

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****201****RSA-2788-2009 (O&M)****Date of decision: 09.04.2026****Tek Chand****...Appellant(s)****Vs.****Krishan Kumar and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. D.S.Matya, Advocate
for the appellant.

Mr. G.S.Ghuman, Advocate
for respondents No.1 and 2.

NIDHI GUPTA, J.

Plaintiff is in second appeal against the concurrent judgments and decrees of the District Courts, whereby suit filed by the appellant for possession by way of specific performance of Agreement to Sell dated 08.01.2004, has been partly decreed by both the District Courts for recovery of Rs.1,08,900/- alongwith interest @ 12% per annum thereupon.

2. It is *inter alia* submitted by learned counsel for the appellant that defendants are the owners in possession of the suit property. Vide Agreement to Sell dated 08.01.2004, defendants No.1 and 2 had agreed to sell the plot in question to the plaintiff for a total sale consideration of Rs.9,36,468/-. The amount of Rs.90,000/- paid in cash was received by defendants No.1 and 2 by way of earnest money. Target date for execution



of Sale Deed was set for 03.03.2004. It is submitted that the appellant had duly proved on record the said Agreement to Sell. It is submitted that defendant had obtained permission from HUDA for transfer of plot in the name of defendants, in favour of nominee of the plaintiff, namely, Atul Jain vide Permission Letter dated 03.02.2004 Ex.PW1/3. Moreover, appellant had also proved his presence before the HUDA office and before the learned Executive Magistrate/Sub Registrar Gurgaon by way of his Affidavits dated 27.02.2004 and 03.03.2004. However, defendants No.1 and 2 had become dishonest and had not performed their part of contract. Plaintiff had served legal notice dated 30.08.2005 upon the defendants but to no avail. It is contended that in view of above said facts, no ground whatsoever is made out as to why suit of the plaintiff was not decreed for specific performance.

3. It is accordingly prayed that present Appeal be allowed; and the impugned judgments and decrees of the Id. District Courts be set aside.

4. *Per contra*, learned counsel for respondents/defendants No.1 and 2 vehemently opposes submissions advanced on behalf of the appellant and submits that defendants had only signed the format for transfer/permission from HUDA authorizing the plaintiff to obtain the said permission either in his name or in the name of his nominee. The said permission from HUDA was obtained in the name of Sh. Atul Jain R/o DLF, Phase-III, Gurgaon. After the said permission was accorded, Sh. Atul Jain, nominee of the plaintiff, it was the plaintiff who failed to get the sale deed



registered. Plaintiff has failed to prove his readiness and willingness to perform the contract. It is submitted that therefore, the plaintiff now wants to grab the plot in dispute after losing his rights as the market value of the plot in question has gone up very sharply and it is this lust of money on the part of the plaintiff that this frivolous suit has been filed. He accordingly prays for dismissal of the present Appeal.

5. I have heard learned counsel for the parties and perused the case file in a great detail. I find no merit in the submissions advanced on behalf of learned counsel for the appellant.

6. A perusal of record of the case shows that defendants in their written statement have admitted the Agreement to Sell dated 08.01.2004 Ex.PW1/2. It is also admitted that plaintiff had paid an amount of Rs.90,000/- to the defendants No.1 and 2 at the time of execution of Agreement dated 08.01.2004. As such, there can be no dispute with regard to the said aspect of the matter.

7. However, in order to grant discretionary relief of specific performance of contract, it is also incumbent upon the plaintiff to prove his readiness and willingness to perform the contract. It is the case of the plaintiff that on 27.02.2004 and 03.03.2004, plaintiff and his nominee went to the HUDA office, Gurgaon for execution of Sale Deed. However, despite repeated Court queries, learned counsel for the appellant has not been able to point out the Affidavit of Attendance of marking the presence of the plaintiff and his nominee in the HUDA office either on 27.02.2004 or 03.03.2004. Plaintiff is also unable to explain as to why he



had gone to the HUDA office on 27.2.2004. When admittedly the target Date was 3.3.2004.

8. Plaintiff has stated that he and his nominee appeared on 03.03.2004 and he got his presence marked vide Affidavit Ex.PW1/4. However, a perusal of Ex.PW1/4 shows that the same was attested on 27.02.2004 and not on 03.03.2004 which was actual target date. Again, on a Court query, learned counsel for the appellant is also unable to explain as to why the plaintiff had gone to HUDA office on 27.02.2004 when admittedly the target date was set as 03.03.2004.

9. Further, plaintiff is also unable to explain the purpose of serving legal notice dated 30.08.2005 almost 1.5 years after target date of 3.3.2004. It is my view, that from the fact that legal notice was not served upon the defendant in time, it is clear that plaintiff was not willing to perform the contract.

10. In this regard, relevant findings of the learned Civil Judge (Senior Division), Gurgaon are contained in paras 15 and 16 of the judgment dated 15.09.2008, which read as under: -

“15. The plaintiff in para No.2 of his plaint has pleaded that he and his nominee Sh. Atul Jain came present before the office of HUDA, Gurgaon on 27.2.2004 as per directions of the defendants No.1 & 2 alongwith balance sale consideration and other misc. expenses required for the transfer of the suit property but the defendants No.1 & 2 did not turn up through out the working hours. But the plaintiff has not placed on record any documentary or any other cogent evidence to prove on record that he or his nominee



was asked by the defendants No.1 & 2 to come present before the office of HUDA Gurgaon on 27.2.2004. As per agreement Ex.PW1/2, the date fixed for execution and registration of the sale deed was 3.3.2004. There is nothing on record to prove that the plaintiff or his nominee went to the office of HUDA Gurgaon on 27.2.2004 with the consent of the defendants No.1 & 2. Therefore, the readiness and willingness of the plaintiff to perform his part of contract/agreement dated 8.1.2004 is not proved on record on the ground that he and his nominee went to the office of HUDA Gurgaon on 27.2.2004.

16. The plaintiff in para No.3 of his plaint has also pleaded that he alongwith his nominee went to the office of HUDA Gurgaon on 3.3.2004 alongwith balance sale consideration and other miscellaneous expenses required for the transfer of the suit property but the defendants No.1 & 2 did not turn up. But the plaintiff has failed to disclose the steps taken by him when the defendants No.1 & 2 did not appear before the office of HUDA Gurgaon on 3.3.2004.

As per pleadings of the plaintiff, the plaintiff requested defendants No.1 & 2 several times to get the suit property transferred in his favour or in favour of his nominee. But the dates and manner in which the plaintiff made requests to the defendants No.1 & 2 have not been disclosed by the plaintiff in his plaint. Therefore, the aforesaid plea of the plaintiff is not sustainable.

The plaintiff has alleged that he served legal notice dated 30.8.2005 under registered post through his counsel Sh. Ashok Malik, Advocate, Gurgaon which was duly received by the defendants No.1 & 2. But the plaintiff has not explained as to why the legal notice was not given by him to the defendant just after 3.3.2004 on which he alongwith his



nominee went to the office of HUDA Gurgaon, as alleged by the plaintiff. The delay of more than 12 years in sending legal notice by the plaintiff to the defendants No.1 & 2 from 3.3.2004 shows the plaintiff was not always ready & willing to perform his part of contract/agreement dated 8.1.2004.....”

11. Furthermore, as per the judgment of the Hon’ble Supreme Court passed in **R.Shama Naik vs. G.Srinivasiah (SC): Law Finder Doc Id # 2670489**, it is held that in order to establish readiness and willingness, two specific ingredients are required to be fulfilled: (a) presence in the Tehsil office; and (b) demonstrate availability of funds. The relevant paras of the said judgment are as under: -

“10. The law is well settled. The plaintiff is obliged not only to make specific statement and averments in the plaint but is also obliged to adduce necessary oral and documentary evidence to show the availability of funds to make payment in terms of the contract in time.

11. There is a fine distinction between readiness and willingness to perform the contract. Both the ingredients are necessary for the relief of specific performance.”

12. In the present case, even if it is assumed for the sake of argument that plaintiff was present in the HUDA office on 03.03.2004, however despite repeated Court queries, plaintiff has been unable to demonstrate the balance sale consideration to this Court. As per the judgment of **R. Shama Naik (supra)**, plaintiff is required to demonstrate and establish availability of the balance sale consideration. Even source of



funds has to be disclosed. Even in the present case, earnest amount of Rs.90,000/- was paid in cash. However, the remaining substantial amount of Rs.8,46,468/- (Rs.9,36,468-Rs.90,000) was required to be shown by the plaintiff. Again, on a Court query, learned counsel for the appellant has admitted that plaintiff has failed to demonstrate the availability of the balance sale consideration. In this view of the matter, specific performance of the contract could not have been granted to the appellant.

13. Reliance may further be placed upon judgment of this Court in **Smt. Naraini Devi v. Manoj Kumar, (Punjab And Haryana) : Law Finder Doc ID # 2723337**, wherein it is held that:-

“10. Thus, the defendant has admitted the Agreement to Sell; and has also admitted receipt (Ex.P2) of Rs.10 lakh advance payment and only balance amount of Rs.11,50,000/- remained to be paid by the plaintiff on or before agreed date on 10.04.2008. In the face of these admissions, the only question that remained to be determined by the Courts below was the readiness and willingness of the parties to perform the contract.

11. As noted above, the target date was mutually set by the parties for 10.04.2008. Record reveals that defendant failed to produce any evidence to prove that she was present in the office of the Sub-Registrar on 10.04.2008. On the contrary, the defendant has admitted in her cross-examination that on 10.04.2008, she did not go to the office of the Sub-Registrar for execution of the Sale Deed because plaintiff had made a complaint against her to the Police. It has also been admitted by the defendant in her cross-



examination that permission to sell the suit property was granted to her by HUDA after 10.04.2008 and that after getting the said permission, she had not given any notice to the plaintiff.

12. On the other hand, the plaintiff proved his presence in the office of the Sub-Registrar on the target date on 10.04.2008. A perusal of Ex.P7, affidavit sworn by plaintiff on 10.04.2008, duly attested by Executive Magistrate reveals that vendee/plaintiff remained present in the office of concerned Sub-Registrar for execution and registration of Sale Deed. Since the time for performance was admittedly mutually enlarged, therefore, vendor/defendant was under an obligation to execute requisite Sale Deed in favour of plaintiff, after receiving remaining sale consideration. However, as noted above, the defendant did not visit office of Sub-Registrar. She has further conceded in cross-examination that she cannot say whether vendee had visited office of Sub-Registrar on 10.04.2008 or not. She also conceded that after 10.04.2008, vendee filed a complaint against her. From the above, it is clear that vendee did whatever he could for performance of Agreement to Sell in dispute. He visited office of Sub-Registrar, got his affidavit attested, filed a complaint against vendor for not honouring her contractual obligations and got legal notice (Ex.P8) which shows that legal notice was sent to defendant on 29.07.2008, and served upon her through counsel. Thereafter, suit was also promptly filed on 21.08.2008. Admittedly, Plaintiff has also paid sum of Rs.10 lakh out of sale consideration of Rs.21,50,000/-. Plaintiff appeared in the office of Sub-Registrar whereas defendant failed to appear on 10.04.2008. Defendant has also admitted in cross-examination that on 10.04.2008 she did not go to office of Sub-Registrar for execution of Sale



Deed because plaintiff had made complaint against her to Police. It is therefore, proved that it was the defendant who breached Agreement to Sell; whereas Plaintiff filed the suit 4 months 11 days after the date fixed for execution of Sale Deed by affixing Court fees of Rs.90,000/-approximately, which shows that he was ready and willing to perform his part of contract.

XXX XXX XXX

15. In view of the above undisputed facts and findings on record, present appeal is dismissed."

14. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.

15. In view of the above noted factual and legal position, no ground is made out to interfere in the impugned judgments and decrees of the learned District Courts. The present Regular Second Appeal is hereby **dismissed**.

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

09.04.2026

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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