# Ravi Setia vs Madan Lal on 4 October, 2019

## Equivalent citations: AIR 2019 SUPREME COURT 4791, AIRONLINE 2019 SC 1156, (2019) 13 SCALE 553, (2019) 2 CLR 1211 (SC), (2019) 4 CIVILCOURTC 756, (2019) 4 CURCC 22, (2019) 4 RECCIVR 916, 2019 (9) SCC 381, (2020) 129 CUT LT 40, (2020) 138 ALL LR 269, (2020) 1 ALL RENTCAS 371, (2020) 1 CIVLJ 1, (2020) 1 ICC 97, (2020) 205 ALLINDCAS 163

## Author: Navin Sinha

## Bench: Indira Banerjee, Navin Sinha

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 2837 OF 2011

RAVI SETIA ...APPELLANT(S)

VERSUS

MADAN LAL AND OTHERS ...RESPONDENT(S)

JUDGMENT

NAVIN SINHA, J.

The plaintiff assails correctness of the order allowing the second appeal of the defendants. By the impugned order, the High Court set aside the concurrent orders of the courts below decreeing the plaintiff's suit for specific performance.

2. The plaintiff filed a suit for specific performance of agreement for sale dated 10.11.1989 with regard to 2/3 rd of the lands owned by defendants 1 and 2 as Defendant No. 3 declined to sign the agreement. Rs. 50,000/□was paid as earnest money 12:18:41 IST Reason:

> and the balance consideration of Rs.3,10,490/□was to be paid at the time of execution. The agreement provided for execution of the sale deed on or before 30.04.1990. The Trial Court decreed the suit holding that the plaintiff had remained present in the office of the Sub□Registrar for registration of the sale documents on

30.04.1990, but defendant nos. 1 and 2 did not appear for execution. During the pendency of the proceedings, defendant nos. 1 and 2 sold the lands to defendant nos. 4 to 7 by three separate sale deeds dated 16.01.1991. The first appeal by the defendants was dismissed holding that defendant nos. 4 to 7 were not bonafide purchasers. Thus, the present appeal.

3. Shri Amit Anand Tiwari, learned counsel for the appellant□plaintiff, submitted that the High Court in a second appeal ought not to have interfered with a concurrent finding of fact that the plaintiff was ready and willing to perform his part of the obligations under the agreement. Defendant nos. 1 and 2 had failed to appear before the Sub□Registrar for execution on 30.04.1990. The plaintiff never received the purported notices from defendant nos.1 and 2 dated 28.05.1990 and 12.06.1990 requiring the plaintiff to execute the sale deed on 25.06.1990. The subsequent sale to defendants 4 to 7 has been held to be not bonafide, but a sham transaction. The plaintiff had been granted extension of time for deposit of the balance consideration by the Trial Court till the disposal of the first appeal. The balance consideration was deposited after decision in the First Appeal. In the alternative, a submission was made that if the appeal is not to be allowed, defendants 1 and 2 may be directed to pay the sum of Rs.1,00,000/□to the plaintiff comprising the earnest money plus damages as claimed in the suit.

4. Shri Ranjit Thomas, learned senior counsel appearing for the defendants□respondents, submitted that the plaintiff had failed to prove readiness and willingness to perform its obligations under the agreement. The defendants were not put on notice for appearance before the Sub□Registrar on 30.04.1990. The notices dated 28.05.1990 and 12.06.1990 were sent by defendants 1 and 2 through registered post at the correct residential address of the plaintiff. The plaintiff did not respond to the same because he did not have the capacity to perform his obligations under the agreement and failed to deposit the balance consideration within the two months' time granted by the Trial Court on 01.06.1994. The application for extension of time made after expiry of the time prescribed is sufficient evidence for the incapacity of the plaintiff to perform his obligations demonstrating readiness and willingness. The High Court in second appeal was empowered to set aside concurrent findings of facts if they were perverse.

5. We have considered the submissions on behalf of the parties and have also been taken through the orders under appeal. Defendants nos. 1 to 3 owned 61 karnals 17 marlas of lands in Village Gumjal, Tehsil Abohar, District Ferozpur. Defendant no.3 having refused to sign the agreement for sale dated 10.11.1989, the plaintiff instituted a suit for enforcement of the agreement with regard to the 2/3rd share of defendants 1 and 2. The sale deed was to be executed on or before 30.04.1990. The Trial Court and the First Appellate Court arrived at the finding of readiness and willingness on part of the plaintiff solely on basis of a certificate produced by them from the Sub□Registrar confirming their presence before him on 30.04.1990 for execution. Apart from the same, no further evidence was led by the plaintiff to demonstrate readiness and willingness including the continuous capacity for discharge of the balance consideration. The plaintiff in its application before the Sub□Registrar stated that he had required defendants 1 and 2 to be present for registration on 25.06.1990. No evidence whatsoever has been led by the plaintiff in support of the same. We are of the considered opinion that in the circumstances the certificate from the office of the Sub□Registrar

cannot be construed as conclusive evidence to non-suit defendants 1 and 2. The findings to that effect are therefore held to be unsustainable.

6. Defendant nos. 1 and 2 by registered notices dated 28.05.1990 and 12.06.1990 required the plaintiff to get the sale deed executed by 25.06.1990. The plaintiff does not dispute that the communication was properly addressed and sent through registered acknowledgement due. If it was returned back with the endorsement that the plaintiff was not available at his home, defendants 1 and 2 were not required to do anything further. If the plaintiff was of the opinion that the endorsement was wrong, it was for him to have contended so and led necessary evidence in this regard. The Trial Court rightly did not disbelieve defendants 1 and 2, but without returning any finding in that regard preferred to rely on the unsubstantiated claim of the plaintiff of having been present before the Sub-Registrar on 30.04.1990. The said finding is also held to be unsustainable.

7. Under Section 16 of the Specific Relief Act, 1963 (for short "the Act"), there are certain grounds which bar the relief of specific performance of the contract. This section, insofar it is relevant, is as under:

> "16. Personal bars to relief.—Specific performance of a contract cannot be enforced in favour of a person—
>
> (a)-(b) * * *
>
> (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant."

8. The Trial Court decreed the suit on 01.06.1994 and granted time to the plaintiff for deposit of the balance consideration within two months from 01.06.1994, i.e. by 31.07.1994. The plaintiff offered no explanation whatsoever for the failure to comply the direction. After expiry of the time granted for deposit, on 02.08.1994 the plaintiff filed an application before the Trial Court that in view of the pendency of the First Appeal preferred by defendants, the time for deposit may be extended as otherwise the amount would lie in the bank without interest. On 02.08.1994 itself, the time for deposit was extended till disposal of the First Appeal. The defendants' challenge to the ex-parte order was unsuccessful on technical grounds.

9. There can be no straight jacket formula with regard to readiness and willingness. It will have to be construed in the facts and circumstances of each case in the light of all attending facts and circumstances. We are of the considered opinion, that in the facts and circumstances of the present case, the failure of the plaintiff to offer any explanation why the balance consideration was not deposited within the time granted, the filing of the application for extension of time after expiry of the prescribed period coupled with the frivolousness of the grounds taken in the application for extension that the money would lie in the bank without earning interest, are all but evidence of incapacity on part of the plaintiff to perform his obligations under the agreement and reflective of

lack of readiness and willingness. He preferred to wait and abide by the gamble of a favourable decision in the first appeal.

10. The grant of relief for specific performance under Section 16 (1)(c) of the Act is a discretionary and equitable relief. Under Section 16 (1)(c), the plaintiff has to demonstrate readiness and willingness throughout to perform his obligations under the contract. The plea that the amount would lie in the bank without interest is unfounded and contrary to normal banking practice. To our mind, this is sufficient evidence of the incapacity or lack of readiness and willingness on part of the plaintiff to perform his obligations. Undoubtedly, the time for deposit could be extended under Section 28 of the Act. But the mere extension of time for deposit does not absolve the plaintiff of his obligation to demonstrate readiness and willingness coupled with special circumstances beyond his control to seek such extension. The plaintiff did not aver in the application that he was ready and willing to perform his obligations and was prevented from any special circumstances from doing so. The pendency of an appeal by the defendant did not preclude the plaintiff from depositing the amount in proof of his readiness and willingness. Readiness has been interpreted as capacity for discharge of obligations with regard to payment. The High Court has rightly observed that there was no stay by the Appellate Court of the decree under appeal to justify non-deposit during the pendency of the appeal. The grant of extension of time cannot ipso facto be construed as otherwise demonstrating readiness and willingness on part of the plaintiff. The plaintiff was required to plead sufficient, substantial and cogent grounds to seek extension of time for deposit because otherwise it becomes a question of his conduct along with all other attendant surrounding circumstances in the facts of the case. We therefore find no infirmity in the order of the High Court concluding that the plaintiff in the facts and circumstances was not ready and willing to perform his obligations.

11. In V.S. Palanichamy Chettiar Firm vs. C. Alagappan, (1999) 4 SCC 702, it was observed as follows :

> "17. The agreement of sale was entered into as far back on 16-2-1980, about 19 years ago. No explanation is forthcoming as to why the balance amount of consideration could not be deposited within the time granted by the Court……Merely because a suit is filed within the prescribed period of limitation does not absolve the vendee-plaintiff from showing as to whether he was ready and willing to perform his part of the agreement and if there was non-performance, was that on account of any obstacle put by the vendor or otherwise. Provisions to grant specific performance of an agreement are quite stringent. Equitable considerations come into play. The court has to see all the attendant circumstances including if the vendee has conducted himself in a reasonable manner under the contract of sale….. It is not the case of the respondent decree-holders that on account of any fault on the part of the vendor judgment-debtor, the amount could not be deposited as per the decree……That apart, no explanation whatsoever is coming from the respondent decree-holders as to why they did not pay the balance amount of consideration….. Equity demands that discretion be not exercised in favour of the respondent decree-holders and no extension of time be granted to them to comply with the decree."

12. In our opinion, had the plaintiff deposited the amount after expiry of the time but during the pendency of the appeal, as held in Ramankutty Guptan vs. Avara, (1994) 2 SCC 642, entirely different considerations may have arisen. The judgement in any event is based on its own peculiar facts and circumstances.

13. In Umabai and Another vs. Nilkanth Dhondiba Chavan (Dead) by Lrs. and Another, (2005) 6 SCC 243, it has been observed as follows :

> "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□defendants 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□defendants must be judged having regard to the entirety of the pleadings as also the evidence brought on records."

14. According to normal human prudence, land price escalates over time. Unless it be a situation of a distress sale, no land owner will sell his land for a lesser price than what may have been recorded in an agreement for sale. The fact that the defendants nos.1 and 2 subsequently sold the land on 16.01.1991 to defendants nos.4 to 7 at a lesser price, due to personal necessity, also mitigates against the plea of the plaintiff that he was ready and willing to perform his part of the obligations under the contract.

15. There can be no quarrel with the well settled proposition of law that in a second appeal, the High Court ought not to enter into reappreciation of evidence to arrive at new findings, except on pure questions of law. But if the findings are perverse, based on complete misappreciation or erroneous consideration of evidence, and the failure to consider relevant evidence, it becomes a question of law. In Dilbagrai Punjabi vs. Sharad Chandra, 1988 Supp SCC 710, it was observed as follows:

> "5.....The High Court was right in pointing out that the courts below had seriously erred in not considering the entire evidence on the record including the aforesaid documents. It is true that the High Court while hearing the appeal under Section 100 of the Code of Civil Procedure has no jurisdiction to reappraise the evidence and reverse the conclusion reached by the first appellate court, but at the same time its power to interfere with the finding cannot be denied if when the lower appellate court decides an issue of fact a substantial question of law arises. The court is under a duty to examine the entire relevant evidence on record and if it refuses to consider important evidence having direct bearing on the disputed issue and the error which arises is of a magnitude that it gives birth to a substantial question of law, the High Court is fully authorised to set aside the finding...."

16. In view of the discussion, we arrive at the conclusion that the plaintiff failed to prove readiness and willingness to perform its obligations under the agreement for sale. We are of the considered

opinion that there is no merit in the present appeal. However, in the peculiar facts and circumstances of the case, we are of the considered opinion that the respondent is not entitled to retain the earnest money and it shall be refunded to the appellant without interest within a period of one month failing which it shall carry interest at the rate of 7 per cent.

17. The appeal is dismissed. There shall be no order as to costs.

.....J. [NAVIN SINHA] .....J. [INDIRA BANERJEE] NEW DELHI OCTOBER 04, 2019