot be held entitled for grant of alternate relief of specific performance.

11. I have heard counsel for the parties and have carefully gone through records of the case.

12. Since the execution of agreement to sell is not in dispute and receipt of earnest money is not denied by defendants, the only issue that arises for consideration of this Court is of readiness and willingness.

13. In order to appreciate the rival contentions of counsel for the parties, it would be apt to peruse Section 16 of the Specific Relief Act, 1963 (hereinafter referred to as '1963 Act'), which reads as under:-

> "16. Personal bars to relief.-Specific performance of a contract cannot be enforced in favour of a person-
>
> (a) who has obtained substituted performance of contract under section 20; or
>
> (b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be

performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.-For the purposes of clause (c),-

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must prove performance of, or readiness and willingness to perform, the contract according to its true construction."

14. As per the settled law, plaintiff seeking specific performance of agreement to sell is required to clear the statutory bar as contemplated under Section 16(c) of 1963 Act, dehors the defence raised by defendants. It is admitted case of the parties, that the agreed rate of land was Rs.76,50,000/-per acre. The land measures 33 Kanals, therefore, the total sale consideration would be Rs.3,15,56,250/-. Out of the aforesaid total sale consideration, plaintiff paid Rs.10 lakhs to the defendants on the date of execution of agreement to sell i.e.29.01.2011 and Rs.22 lakhs were paid on 11.02.2011. On the date of execution of sale deed i.e. 11.05.2011, the plaintiff was thus required to pay an amount of Rs.2,83,56,250/-.

15. Even if the affidavit Ex.PW1/2 tendered by plaintiff is taken into consideration, despite having been attested by a Public Notary and not by the Sub-Registrar, and purchase of stamp duty is considered, the same may prove and demonstrates his willingness to get the sale deed executed. In order to prove his readiness to perform his part, the plaintiff was required to prove his financial capacity to honour his commitment on 11.05.2011 i.e. the agreed date to get the sale deed executed. In order to prove the same, the plaintiff wants to rely upon sale deeds, whereby he along with his father and brother sold various properties. He placed on record the sale deeds as Ex.PW5/1 to Ex.PW5/13. The dates and the sale proceed relatable to the said sale deeds are tabulated herein below:-

| Sr. No. | Exhibited Documents | Amount | Date of Execution |
|---|---|---|---|
| 1. | Ex.PW5/l | Rs.5,84,000/- | 29.03.2013 |
| 2. | Ex.PW5/2 | Rs. 11,00,000/- | 14.11.2011 |
| 3. | Ex.PW5/3 | Rs.4,15,000/- | 03.11.2011 |

| | | | |
|---|---|---|---|
| 4. | Ex.PW5/4 | Rs. 12,20,000/- | 14.12.2011 |
| 5. | Ex.PW5/5 | Rs.4,10,000/- | 09.11.2011 |
| 6. | Ex.PW5/6 | Rs.6,10,000/- | 09.11.2011 |
| 7. | Ex.PW5/7 | Rs.6,20,000/- | 30.12.2011 |
| 8. | Ex.PW5/8 | Rs.4,10,000/- | 04.11.2011 |
| 9. | Ex.PW5/9 | Rs.3,80,000/- | 04.11.2011 |
| 10. | Ex.PW5/10 | Rs.5,00,000/- | 04.11.2011 |
| 11. | Ex.PW5/ll | Rs.7,29,000/- | 04.11.2011 |
| 12. | Ex.PW5/12 | Rs.2,30,000/- | 04.11.2011 |
| 13. | Ex.PW5/13 | Rs.7,25,000/- | 10.02.2012 |
| | | Rs.79,33,000/- | |

16. The aforesaid sale deeds do not advance the cause of the plaintiff. They are neither before the agreed date nor the sale proceeds match up the amount which was required to be paid by the plaintiff to get the sale deed executed in his favour. In these circumstances, this Court finds that the plaintiff was not ready to perform his part on 11.05.2011 as he had no financial capacity to honour his contractual commitment.

17. The dispute does not end here. Defendants also cannot escape from their incapacity to perform their part. The relevant covenants contained in the agreement to sell read as under:-

> *"6. यह कि क्रेता उक्त म्याद दिनांक 11.05.2011 तक आराजी मज़कूरा बाला का बैनामा तेहरीर व् तकमील करा कर रजिस्ट्री ना करावे तो जरे ब्याना वाला रुपया जब्त होगा और सौदा कैंसिल माना जायेगा।*
>
> *7. यह कि आराजी मज़कूरा बाला पर कब्ज़ा 3/4 हिस्सा के फ्रंट पर दिया जायेगा, 1/4 हिस्सा का फ्रंट किशोरी लाल का छोड़ा जावेगा।"*

**Translated version**

"6. In the event that the purchaser fails to have the sale deed for the aforementioned land drafted, executed, and registered by the stipulated date of 11.05.2011, the earnest

> money shall be forfeited, and the transaction shall be deemed to be cancelled.
>
> 7. That the possession of the aforementioned land will be given on the frontage of the 3/4 share, while the frontage of the 1/4 share of Kishori Lal will be left."

18. Plaintiff in the plaint raised specific plea qua handing over of the possession of front portion to the following effect:-

> "3. That the defendants further agreed upon that they will give the possession of 3/4 portion on the front regarding the disputed land to the plaintiff at the time of sale deed."

19. Defendants in the written statement responded as under:-

> *"6. यह कि क्रेता उक्त म्याद दिनांक 11.05.2011 तक आराजी मज़कूरा बाला का बैनामा तेहरीर व् तकमील करा कर रजिस्ट्री ना करावे तो जरे ब्याना वाला रुपया जब्त होगा और सौदा कैंसिल माना जायेगा।*
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> *7. यह कि आराजी मज़कूरा बाला पर कब्ज़ा 3/4 हिस्सा के फ्रंट पर दिया जायेगा, 1/4 हिस्सा का फ्रंट किशोरी लाल का छोड़ा जावेगा।"*

**Translated version**

> "3. Paragraph No. 3 of the plaint, as has been stated, is incorrect and is not admitted. The assertion that a promise was made to hand over possession of 3/4 of the land at the time of the agreement, is absolutely incorrect. The story in the para of the plaint, is fabricated and bogus."

20. Counsel for the appellant relied upon **Tej Singh** (supra) to submits that once defendants themselves were not in a position to perform their part, the agreed date cannot be held to be sacrosanct. The question of determining availability of funds with the plaintiff would arise only after the defendants have fulfilled their part of contract.

21. Observations made by coordinate Bench in **Tej Singh** (supra) is based upon ratio of law laid down by Supreme Court in **R. Lakshmikantham vs. Devaraji, (2019) 8 SCC 62**. The Supreme Court observed as under:-

"xxxx xxxx xxxx

> 10. The High Court has, in the second appeal, obviously gone wrong on a number of counts. First, to hold that time was of essence in the agreement, is wholly incorrect. Clause 3 has to be read along with Clauses 5 and 8, which clearly show that in the nature of reciprocal promises, the promise made by the seller in

Clause 5 has to be performed first viz. that the title documents have to be obtained from the mortgagee after the mortgage is cleared. It is only then that the consideration above Rs 70,000, being the balance consideration for the sale, has to be paid. Secondly, the High Court is wholly incorrect in stating that the two letters of 18-12-2002 and 19-12-2002 cannot be said to have been proved. Both the letters were registered AD letters sent to the very address of the defendant, which the defendant states is the address on which it received the legal notice dated 7-7-2003. Further, the moment the registered letter once sent is returned with the remarks mentioned hereinabove, it shall be deemed to have been served on the defendant on the address so stated, unless the contrary is proved. The defendant did not come forward with anything to show that this was not the proper address. In fact, that this is the proper address is shown by the fact that he acknowledged the receipt of the legal notice dated 7-7-2003 on this very address.

11. The High Court order is not correct in stating that readiness and willingness cannot be inferred because the letters dated 18-12-2002 and 19-12-2002 had not been sent to the defendant. The High Court also erred in holding that despite having the necessary funds, the plaintiff could not be said to be ready and willing. In the aforesaid circumstances, the High Court was also incorrect in putting a short delay in filing the suit against the plaintiff to state that he was not ready and willing. In India, it is well settled that the rule of equity that exists in England, does not apply, and so long as a suit for specific performance is filed within the period of limitation, delay cannot be put against the plaintiff - See Mademsetty Satyanarayana v. G. Yelloji Rao [**Mademsetty Satyanarayana v. G. Yelloji Rao, AIR 1965 SC 1405**] (para 7) which reads as under: (AIR p. 1409)

> "7. Mr Lakshmaiah cited a long catena of English decisions to define the scope of a court's discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems-English and Indian- qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay - the time lag depending upon circumstances - may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises."

> 12. The High Court also went into error in stating that the value of the property was Rs 10 lakhs at the time of the sale agreement. PW 1 in his cross-examination admitted that it was Rs 10 lakhs on the date when PW 1 was cross-examined. The value of the property on the date of the sale agreement was only Rs 6 lakhs, and it was open for the parties to negotiate the said price upwards or downwards, which was what the parties did in the facts of the present case. Nothing can, therefore, be derived from the erroneous assumption that a valuable property had been sold at a throwaway price.
>
> 13. For all these reasons, therefore, we allow the appeal and set aside the judgment of the High Court and restore that of the courts below."

22. The Supreme Court in **R. Lakshmikantham's case** (supra) made these observations noticing that plaintiff proved his continuous readiness and willingness. The same is in sync with statutory mandate of Section 16(c) of 1963 Act. Unfortunately for the plaintiff, the same is missing in the present case. His case of readiness on appointed date has rather fallen flat.

23. The plaintiff is required to prove his readiness and willingness, dehors the conduct of defendants. The plaintiff is under statutory obligation to clear the bar by proving his continuous readiness and willingness to claim main relief of specific performance. Once the plaintiff fails to meet the test as contemplated under Section 16 of 1963 Act, the main relief of specific performance cannot be granted in his favour. However, keeping in view that defendants also lacked readiness and willingness to perform their part on the agreed date i.e. 11.05.2011 being not in capacity to handover 3/4th share of front portion of suit land to the plaintiff, the defendants cannot contest the right of plaintiff to recover the part of sale consideration received by defendants along with interest as awarded by the Lower Appellate Court.

24. In view of above, this Court finds no merits in the present appeals. Both the appeals are dismissed.

25. Pending application(s), if any, shall also stand disposed off.

26. Photocopy of this order be placed on file of the connected case.