



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

RSA No.4513 of 2017 (O&M)

Reserved on: 12.02.2026

Pronounced on: 10.04.2026

Uploaded on : 10.04.2026

Shri Pardeep Goyal and others

....Appellants

V/s

Sh. Subhash Chander

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Argued by: Mr.Sunil Chadha, Senior Advocate with
Mr. Kashish Aggarwal, Advocate, for the appellants.

Mr. Akshay Bhan, Senior Advocate with
Mr. Rohit Nagpal, Advocate,
Mr. Ashutosh Dhankar, Advocate
Mr. Dharam Chand Mittal, Advocate and
Mr. Harsh Bansal, Advocate, for the respondent.

VIKRAM AGGARWAL, J.

Plaintiffs are in appeal against the judgment and decree dated 18.02.2017 passed by the Court of learned Additional District Judge, Chandigarh, dismissing the appeal against the judgment and decree dated 22.07.2014 passed by the Court of Addl. Civil Judge (Sr. Divn.), Chandigarh, vide which the suit of the plaintiff for possession by way of specific performance and mandatory injunction was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. Plaintiffs instituted a suit for possession by way of specific performance of an agreement to sell dated 16.10.2007 and for mandatory injunction restraining the defendant from alienating the suit property.

4. The case set up by the plaintiffs was that 60% share in triple storey SCO No.804, situated in 61.21 acre Development Scheme, Shivalik



Enclave, Mani Majra, U.T., Chandigarh was sold by the defendant in favour of the plaintiffs on 16.10.2007 and ownership was transferred in favour of the plaintiffs by the Municipal Corporation, Chandigarh vide letter dated 05.11.2007.

4.1 In respect of the remaining 40% share in the said triple storey SCO (hereinafter referred to as “the suit property”), another agreement to sell dated 16.10.2007 was executed by the defendant in favour of the plaintiffs. The total sale consideration was fixed as Rs.2.96 crores. A sum of Rs.25 lakhs is stated to have been paid by way of two post dated cheques bearing No.600489, dated 25.10.2007 and 311467 dated 30.10.2007. The date for execution of the sale deed was fixed as 31.12.2007. The seller was required to clear all outstanding dues against the suit property and was also required to obtain no objection certificate from the concerned department.

4.2 It was averred that in addition to earnest money of Rs.25 lakhs, another sum of Rs.5 lakhs had been paid to the defendant by way of cheque No.600488 dated 15.10.2007 and the said amount was credited in the account of the defendant on 16.10.2007. It was claimed that this amount of Rs.5 lakhs had also been paid towards the price of the suit property.

4.3 It was averred that two legal notices dated 27.12.2007 and 15.06.2008 were issued to the defendant. The notice dated 27.12.2007 was duly received and the notice dated 15.06.2008 was not received back and, therefore, was deemed to have been delivered to the defendant. However, the defendant did not perform his part of the agreement.

4.4 It was averred that the plaintiffs had been ready and willing to perform their part of the agreement but the defendant had not come forward.

5. The suit was opposed by the defendant. In the written statement, certain preliminary objections as regards maintainability, the



agreement to sell dated 16.10.2007 being no agreement in the eyes of law and being not executable as no consideration had been paid and the plaintiffs not having approached the Court with clean hands as they had tried to include a sum of Rs.5 lakhs as part of the sale consideration, were raised. It was claimed that the sum of Rs. 5 lakhs was never mentioned in the agreement.

6. On merits, execution of the agreement was admitted. It was stated that in fact, upon purchase of 60% share in the SCO on 16.10.2007, the agreement to sell in question was prepared for the suit property. However, the plaintiffs told the defendant that they were not having the cash amount to pay the earnest money as a result of which, they had mentioned post dated cheques amounting to Rs.25 lakhs. The defendant was requested by the plaintiffs to sign the agreement as he being an old man, would have to come again from Jalandhar to Chandigarh to append signatures on the agreement to sell. It was averred that the plaintiffs had assured that the post dated cheques mentioned in the agreement would be sent to the defendant one day prior to the presentation of the first cheque. In all good faith, the defendant appended his signatures on the agreement but the cheques were never sent.

6.1 It was averred that the defendant had demanded two cheques along with a photocopy of the agreement. However, the plaintiffs stated that they would not be in a position to arrange the total sale consideration of Rs.2.96 crores on the date of execution of the sale deed as they had explored all possibilities to arrange the requisite amount. It was averred that the plaintiffs had stated that the agreement, therefore, stood cancelled.

6.2 It was averred that the plaintiffs had assured the defendant that they would send the original copy of the agreement to him by post.



6.3 It was denied that Rs.5 lakhs had been received in connection with the agreement to sell in question. It was averred that the said Rs.5 lakhs were nowhere mentioned in the agreement to sell and in fact, the said amount had been paid on 15.10.2007 as cost of furniture, air conditioners and other fixtures which had been installed in the SCO, the sale deed *qua* which had been executed on 16.10.2007.

6.4 The receipt of legal notices was denied. It was averred that only a photocopy of the agreement to sell dated 16.10.2007 had been received by post in December 2007.

6.5 All other averments were denied.

7. In the replication, the averments made in the written statement were denied and those made in the plaint were reiterated.

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

“1. Whether the plaintiffs are entitled to decree for specific performance of agreement to sell dated 16.10.2007? OPP

2. Whether the plaintiffs are/were ready and willing to perform their part of contract? OPP

3. Whether the suit is not maintainable? OPD

4. Whether the plaintiffs have not approached the Court with clean hands, if so, its effects?OPD

5. Relief.”

9. Parties led their respective evidence. The trial court dismissed the suit holding that the plaintiffs had been unable to prove that they had been ready and willing to perform their part of the agreement. It was also held that the sum of Rs.5 lakhs had not been paid as part of the same transaction.

10. Aggrieved by the decision of the trial Court, an appeal was preferred which too was dismissed by the first appellate Court, leading to the



filing of the instant appeal.

11. Learned counsel for the parties were heard.

12. It was strenuously urged by Sh. Sunil Chadha, Senior Counsel representing the appellants that both Courts have gravely erred in non-suiting the plaintiffs. It was submitted that the story put forth by the defendant that he had appended his signatures on the agreement to sell on the asking of the plaintiffs is imaginary. It has been argued that the terms and conditions of the agreement to sell were very clear and it was the defendant who did not present the cheques for payment with an ill intention. Learned Senior Counsel referred to the entire oral and documentary evidence led on the record of the case and submitted that the plaintiffs had always been ready and willing to perform their part of the agreement.

12.1 It was argued that in fact, no NOC had been obtained by the defendant and further, the suit property was in possession of tenants as a result of which, the sale deed could not be executed. It was argued that the defendant did not give any response to the two legal notices, one of which had been issued prior to the target date.

12.2 It was submitted that this in itself would show that the defendant was not ready and willing to perform his part of the agreement.

12.3 It was argued that once the execution of the agreement to sell had not been disputed, there was no occasion for the Courts to have denied the relief of specific performance.

12.4 It was submitted that to prove their readiness and willingness, the plaintiffs had moved two applications for additional evidence but both were erroneously dismissed by the first appellate Court. It was submitted that there was ample evidence to prove that the plaintiffs had been ready and willing to perform their part of the agreement.



12.5 It was also argued that once the NOC had not been obtained by the defendant and the tenants had not vacated the suit property, it was not incumbent upon the plaintiffs to have appeared before the sub-registrar for execution of the sale deed. In support of his contentions, learned Senior Counsel placed reliance upon the case of ***Amar Singh and another vs. Surjit Kaur and another, 2014 (30) RCR (Civil) 26.***

13. *Per contra*, Learned Senior Counsel representing the respondent-defendant submitted that there is no illegality in the impugned decisions and that the said decisions were given after considering the factual and legal position.

13.1 It was submitted that the plaintiffs had miserably failed to prove that they had been ready and willing to perform their part of the contract. Reference was made to the statements of Pradeep Goyal and Suman Goyal, who appeared as PW1 and PW5. It was submitted that the plaintiffs had not been able to prove that the sum of Rs.5 lakhs had been paid as a part of the earnest money. It was argued that even in the agreement to sell, there was no reference of the same, and that the said plea was a false plea taken by the plaintiffs as regards an amount which had been paid qua fixtures etc. upon execution of sale deed pertaining to the 60% share in the SCO.

13.2 It was argued that the plaintiffs were unable to prove that they had the amount of Rs.25 lakhs in their bank account qua the cheques that had been issued for the payment of earnest money. Learned Senior Counsel submitted that despite an opportunity having been given, the plaintiffs did not produce their bank statements to show that the said amount was available with them.

13.3 Learned Senior Counsel also submitted that the plaintiffs had miserably failed to prove that they had been ready and willing to perform



their part of the contract. It was argued that after the payment of alleged Rs.25 lakhs, the balance sale consideration was more than Rs.2.7 crores and the plaintiffs were not able to show that they were in possession of the said amount. Reference was again made to the cross examination of PW1 and PW5 and other witnesses to prove the said fact. It was submitted that the cross-examination of PW1 and PW5 was deferred to enable them to produce their income tax returns and proof of the plaintiffs having been in possession of the amount but no such document was produced. Learned Senior Counsel submitted that under the circumstances, both Courts rightly held that the plaintiffs had miserably failed to prove that they had been ready and willing to perform their part of the contract.

13.4 Learned Senior Counsel argued that it had nowhere been recorded in the agreement to sell that the suit property was in the possession of the tenants and that vacant possession of the same would be handed over.

13.5 Learned Senior Counsel also argued that the plaintiffs unilaterally extended the time for execution of the sale deed because they were not in possession of the requisite funds. In support of his contention, he placed reliance upon judgments in ***R. Shama Naik vs. G. Srinivasiah*** 2024 SCC Online SC 3586, ***Vijay Kumar and others vs. Om Parkash*** 2019 (5) RCR (Civil) 12 and ***C.S. Venkatesh vs. A.S.C. Murthy (D) by LRs & others*** 2020 SCC Online SC 143.

14. I have considered the submissions made by the learned counsel for the parties and have perused the record.

15. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the



judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317*** and ***Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no substantial question of law is required to be framed.

16. Reverting to the matter in hand, few facts were admitted. Concededly, sale deed as regards 60% share of the SCO was executed on 16.10.2007 by the defendant in favour of the plaintiffs for a total sale consideration of Rs.2.01 crores. Further, the execution of the agreement to sell qua the suit property is also an admitted fact, though, the defendant made an attempt to say that his signatures had been got appended on the agreement to sell, stating that, being an old man, he would have to come again from Jalandhar to append his signatures. However, this version was rightly not accepted as, once, signatures had been admitted on the agreement to sell, it was for the defendant to prove that it was under specific circumstances that the signatures were appended, which he failed to do.

17. The terms and conditions of the agreement to sell were also never in dispute. The sale price of the suit property was fixed as Rs.2.96 crores. The target date for registration of the sale deed was fixed as 31.12.2007. Earnest money of Rs.25 lakhs was recorded to have been paid by way of two post dated cheques.

18. Concededly, the said cheques were not encashed. It was the stand of the plaintiffs that the defendant never produced the cheques for encashment, whereas, it was the case of the defendant that the plaintiffs had never given the cheques. When PW1 (Pardeep Goyal) and PW5 (Suman Goyal) stepped into the witness box, they were put a specific question about



the availability of funds and they sought an adjournment to produce their income tax returns etc. but did not produce the same. When the plaintiffs were non-suited, they filed an application for additional evidence before the first appellate Court, which was rightly dismissed by the first appellate Court. Under the circumstances, it can be safely held that the plaintiffs were not in possession of the requisite funds.

19. The version put forth by the plaintiffs that in addition to sum of Rs.25 lakhs, another sum of Rs.5 lakhs had been paid as earnest money was rightly found to be false by both Courts as there was no recital to the said effect in the agreement to sell. Any plea contrary to the terms and conditions of document reduced in writing would not be acceptable.

20. Further, most importantly, the plaintiffs failed to prove that they had been ready and willing to perform their part of the contract. The balance sale consideration, after the payment of earnest money was more than Rs.2.7 crores. No evidence worth its name was produced to even *prima facie* show that the plaintiffs were in possession of such funds.

21. Even in the application for additional evidence, it was stated that the plaintiffs were in possession of the amount of earnest money but there was no reference about they being in possession of the amount which was required to be paid as the balance consideration. It is now well settled that to prove readiness and willingness, a plaintiff must not only aver so in the plaint, but would also be required to adduce oral and documentary evidence to show availability of funds and capacity to perform the contract in time. In the case of **R. Shama Nayak** (supra), this categorical view was taken by the Apex Court. In the case of **Vijay Kumar** (supra) also, this view was taken by the Apex 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 L 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 L 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.”

22. The Apex Court examined the entire law on the issue of readiness and willingness in the case of **C.S. Venkatesh** (supra) and it was held as under:-

“15. The words 'ready and willing' imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of performance. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of contract, the court must take into consideration the conduct of the plaintiff prior, and subsequent to the filing of the suit along with other attending circumstances. The amount which he has to pay the defendant must be of necessity to be proved to be available. Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.

16. In N.P. Thirugnanam (Dead) by LRs. v. Dr. R. Jagan Mohan Rao and Others, 1995 (S) SCC 115 : 1995(3) R.R.R. 190, it was held that



continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant of the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior to and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must necessarily be proved to be available.

17. In Pushparani S. Sundaram and Others v. Pauline Manomani James (deceased) and Others, 2002 (9) SCC 582, this Court has held that inference of readiness and willingness could be drawn from the conduct of the plaintiff and the totality of circumstances in a particular case. It was held thus:

"So far these being a plea that they were ready and willing to perform their part of the contract is there in the pleading, we have no hesitation to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of section 16(c) of the Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance about willingness or readiness of the plaintiff. This at the most could be the desire of the plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But Section 16(c) of the said Act makes it clear that mere plea is not sufficient, it has to be proved."

18. Similar view has been taken by this Court in Manjunath Anandappa URF Shivappa Hanasi v. Tammanasa and Others, 2003 (10) SCC 390: 2003(2) RCR (Civil) 713 and Pukhraj D. Jain and Others v. G. Gopalakrishna, 2004 (7) SCC 251: 2004(3) RCR (Civil) 171.

19. The judgment of this Court in Umabai and Anr. v. Nilkanth Dhondiba Chavan (Dead) by LRs. and Anr., (2005) 6 SCC 243: 2005(2) RCR (Civil) 659 is almost similar to the case at hand where the plaintiff had filed a suit for specific performance of the agreement to reconvey property. The plea of the plaintiff was that the transaction was one of mortgage and the sale stood redeemed and the plaintiff was discharged from the debt and he was ready to pay the defendant the amount for the property only in the alternative that the plea of mortgage was not accepted by the Court, would show that his readiness was conditional.



The plaintiff did not have any income and could not raise the amount required for re-purchase of the property. In the totality of the circumstances, it was held that the plaintiff was not ready and willing to perform the contract. The conditions laid for the specific performance of the contract are in para 30, which is as under:

"30. It is now well settled that the conduct of the parties, with a view to arrive at a finding as to whether the plaintiff-respondents were all along and still are ready and willing to perform their part of contract as is mandatorily required under section 16(c) of the Specific Relief Act must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in-chief would not suffice. The conduct of the plaintiff-respondents must be judged having regard to the entirety of the pleadings as also the evidences brought on records".

23. If one keeps in mind the evidence produced on record and the law on the subject, there remains no doubt that the plaintiffs had not been able to prove that they had been ready and willing to perform their part of the contract.

24. Not only this, the plaintiffs unilaterally extended the time for execution of the sale deed. The target date was 31.12.2007. The plaintiffs issued a legal notice dated 27.12.2007 but did not appear before the Sub-Registrar on 31.12.2007. The argument that they did not appear since NOC had not been obtained is devoid of merit. In view of the findings recorded in the preceding paragraphs, it is amply clear that the plaintiffs did not appear since they were not in possession of the requisite funds. No doubt, NOC was not obtained. However, once even the earnest money had not been reached the defendant, he was not bound to obtain the same.

25. The second legal notice was issued six months after the first legal notice. It is not understood as to why this notice was issued six months after the issuance of the first notice. It again appears to have been done with a view to buy time and keeping the matter alive.



26. Be that as it may, this Court has already held that there is no illegality in the findings recorded by both Courts that the plaintiffs had not been able to prove that they had not been ready and willing to perform their part of the contract.

27. Considering the matter from all angles, this Court finds no illegality in the impugned judgments and decrees warranting interference in second appeal. Consequently, the instant appeal is found to be devoid of merit and is accordingly dismissed.

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

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: 10.04.2026

vcgarg

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No