

**SUPREME COURT OF INDIA**

Vijay Kumar

Vs.

Om Parkash

Crl.A.No.10191 of 2018

(R.Banumathi and Indira Banerjee,JJ.,)

03.10.2018

**JUDGMENT**

**R.Banumathi,J.,**

SLP(C)No.3768 of 2016

1. Leave granted.

2. This appeal arises out of judgment and order dated 19th December, 2015 passed by the High Court of Punjab and Haryana at Chandigarh in R.S.A. NO.6184 of 2015 in and by which the High Court has affirmed the judgment of the First Appellate Court thereby granting decree for specific performance in favour of the respondent-plaintiff.

3. The facts of the case in a nutshell are as follows. The appellants-defendant and the respondent-plaintiff had entered into an agreement for sale on 9th November, 2007 in respect of a shop for a total sale consideration of Rs.26,00,000 (Rupees twenty six lakhs). Rs.4,00,000/- (Rupees four lakhs) was paid by the respondent-plaintiff to the appellants-defendant as money and the remaining amount of Rs.22,00,000/- (Rupees Twenty Two Lakhs) was to be paid on 31st March, 2008 that is the date fixed for executing the registration of the sale deed. Admittedly, both the parties went to the concerned Sub-Registrar's Office on 31st March, 2008; but the sale deed was not executed. The respondent-plaintiff filed a suit on 29th April, 2008 for specific performance. The appellants-defendant contested the suit contending that the respondent-plaintiff was not ready and willing to perform his part of the contract. Upon consideration of oral and documentary evidence, the Trial Court dismissed the suit for specific performance filed by the respondent-plaintiff holding that the respondent has failed to prove his readiness and willingness to perform the contract.

4. In appeal, preferred by the respondent-plaintiff, the First Appellate Court set aside the judgment of the Trial Court and allowed the first appeal thereby granting specific

performance in favour of the respondent-plaintiff. The judgment of the First Appellate Court was affirmed by the High Court, as aforesaid in para (1).

5. We have heard Mr. Kaushal Yadav, learned counsel appearing for the appellants-defendant and Mr. Sumit Bansal, learned counsel appearing for the respondent-plaintiff and also perused the impugned judgment and the evidence/materials on record.

6. Learned counsel for the respondent-plaintiff has submitted that the respondent's readiness and willingness has been accepted by the two courts below and the respondent has actually deposited the balance amount of Rs.22,00,000/- (Rupees Twenty Two Lakhs) in 2015 after the judgment of the First Appellate Court.

7. In order to obtain a decree for specific performance, the plaintiff has to prove his readiness and willingness to perform his part of the contract and the readiness and willingness has to be shown through out and has to be established by the plaintiff. In the case in hand, though the respondent-plaintiff has filed the suit for specific performance on 29th April, 2008, the respondent-plaintiff has not shown his capacity to pay the balance sale consideration of Rs.22,00,000 (Rupees Twenty Two Lakhs). In his evidence, the respondent-plaintiff has stated that he has borrowed the amount from his friends and kept the money to pay the balance sale consideration. As rightly pointed out by the Trial Court, the respondent-plaintiff could not produce any document to show that he had the amount of Rs.22,00,000 (Rupees Twenty Two Lakhs) with him on the relevant date; nor was he able to name the friends from whom he raised money or was able to raise the money. Further more, as rightly pointed out by the Trial Court, the respondent-plaintiff could have placed on record his Accounts Book, Pass Book or the Statement of Accounts or any other negotiable instrument to establish that he had the money with him at the relevant point of time to perform his part of the contract. We are, therefore, in agreement with the view taken by the Trial Court that the respondent-plaintiff has not been able to prove his readiness and willingness on his part.

8. The relief for specific performance is purely discretionary. Though the respondent-plaintiff has alleged that he was ready and willing to perform his part of the contract, the First Appellate Court ought to have examined first whether the respondent-plaintiff was able to show his capacity to pay the balance money. In our considered view, the First Appellate Court as well as the High Court has not properly appreciated the evidence and the conduct of the parties. The First Appellate Court as well as the High Court, in our view, was not right in reversing the judgment of the Trial Court and the impugned order cannot be sustained and liable to be set aside.

9. Considering the relief to be granted to the respondent-plaintiff, admittedly the respondent-plaintiff had paid an earnest money of Rs.4,00,000/- (Rupees Four Lakhs) to the appellants-defendant and that has to be necessarily paid back to the respondent-plaintiff, of course with interest at the rate of 12% per annum (from the date of Agreement to Sell i.e. 9th November, 2007 till date i.e. 3rd October, 2018) and thereafter at the rate of 10% per annum till the date of releasing the payment. Ordered accordingly. The amount of Rs.4,00,000/- (Rupees Four Lakhs) along with interest, as above, be paid by the appellants-defendant by way of

Demand Draft in favour of the respondent within eight weeks from today. Further, the respondent-plaintiff is permitted to withdraw Rs.22,00,000/- (Rupees Twenty Two Lakhs) deposited by him before the First Appellate Court along with the interest, if any accrued on the same.

10. The appeal is accordingly allowed.