

Rajinder Kumar vs Kuldeep Singh & Ors on 7 February, 2014

Equivalent citations: AIR 2014 SUPREME COURT 1155, 2014 (15) SCC 529, 2014 AIR SCW 1121, 2014 (2) ADR 676, 2014 (3) AJR 107, (2015) 1 RAJ LW 374, (2014) 2 MAD LW 540, (2015) 1 ALLMR 435 (SC), (2014) 2 KCCR 127, (2014) 2 ALL WC 1976, (2014) 118 CUT LT 430, (2014) 2 SIM LC 1126, (2014) 138 ALLINDCAS 167 (SC), (2014) 1 WLC(SC)CVL 347, (2014) 1 CLR 719 (SC), (2014) 124 REVDEC 240, (2014) 104 ALL LR 741, (2014) 3 CAL HN 162, (2014) 1 ORISSA LR 902, (2014) 2 ICC 53, (2014) 2 CIVILCOURTC 184, (2014) 1 RECCIVR 980, 2014 (2) SCALE 135, AIR 2014 SC (CIVIL) 810, (2014) 2 SCALE 135, (2014) 2 MAD LJ 496, (2014) 1 ALL RENTCAS 561, (2014) 1 CURCC 59

Bench: Kurian Joseph, Chandramauli Kr. Prasad

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1873 OF 2014
[Arising out of S.L.P. (C) No. 19215 OF 2011]

RAJINDER KUMAR ... APPELLANT (S)
VERSUS

SHRI KULDEEP SINGH & OTHERS ... RESPONDENT (S)

WITH

CIVIL APPEAL NO. 1874 OF 2014
[Arising out of S.L.P. (C) No. 28302 OF 2010]

MOHINDER KUMAR GUPTA ... APPELLANT (S)

VERSUS

SHRI KULDEEP SINGH & OTHERS ... RESPONDENT (S)

WITH

CIVIL APPEAL NO. 1875 OF 2014
[Arising out of S.L.P. (C) No. 26419 OF 2011]

MOHINDER KUMAR GUPTA ... APPELLANT (S)

VERSUS

KULDEEP SINGH & OTHERS ... RESPONDENT (S)

WITH

CIVIL APPEAL NOS. 1876-1877 OF 2014
[Arising out of S.L.P. (C) Nos. 29361-29362 OF 2012]

S. K. GUPTA (DEAD) THROUGH LRS,
AND OTHERS ... APPELLANT (S)

VERSUS

SHRI KULDEEP SINGH & OTHERS ... RESPONDENT (S)

J U D G M E N T

KURIAN, J.:

Leave granted.

2. Specific performance is an equitable relief granted by the courts in specific situations. Plainly speaking, equity means fairness. According to Sir Edward Fry, the Court by a decree of specific performance compels the defaulting party to do that which in conscience he is bound to do, viz., actually and specifically to perform his contract[1]. Conscience means a person's moral sense of right or wrong[2]. Thus, what is morally wrong cannot be equitably right and necessarily what is morally right will be just and proper. This prelude is the keyhole for us to see through the factual and legal position of a three decade long litigation on a specific performance.

FACTS

3. One Nand Lal (deceased) was the perpetual lessee of the Land and Development Officer (hereinafter referred to as 'L&DO') of property bearing Bungalow No. 9, Sunder Nagar, New Delhi measuring 0.179 acres equal to 865 sq. yards equal to 721 sq. metres. His legal heirs are -

(1) Banarsi Das; (2) Dhanpat Rai; (3) Din Dayal; and (4) Gaindo Devi (widow of a pre-deceased son Paras Ram) as his legal heirs. Each had a 1/4th share in the suit property. Din Dayal passed away leaving behind, as originally claimed - (5) his widow Sushila Devi; (6) son Mohinder Kumar Gupta; (7) son Surinder Dayal; (8) son Narinder Dayal;

and (9) daughter Vijay Lakshmi and each of them had 1/24th share each in the suit property.

4. The eight legal heirs of Nand Lal entered into an agreement to sell the aforesaid immovable property on 29/30.07.1980 with Kuldeep Singh- (respondent) for a total sum of Rs.14,00,000/- out of which Kuldeep Singh paid Rs.1,40,000/- as earnest money and possession of one garage in the suit property was handed over to him. The balance amount of Rs.12,60,000/- was to be paid by the respondent on the execution and registration of the sale deed and delivery of possession.

5. One Rajinder Kumar (Petitioner in SLP (C) No. 19215/2011) claims that he is son of the late Din Dayal and at the time of agreement to sell, he was a minor. He filed a suit through his maternal grandfather (Suit No. 1428 of 1981) and sought a declaration that the agreement for sale was illegal as he was not a party to it. The suit was dismissed for default on 22.05.1984. After more than 17 years, it was eventually restored on 17.01.2002.

6. The respondent-Kuldeep Singh filed a suit (Suit No. 280/1982) on 10.01.1982 for specific performance of the agreement against the eight legal heirs, impleading also Rajinder Kumar in the said suit as defendant no. 9, on the original side of High Court of Delhi. The suit was decreed ex parte on 30.04.1984. Appeal (RFA (OS) NO. 14/1985) against the above Judgment dated 30.04.1984 was dismissed vide order dated 22.03.1985 as time barred. An application under Order IX Rule 13 of the Code of Civil Procedure, 1908 filed thereafter for setting aside the decree was also dismissed on 15.07.1985. Thus, the decree has attained finality.

7. Kuldeep Singh filed Execution Petition (No. 164/1990) on 07.11.1990. Mohinder Kumar Gupta (petitioner in SLP No. 28302 of 2010), one of the judgment debtors, filed Application No. 110/1991 objecting to the execution of the decree. Another application EA NO. 111/1991 was filed by minor Rajinder Kumar under Order XXI Rule 58 of the Code of Civil Procedure, 1908. Single Judge of the Delhi High Court vide Judgment dated 01.02.2002 dismissed both petitions holding that the decree dated 30.04.1984 is executable. Aggrieved, Mohinder Kumar Gupta filed FAO (OS) No. 66/2002 against the aforesaid judgment dated 01.02.2002 and Rajinder Kumar filed EFA (OS) No. 4/2002 before the Division Bench of the High Court.

8. Meanwhile, on 24.04.1999, some of the appellants filed an application under Section 28 of Specific Relief Act, 1963 (IA No. 4274/1999 in Suit No. 280/1982) for rescission of the agreement. That was dismissed by the Single Judge, High Court of Delhi vide Order dated 23.02.2000. FAO (OS) 110/2000 before the Division Bench of the High Court arises against the order dated 23.02.2000.

9. The Division Bench vide Judgment dated 19.02.2010 dismissed FAO (OS) No. 110 of 2000, FAO (OS) NO. 66 of 2002 but allowed EFA (OS) No. 4/2002 filed by the then minor Rajinder Kumar, holding that the execution against him cannot be pursued as there is no decree against him.

10. The appellants then filed review petitions No. 210/2010 & 328/2010 against Judgment dated 19.02.2010 in FAO (OS) No. 110/2000. The High Court dismissed the Review Petition No. 210/2010 in FAO (OS) No. 110/2000 and Review Petition No. 328 of 2010 in FAO (OS) No. 66 of 2002 on 25.04.2011. Thus, they are before this Court in these appeals.

11. It is the main contention of the appellants that the decree dated 30.04.1984 is inexecutable since it is vague and contingent. It is also contended that the High Court of Delhi failed to properly exercise its jurisdiction while deciding the application for rescinding the contract. There are other ancillary contentions as well.

12. Having heard the learned Senior Counsel appearing for the parties, we feel that mainly two issues arise for consideration:

- A. Is the decree executable?
- B. Was the application for rescission properly decided?

13. The agreement for sale was executed by the appellants (Defendants 1 to

8) on 30.07.1980. They received part of the consideration, viz., Rs. 1,40,000/- as earnest money. Possession of part of the agreement schedule property, a garage was parted with. The balance Rs.12,60,000/- was to be paid at the time of execution of the sale deed. That deed could have been executed only after obtaining permission from the L&DO, Delhi. As per the agreement, it was for the vendors to obtain that permission from the L&DO on paying the unearned increase. There were certain other obligations as well. That the vendors actually intended to sell the property is clear from the fact that they had approached the L&DO and the L&DO gave permission on 12.11.1981, subject to payment of an amount of Rs.7,17,330/-. The unearned increase came to be such a large amount only because of the delay caused by the purchaser in getting his power of attorney, it is alleged. The amount was not deposited by the vendors even during the time extended by the L&DO.

14. It was in the meanwhile, Rajinder Kumar (petitioner in SLP (Civil) No. 19215 of 2011) claiming to be the minor son of Din Dayal, filed a suit on 15.12.1981 attacking the agreement, claiming his 1/24th share and for other reliefs. Rajinder Kumar aged 7 years at the time of the agreement, filed the suit through his maternal grandfather even though his mother and natural guardian who is signatory to the agreement to sale, was very much alive and available. Smelling a rat, the purchaser-Kuldeep Singh on 10.01.1982 filed OS No. 1428 of 1981 on the original side of the High Court for specific performance. At that time, the suit filed by Rajinder Kumar was pending for plaintiff's evidence. Rajinder Kumar was arrayed as Defendant No. 9 in the suit for specific performance. For some reason or other, the defendants did not file written statement despite several chances. Hence, the suit was decreed as prayed for on 30.04.1984.

15. For the purposes of easy reference, we may extract the decree as such:

“(DECREE IN A SUIT FOR SPECIFIC PERFORMANCE AND AWARD OF DAMAGES) IN THE HIGH COURT OF DELHI AT NEW DELHI (Ordinary Original Civil Jurisdiction) S. Kuldeep Singh son of S. Hara Singh Resident of 20, Rajindra Park, New Delhi, Through his General Attorney S. Harkirat Singh ... Plaintiff Versus

1. Sh. Banarsi Dass, son of Shri Nand Lal, R/o M-49, Greater Kailash-I, New Delhi.
2. Sh. Dhanpat Rai, son of Shri Nand Lal resident of E-4, N.D.S.E., Part-I, New Delhi.
3. Shrimati Gaindo Devi, widow of Shri Paras Ram, son of Shri Nand Lal, Resident of N-21, N.D.S.E., Part-I, New Delhi.

4. Smt. Sushila Devi, widow of late Shri Din Dayal, resident of C-3, House Cooperative Society, South Extension Part I, New Delhi.

5. Shri Mohinder Kumar Gupta, son of Shri Din Dayal, resident of C-3, House Cooperative Society, South Extension Part I, New Delhi.

6. Shri Surinder Dayal, son of Shri Din Dayal, resident of C-3, House Cooperative Society, South Extension Part I, New Delhi.

7. Shri Narinder Dayal son of Shri Din Dayal, resident of C-3, House Cooperative Society, South Extension Part I, New Delhi.

8. Miss. Vijay Lakshmi daughter of Shri Din Dayal, resident of C-3, House Cooperative Society, South Extension Part I, New Delhi.

9. Shri Rajinder Kumar (Minor), son of Late Shri Din Dayal, resident of C-3, House Cooperative Society, South Extension Part I, New Delhi-49 through his legal guardian and Maternal Grand father Shri Nand Kishore Mittal, son of Shri Sagar Mal Mittal, 746, Gali Bhagwan, Kotla Mubarakpur, New Delhi. ...Defendants Value of the suit for) purposes of jurisdiction) Rs. 15,40,000/-

Court fee paid	Rs. 17,374.40
Suit filed on	11.2.1982

CLAIM: In the event of Defendant No.9 being held to have no

right, title or interest in the property in suit, it is prayed:-

1(A) A decree for specific performance of the agreement to sale dated 29/30.7.80 in respect of entire property No.9, Sunder Nagar, New Delhi be granted in favour of the plaintiff against the Defendants 1 to 8 against the total agreed consideration of Rupees Fourteen Lakhs. (B) The Defendants 1 to 8 be ordered to deliver the actual, physical, vacant possession of the said entire property Bungalow No.9, Sunder Nagar, New Delhi except one garage, the possession whereof has already been delivered to the plaintiff by Defendants 1 to 8 in terms of the agreement to sale referred to above.

(C) That Defendants 1 to 8 be ordered to deposit Rs.7,17,330/- as the unearned increase in the value of the plot No.9, Sunder Nagar, New Delhi, and failing such payment, the plaintiff be allowed to deposit the said amount in the account of the Defendants 1 to 8 out of the unpaid balance of Rs.12,60,000/-.

(D) That Defendants 1 to 8 be ordered to pay Rs.1,40,000/- as and by way of liquidated damages for the breach of contract and the said amount of Rs.1,40,000/- be allowed to be appropriated out of the unpaid balance consideration of

Rs.12,60,000/- due and payable to the said Defendants 1 to 8.

(E) That it may also be ordered that all public dues payable by the Defendants 1 to 8 in respect [sic] of the property in suit be paid by the plaintiff in the account of the said Defendants and the amount so paid be allowed to be appropriated out of the last mentioned unpaid balance money payable to the Defendants 1 to 8 for conveying the said property to the plaintiff.

(F) That the Defendants 1 to 8 be required to apply to their respective Income-Tax Officers and to obtain the respective Clearance Certificates for the sale of the property in favour of the plaintiff.

It may further be ordered that if Defendants 1 to 8 or any of them neglects to apply to their Income-Tax Officers for obtaining the necessary Clearance Certificates for the sale of the said property, then an officer of this Hon'ble Court do make such application on behalf of the concerned Defendants 1 to 8 and all costs of the said applications as also any amounts demanded by the Taxation authorities for issue of the requisite Clearance Certificates be ordered to be deducted out of the said amount of Rs.12,60,000/- and in case of a short fall a decree for the additional amount involved be passed in favour of the plaintiff against the Defendants 1 to 8 jointly and severally.

(G) That the Defendants 4 to 8 be required to produce the Estate Duty Clearance Certificate in respect of the conveyance of one quarter undivided right, title and interest in the said property previously belonging to Shri Din Dayal, the deceased husband of Defendant No.4 and father of Defendants 5 to 8. It may also be ordered that in case Defendants 4 to 8 neglect to obtain the Requisite Estate Duty Clearance Certificate, then an Officer of this Hon'ble Court do apply for the grant of the said Estate Duty Clearance Certificates on behalf of Defendants 4 to 8 and all costs of such applications as also the payment of any dues demanded by the Estate Duty Officer be allowed to be deducted out of the balance consideration money, if any, in the hands of the plaintiff and in the event of the plaintiff being required to pay any amount to the Taxation authorities, then a decree for a like amount be passed in favour of the plaintiff and the Defendants 1 to 8.

(H) That Defendants 1 to 8 be also required to pay all the public dues, lease money, and misuse charges, if any pertaining to Bungalow No.9, Sunder Nagar, New Delhi, and if they fail to do so, then the plaintiff be required to pay all such dues, and a decree for a like amount be passed in favour of the plaintiff against Defendants 1 to 8 jointly and severally.

(I) That the Defendants 1 to 8 be ordered to hand over all the antecedent original title deeds of the property No.9, Sunder Nagar, New Delhi to the plaintiff.

(J) That pending the completion of all the jobs to be undertaken and completed by the Defendants 1 to 8 as detailed above, the plaintiff be allowed to deposit final balance amount if any, payable by the said Defendants 1 to 8 in this Hon'ble Court and the said balance may be ordered to be released to the Defendants 1 to 8 only after they have fully complied with their part of the contract, as decreed by this Hon'ble Court.

II. That in the event of this Hon'ble court deciding that for any reason whatsoever a decree for specific performance is not to be allowed to the plaintiff (which is not expected):-

Then in the alternative:

A decree for the refund of Rs.1,40,000/- alongwith interest thereon at Rs.1.25 paise percent per month or part of a month from the date of payment viz. 30.7.80 to the date of receipt by the plaintiff be passed in favour of the plaintiff against the Defendants 1 to 8 jointly and severally and the said Defendants may further be ordered to pay Rs.11,00,000/- for breach of contract to the plaintiff as and by way of damages, and the same be decreed accordingly.

III.(A)That in the event that this Hon'ble Court holds that Defendant No.9 is the owner of an undivided 1/24th right, title and interest in the said property, then a decree for specific performance of the agreement to sale dated 29/30.7.80 in respect of an undivided 23/24th right, title and interest in the said property No.9, Sunder Nagar, New Delhi belonging to Defendants 1 to 8 be granted in favour of the plaintiff against the Defendants against the payment of the agreed total consideration of Rs.14,00,000/-.

(B) That the Defendants 1 to 8 be ordered to deliver the actual, physical, joint possession of the said entire property to the plaintiff and Defendant No.9 jointly except one garage, the possession whereof has already been delivered to the plaintiff by Defendants 1 to 8 in terms of the agreement to sale referred to above.

(C) That Defendants 1 to 8 be ordered to pay Rs.7,17,330/- to the Land and Development Officer as the unearned increase in the value of the plot No.9, Sunder Nagar, New Delhi, as also the other dues demanded by the said Officer, and in case the Defendants neglect to pay the said amounts then the plaintiff be permitted to pay the above amounts in the account of Defendants 1 to 8 and to deduct the same out of the unpaid balance of Rs.12,60,000/-.

(D) That Defendants 1 to 8 be ordered to pay Rs.1,40,000/- as and by way of liquidated damages for the breach of contract and the said amount of Rs.1,40,000/- be allowed to be appropriated out of the unpaid balance consideration of Rs.12,60,000/- due and payable to the said Defendants 1 to 8.

(E) That it may also be ordered that all public dues payable by the Defendants 1 to 8 in respect of the property in suit be paid by the plaintiff in the account of the said Defendants 1 to 8 and the amount so paid be allowed to be appropriated out of the last mentioned unpaid balance money payable to the Defendants 1 to 8 for conveying the said property to the plaintiff.

(F) that the Defendants 1 to 8 be required to apply to their respective Income Tax Officers and to obtain Clearance Certificate for the sale of the property in favour of the plaintiff. It may further be ordered that if Defendants 1 to 8 or any of them neglect to apply to their Income Tax Officers for obtaining the necessary Clearance Certificate for sale of the said property, then an officer of this

Hon'ble Court do make such applications on behalf of the concerned Defendants 1 to 8 and all costs for the making of the said applications as also any amounts demanded by the Taxation authorities for issue of the requisite Clearance Certificates be ordered to be deducted out of the said amount of Rs.12,60,000/- and in case of a short fall a decree for the additional amount involved be passed in favour of the plaintiff against the Defendants 1 to 8 jointly and severally. (G) That the Defendants 4 to 8 be required to produce the Estate Duty Clearance Certificate in respect of the Conveyance of one-quarter undivided right, title and interest in the said property previously belonging to Shri Din Dayal, the deceased husband of Defendant No.4, and father of Defendants 5 to 8. It may also be ordered that in case Defendants 4 to 8 or any of them, neglect to obtain the requisite Estate Duty Clearance Certificate, then an officer of this Hon'ble Court do apply for the grant of the said Estate Duty Clearance Certificate on behalf of the Defendants 4 to 8 and all costs of such applications as also the payment of any dues demanded by the Estate Duty Officer be allowed to be deducted out of the balance consideration money, if any, in the hands of the plaintiff and in the event of there being a short fall, the plaintiff be required to pay the requisite amount to the Taxation authorities and a decree for a like amount be passed in favour of the plaintiff against the Defendants 1 to 8, jointly and severally.

(H) That the Defendants 1 to 8 be ordered to hand over all the original title deeds of the property No.9, Sunder Nagar, New Delhi to the plaintiff.

(I) That pending the completion of all the jobs to be undertaken and completed by Defendants 1 to 8, the plaintiff be allowed to deposit the final balance amount, if any, payable to the Defendants in this Hon'ble court and the said balance may be ordered to be released to the Defendants 1 to 8 only after they have fully complied with their part of the contract as decreed by this Hon'ble Court. (J) The costs of the suit may also be awarded, to the plaintiff against the Defendants 1 to 8.

30th day of April 1984 CORAM:

Hon'ble Mr. Justice Yogeshwar Dayal For the Plaintiff : Mr. S. R. Bhagat, Advocate.
For the Defendants : Mr. G.L. Rawal, Advocate for Deft. No.9.

The suit coming on this day for final disposal before this Court in the presence of counsel for the parties as aforesaid; it is ordered that a decree as prayed by the plaintiff and the same is hereby passed in favour of the plaintiff and against the Defendants 1 to 8 only.

It is lastly ordered that Defendants 1 to 8 herein do pay to the plaintiff herein the cost of the suit incurred by the latter as Rs.18,028.75p (Rs. Eighteen Thousand Twenty Eight and Paise Seventy Five only) as taxed by the Taxing Officer of this court and noted in the margin of this decree.

Given under my hand and the seal of the court this the 30th day of April, 1984.

Sd/ Dy. Registrar”

16. Appeal was dismissed as time barred. A few months thereafter an Application under Order IX Rule 13 of Code of Civil Procedure, 1908 was filed for setting aside the ex parte decree. That too was dismissed. It appears the vendors lost all hope and left things as they were at that stage. It is seen from the pleadings that attempts were also made for an out of court settlement, but in vain.

17. We do not think that the vendors would be justified in setting up any defence on executability of the decree both on law and facts of the case. At the risk of redundancy, on referring to the facts, it can be seen that the vendors had in fact wanted to fructify the agreement for sale. Having received the advance amount of Rs.1,40,000/-, they had parted possession of a part of the property, viz., garage. They had jointly made an application to the L&DO in terms of the agreement, for permission to transfer the property. The L&DO did grant the permission but on condition of deposit of an amount of Rs.7,17,330/- towards the unearned increase, which is more than 50% of the sale consideration. The value of the property had shot up by that time. It is pertinent to note that as per the original agreement, the unearned increase was to be paid by the vendors. On account of the escalation, it appears, their hearts started burning and they were extremely reluctant to part with the property. Their attempts thereafter have always been, one way or the other, to delay, if not deny, their obligation for conveyance of the property.

18. The main contention of the vendors is that that there is no decree in terms of Section 2 (2) of the Code of Civil Procedure, 1908 because there is no formal expression of adjudication and the court has not conclusively determined the rights of the parties. But it has to be seen that the vendors did not contest the suit. They had not even filed a written statement. In that context only, the suit was decreed as prayed for. In the Judgment dated 30.04.1984, the Court has referred to the averments in the plaint. The opening and concluding sentences of the Judgment read as follows:

“Plaintiff, S. Kuldeep Singh has filed the present suit against Shri Banarsi Dass and 8 others for specific performance of an agreement to sell dated 29/30th July 1980. The agreement relates to plot No.9, Block No.171 in the layout plan of the New Capital of Delhi, now known as Bungalow No.9, Sunder Nagar, New Delhi. ... xxx xxx xxx xxx xxx However, since the Defendants have failed to file written statement, as directed in my order dated 15th February, 1984, I proceed to pronounce the judgment under the provisions of order 8 rule 10 of the Code of Civil Procedure and decree the suit of the plaintiff as prayed for with costs against Defendants 1 to 8 only as there is no relief prayed against Defendant No.9.”

19. Having referred to the entire contentions of the plaintiff, the Judgment was pronounced under Order VIII Rule 10 of the Code of Civil Procedure, 1908 since there was no written statement. The Court has taken the position that the defendants had failed to file written statement. Therefore, the Court, in the facts of the case, opted to pronounce the Judgment, under Order VIII Rule 10 of the Code of Civil Procedure, 1908 and draw the decree accordingly.

20. No doubt, the decree passed under Order VIII Rule 10 of the Code of Civil Procedure, 1908 is an ex parte decree. But merely because it is an ex parte decree, the same does not cease to have the force of the decree. It is a valid decree for all purposes.

21. It is also worthwhile to note that the Judgment was pronounced under the pre-amended Rule 10 under Order VIII of the Code of Civil Procedure, 1908 and there was more discretion with the Court regarding pronouncement of the Judgment in the absence of written statement. Still further, it is to be noted that Rule 10 speaks about the requirement of written statement indicating thereby that there are cases where written statement was required to be filed. Written statement is the defense of the defendants. They chose not to file it. Despite the absence of such defense, the court still applied its mind and after referring to the pleadings, pronounced a Judgment allowing the suit for specific performance. Though the Judgment says that the suit is decreed as prayed for and though all the prayers have been incorporated in the decree, it is to be noted that the suit is one for specific performance of the agreement. The suit that has been decreed is the suit for specific performance of the agreement. Once the decree for specific performance attained finality, they cannot thereafter turn round and make weak and lame contentions regarding the executability of the decree.

22. If the suit for specific performance is not decreed as prayed for, then alone the question of any reference to the alternative relief would arise. Therefore, there is no question of any ambiguity. As held by this Court in *Topanmal Chhotamal v. Kundomal Gangaram and Others*[3] and consistently followed thereafter, even if there is any ambiguity, it is for the executing court to construe the decree if necessary after referring to the Judgment. If sufficient guidance is not available even from the Judgment, the Court is even free to refer to the pleadings so as to construe the true import of the decree. No doubt, the court cannot go behind the decree or beyond the decree. But while executing a decree for specific performance, the Court, in case of any ambiguity, has necessarily to construe the decree so as to give effect to the intention of the parties. Thus, there is no question of any alternate relief regarding the damages etc. in the present case since the suit for the specific performance for the conveyance of the property has been decreed.

23. There is no case that the court does not have jurisdiction to pass the decree. Nor is there any case that the decree is a nullity on account of any jurisdictional error. Hence, the decree is executable for all intents and purposes but limited to the shares of the vendors. The claim of Rajinder Kumar would depend on the outcome of the pending suit.

24. Now we shall deal with the issue regarding the approach of the High Court in dealing with the application for rescission. Apparently, the purchaser-Kuldeep Singh was also not quite serious in pursuing the cause. Though the decree is dated 30.04.1984, the execution petition was filed only after six and a half years, on 07.11.1990. No doubt, it was within the time prescribed by the law of limitation. But the efflux of time assumes importance and seriousness in the background of the escalation of price in real estate.

25. It is very strange that no serious steps have been taken by the executing court for almost a decade. While so, only on 24.04.1999, respondents 3 to 7 and 13 filed Application – IA No. 4274 of 1999 in the suit for rescinding the agreement for sale. The main ground taken in the Application for rescission of the agreement was that the plaintiff/purchaser failed to deposit the balance consideration of Rs.12,60,000/-. It was also contended that between the date of decree in 1984 and the date of filing the Application for rescission, even the notified rates in land value shot up from Rs.2,000/- per square yard to Rs.13,860/- per square meter and the unearned increase would be

around Rs.50,00,000/- and, thus, it would be highly unjust, unconscionable and inequitable to compel the vendors to make the payment of the unearned increase. It was also averred that the vendors were prepared to pay a reasonable compensation to the purchaser. The purchaser-Kuldeep Singh in response to the Application for rescission, stated that the court had not fixed any time for deposit of the balance amount, the balance amount was payable only on the execution and registration of the conveyance deed. He also contended that execution was possible only on permission from the L&DO on payment of unearned increase by the vendors and for which the vendors are at fault in not having taken any serious steps in completing their obligations under the decree; and that the purchaser had always been ready and willing to perform his part of the agreement.

26. By Order dated 23.02.2000, the learned Single Judge dismissed the applications holding that the purchaser was not at fault either in having done something or in not having done something which stood in the way of the execution of the decree. On the contrary, it was the vendors who did not perform their duties in the sequence of events prior to and leading to the registration of the sale deed. In short, it was held that the vendors having not performed their obligations under the agreement, they could not approach the court for rescinding the agreement on the ground that the purchaser had not deposited the balance amount.

27. It is extremely important and crucially relevant to note that the court did not advert to one of the main contentions regarding the escalation in land value by which the vendors had to incur the liability of around four times the balance consideration by way of payment of unearned increase to the L&DO so as to complete their obligation. It is pertinent also to note that the said unconscionable liability for the vendors arose only on account of the delayed execution of the decree.

28. It is significant to note that during the pendency of the appeals, the purchaser sought permission of the court to deposit the balance consideration and, on 06.01.2010, the same was granted. He, accordingly, deposited some amounts towards the liability of unearned income also.

29. It appears from the Order dated 06.01.2010 in FAO (OS) No. 66 of 2002 that only oral submissions were made for the deposit of balance consideration, by the respondent-Kuldeep Singh. For the purpose of ready reference, we may extract the Order as such:

“Learned counsel for Respondent No.1 (Kuldeep Singh) says that the balance consideration in terms of the contract entered into between the parties will be deposited by his client on or before 11th January, 2010. Learned counsel for Respondent No.1 also says that the unearned increase that is required to be calculated by the L and DO has not yet been so calculated but his client is prepared to deposit an amount of Rs. 10 lakhs on account in this regard. This amount will be deposited with the Registrar General of this Court on or before 11th January, 2010.

List for directions on 12th January, 2010.

Arguments have been heard and concluded and judgment is reserved. The matter is listed on 12th January, 2010 only for compliance with regard to the deposit.”

30. We have referred to above development to keep in mind one significant and important aspect of the matter that the vendors did not get an opportunity to make their response to the oral submission made by the purchaser with regard to deposit of the balance consideration, after passage of around 26 years after the decree.

31. Having regard to the facts and circumstances which we have discussed above, we are afraid the High Court has not made an attempt to balance equity. As in the case of a decree for specific performance where equity weighs with the court so is the situation in considering an application under Section 28 of the Specific Relief Act, 1963 for rescinding the contract. Under Section 28 of the Specific Relief Act, 1963, a vendor is free to apply to the Court which made decree to have the contract rescinded in case the purchaser has not paid the purchase money or other sum which the Court has ordered him to pay within the period allowed by the decree or such other period as the court may allow. On such an application, the Court may, by order, rescind the contract “as the justice of the case may require”. It is now settled law that a suit for specific performance does not come to an end on passing of a decree and the Court which passed the decree retains control over the decree even after the decree has been passed and the decree is sometimes described as the preliminary decree.

32. In *Hungerford Investment Trust Limited (In Voluntary Liquidation) v. Haridas Mundhra and Others*[4], it has been held that:

“22. It is settled by a long course of decisions of the Indian High Courts that the Court which passes a decree for specific performance retains control over the decree even after the decree has been passed. In *Mahommadalli Sahib v. Abdul Khadir Saheb* (1930) MLJ Vol. 59, p.351 it was held that the Court which passes a decree for specific performance has the power to extend the time fixed in the decree for the reason that Court retains control over the decree, that the contract between the parties is not extinguished by the passing of a decree for specific performance and that the contract subsists notwithstanding the passing of the decree. ...” (Emphasis supplied)

33. The discretionary power vested in court by Section 28 of the Specific Relief Act, 1963 is intended to apply in such circumstances:

“The effect of this provision is to empower the court which passed the decree for specific performance to rescind the contract and set aside the decree which it has passed earlier if the successful plaintiff failed to comply with the terms of the decree by making payment of the purchase money or other sums which the court ordered him to pay. ...[5]” (Emphasis supplied)

34. The decree for specific performance is a decree in favour of both the plaintiff and the defendant in the suit, as held by this Court in Hungerford Investment Trust Limited case (supra). Hence, the decree can be executed either by the plaintiff or the defendant.

35. The plaintiff or the defendant is also free to approach the court for appropriate clarification/directions in the event of any ambiguity or supervening factors making the execution of the decree inexecutable. To quote Fry (ibid) (please see Pages-546-548):

“1170. It may and not unfrequently does happen that after judgment has been given for the specific performance of a contract, some further relief becomes necessary, in consequence of one or other of the parties making default in the performance of something which ought under the judgment to be performed by him or on his part ; as, for instance, where a vendor refuses or is unable to execute a proper conveyance of the property, or a purchaser to pay the purchase-money. The character of the consequential relief appropriate to any particular case will of course vary according to the nature of the subject-matter of the contract and the position which the applicant occupies in the transaction; but in every case the application must, under the present practice, be made only to the Court by which the judgment was pronounced, and the multiplicity of legal proceedings which sometimes occurred before the fusion of the jurisdictions of the Courts of Chancery and Common Law is now practically impossible.

1171. There are two kinds of relief after judgment for specific performance of which either party to the contract may, in a proper case, avail himself.

1172.(i.) He may obtain (on motion in the action) an order appointing a definite time and place for completion of the contract by payment of the unpaid purchase-money and delivery over of the executed conveyance and title-deeds, or a period within which the judgment is to be obeyed, and, if the other party fails to obey the order, may thereupon at once issue a writ of sequestration against the defaulting party's estate and effects. Furthermore, if the default was in the payment of money, the plaintiff may issue his *fi.fa.* or *elegit*: if in some act other than or besides the payment of money, he may move, on notice to the defaulter, for a writ of attachment against him. Indeed, in a case where a person who had agreed to accept a lease would not, though ordered by the Court to do so, execute the lease, it was held that an attachment was the only means to which the Court could resort for enforcing such execution.

1173. (ii.) He may apply to the Court (by motion in the action) for an order rescinding the contract. On an application of this kind, if it appears that the party moved against has positively refused to complete the contract, its immediate rescission may be ordered :

otherwise, the order will be for rescission in default of completion within a limited time. And where a deposit has been paid, and there is no condition of the contract determining, expressly or impliedly, what is to be done with it in the event of such a rescission, the Court will decline to order the deposit to be returned to a defaulting purchaser. An order for the defendant to pay the plaintiff's costs, and a stay of further proceedings in the action, except such proceedings as may be necessary for recovery of the costs of the action and the costs of the motion, may also be obtained on this application. A vendor plaintiff is not debarred from moving for an order for rescission by the fact that the judgment at the trial contained a declaration of his vendor's lien, and gave him liberty to apply as to enforcing it.

In some cases the order has expressly excepted from the stay of proceedings any application to the Court to award and assess damages sustained by the plaintiff's by reason or in consequence of the breach of contract. In *Henty v. Schroder* (12 Ch.D.666), however, Jessel M.R. declined to make this exception, consider that the plaintiffs could not at the same time obtain an order to have the contract rescinded and claim damages for the breach of it. If this be so, it would seem that in many cases the Court must fail to give the plaintiff the full measure of relief requisite for replacing him in the position in which he stood before the contract,-the repayment, for instance, of expenses incurred by him in showing his title." (Emphasis supplied)

36. Dealing with a situation where deterioration takes place by the conduct, according to Fry (ibid) (please see Page 654):

"1431. If, after the contract and before the purchaser takes, or ought to take, possession, any deterioration take place by the conduct of the vendor or his tenants, he will be accountable for it to the purchaser. "He is not entitled to treat the estate as his own. If he willfully damages or injures it, he is liable to the purchaser ; and more than that, he is liable if he does not take reasonable care of it." And this liability may be enforced by action, even after a conveyance made in ignorance of the facts.

1432. Where a purchaser had paid his money into Court under an order, and was held entitled to compensation for deterioration, which had taken place while the vendors retained possession, he was allowed the amount out of his purchase-money, with interest at 4 per cent., and the costs of an issue to ascertain the amount of damage." (Emphasis supplied)

37. In the instant case, converse is the position. If the purchaser is entitled to claim compensation for deterioration, a fortiori it must be held that vendor should also be entitled to compensation for accretion in value of the subject matter of the agreement for specific performance, in case the execution thereof is unduly delayed by the purchaser. Section 28 of the Specific Relief Act provides that the court has to pass an order as the justice of the case may require. Justice is not an abstract proposition. It is a concrete reality. The parties on approaching the court must get the feeling that justice has been done in the facts and circumstances of the case, particularly in specific performance

related cases, in terms of equity, equality and fairness.

38. In the facts and circumstances of the case, it is very difficult to balance the equity and balance the rights of both the parties in the background of their conduct. No doubt there was no time fixed in the agreement for payment of the purchase money. That was also contingent on a series of obligations to be performed by the vendor and the duty of the purchaser to pay the purchase money was only thereafter. But if we closely analyze the pleadings and submissions, we can see that the purchaser had made an attempt, though belatedly, for getting the obligations performed even at his expense.

39. The plaintiff purchaser very well knew that the vendors have been delaying the performance of their obligation under the agreement and things were getting complicated. It was open to the plaintiff, in such circumstances, to file an application, rather he ought to have filed an application in court on the original side for appropriate direction with regard to the payment of purchase money and for other procedural formalities. Despite the application filed by the vendor for rescission of the agreement in 1999, for the first time, an oral prayer was made by the purchaser before the court for the deposit of balance of purchase money only in the year 2010. That too was merely an oral submission. Consequently, the defendants never had an opportunity to respond to the same or contest the proposition. Therefore, it is abundantly clear that in the peculiar factual background of this case, the plaintiff purchaser was also at fault in not taking prompt steps.

40. In this context, one more reference to Hungerford Investment Trust Limited (supra) would be relevant:

“25. It was contended on behalf of Mundhra that he was always ready and willing to pay the purchase money, but since the decree did not specify any time for payment of the money, there was no default on his part. In other words, the contention was that since the decree did not specify a time within which the purchase money should be paid and, since an application for fixing the time was made by the appellant and dismissed by the Court, Mundhra cannot be said to have been in default in not paying the purchase money so that the Appellant might apply for rescission of the decree. If a contract does not specify the time for performance, the Law will imply that the parties intended that the obligation under the contract should be performed within a reasonable time. Section 46 of the Contract Act provides that where, by a contract, a promiser is to perform his promise without application by the promise, and no time for performance is specified, the engagement must be performed within a reasonable time and the question "what is reasonable time" is, in each particular case, a question of fact. ...” (Emphasis supplied)

41. Analyzing the conduct of the vendors-defendants also, one can see that they are equally at fault. In the contract, no time was fixed for payment and, therefore, the purchaser was obliged to pay the purchase money within a reasonable time. Owing to the laches or lapses on the part of the parties in case there is any insurmountable difficulty, hardship or, on account of subsequent development, any inequitable situation had arisen, either party was free to approach the court for appropriate

direction. Though the suit was decreed in the year 1984 and execution petition filed in 1990, the application for rescission was filed only in the year 1999.

42. In *Nirmala Anand v. Advent Corporation (P) Ltd. and Others*[6], it has been held by this Court:

“6. It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the consideration to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing the specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen.” (Emphasis supplied) In the above case, this Court balanced the equity by directing payment of Rs.6,25,000/- in the place of Rs.25,000/-.

43. In *Satya Jain (Dead) Through Lrs. and Others v. Anis Ahmed Rushdie (Dead) Through Lrs. and Others*[7], it has been held that:

“38. The ultimate question that has now to be considered is: whether the plaintiff should be held to be entitled to a decree for specific performance of the agreement of 22-12-1970?

39. The long efflux of time (over 40 years) that has occurred and the galloping value of real estate in the meantime are the twin inhibiting factors in this regard. The same, however, have to be balanced with the fact that the plaintiffs are in no way responsible for the delay that has occurred and their keen participation in the proceedings till date show the live interest on the part of the plaintiffs to have the agreement enforced in law.

40. The discretion to direct specific performance of an agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles. The parameters for the exercise of

discretion vested by Section 20 of the Specific Relief Act, 1963 cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. It must however be emphasized that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance. Such a view has been consistently adopted by this Court. By way of illustration opinions rendered in *P.S. Ranakrishna Reddy v. M.K. Bhagyalakshmi*[8]:

and more recently in *Narinderjit Singh v. North Star Estate Promoters Ltd.*[9] may be usefully recapitulated.

41. The twin inhibiting factors identified above if are to be read as a bar to the grant of a decree of specific performance would amount to penalizing the plaintiffs for no fault on their part; to deny them the real fruits of a protracted litigation wherein the issues arising are being answered in their favour. From another perspective it may also indicate the inadequacies of the law to deal with the long delays that, at times, occur while rendering the final verdict in a given case. The aforesaid two features, at best, may justify award of additional compensation to the vendor by grant of a price higher than what had been stipulated in the agreement which price, in a given case, may even be the market price as on date of the order of the final Court.” (Emphasis supplied)

44. The circle rate of the residential property based on which the unearned increase is calculated by the L&DO, would show a sharp increase during the period. Sunder Nagar comes under Category ‘A’ colonies. Under the Delhi Stamp (Prevention of Undervaluation of Instruments) Rules, 2007, the notified circle rate for Category ‘A’ colonies from July 2007 was Rs.43,000/- per square meter and from February 8, 2011, it was Rs.86,000/- per square meter. From November 16, 2011, it was Rs.2,15,000/- per square meter and from January 5, 2012, it is Rs.6,45,000/- per square meter.

45. In the peculiar facts and circumstances of the case, we are of the view that the trial court should have passed an equitable order while considering the application for rescission. Having regard to the fact that the decree was passed in 1984, we feel that it would be unjust and unfair to relegate the parties to the trial court at this distance of time. For doing complete justice to the parties, we are of the view that it is a case where the purchaser should be directed to pay the land value to the vendors as per the circle rate notified for the residential property in Category ‘A’ colonies prevailing during November 16, 2011 to January 5, 2012, at the rate of Rs.2,15,000/- per square meter. The purchaser shall also be liable to meet the liability arising by way of unearned increase to be paid to the Land and Development Office. He is free to withdraw the amounts deposited by him in the court as per order dated 06.01.2010. It is also ordered that in case the plaintiff does not deposit the amount to be paid to the vendors within three months from today, the vendors shall deposit in court within two months thereafter the amount calculated as per the circle rate referred to above by way of

compensation to be paid to the purchaser, and in which event, they shall stand discharged of their obligations under the contract and the decree. In the event of the purchaser depositing the amount as above, the execution proceedings shall be finalized within another one month. The Court in seisin of the Suit OS No. 1428 of 1981 shall dispose of the same within three months from today.

46. The Appeal filed by Rajinder Kumar [arising out of SLP (C) No. 19215/2011] is dismissed and the other Appeals are partly allowed as above. There is no order as to costs.

.....J. (CHANDRAMAULI KR. PRASAD)J.
(KURIAN JOSEPH) New Delhi;

February 07, 2014.

[1] FRY A Treatise on the Specific Performance of Contracts by The Rt. Hon. Sir Edward Fry, Sixth Edition, see Paragraph 62, at page 29. [2] Concise Oxford English Dictionary, 10th Edition. [3] AIR 1960 Supreme Court 388 – Paragraph 4- “At the worst the decree can be said to be ambiguous. In such a case it is the duty of the executing Court to construe the decree. For the purpose of interpreting a decree, when its terms are ambiguous, the Court would certainly be entitled to look into the pleadings and the Judgment. ...” [4] (1972) 3 SCC 684.

[5] Pollock & Mulla, The Indian Contract and Specific Relief Acts, 14th Edition, Page 2064.

- [6] (2002) 8 SCC 146
- [7] (2013) 8 SCC 131
- [8] (2007) 10 SCC 231
- [9] (2012) 5 SCC 712

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