

Katta Sujatha Reddy vs M/S Siddamsetty Infra Projects Pvt. ... on 25 August, 2022

Author: Krishna Murari

Bench: Hima Kohli, Krishna Murari, N. V. Ramana

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5822 OF 2022
(arising out of SLP (C) No. 13565 of 2021)

Smt. Katta Sujatha Reddy & Anr.

...APPELLANT(S)

VERSUS

Siddamsetty Infra Projects Pvt. Ltd. & Ors.

...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 5823 OF 2022
(arising out of SLP (C) No. 19920 of 2021)

Siddamsetty Infra Projects Pvt. Ltd.

...APPELLANT(S)

VERSUS

Debbad Visweswara Rao (Dead, Through Lrs) & Ors

...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 5824 OF 2022
(arising out of SLP (C) No. 19286 of 2021)

Debbad Srinandhan Rao & Ors.
Signature Not Verified

...APPELLANT(S)

VERSUS

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SATISH KUMAR YADAV
Date: 2022.08.25

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Reason:

State of Telangana & Ors.

...RESPONDENTS

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JUDGMENT

KRISHNA MURARI, J.

1. Leave granted in all the matters.

C.A. NO. 5822 OF 2022 (ARISING OUT OF SLP (C) NO. 13565 OF 2021)

2. The present civil appeal arises out of the impugned judgment dated 23.04.2021 in A.S. No. 998 of 2010, passed by the High Court for the State of Telangana at Hyderabad.

3. Siddamsetty Infra Projects Pvt. Ltd., who is the respondent herein, had filed a suit for specific performance against the appellants, Smt. Katta Sujatha Reddy and Smt. Kamireddy Geetha Reddy, who were respondents 6 & 8 respectively, among others in the suit.

4. A conspectus of the facts necessary for the disposal of the appeals is as follows: One late D Narayana, predecessor in interest of the respondent no. 2 and 3, was the owner of an agricultural land bearing Sy. No. 300/309, admeasuring 141.05 acres, situated in Budvel Village, Rajendra Nagar Mandal, Ranga Reddy District, Hyderabad. The appellants herein acquired certain extent of the land from the aforesaid predecessor in interest through an agreement dated 19.03.1994. In pursuance to this agreement, two registered Joint GPA'S dated 28.03.1994 were executed in the name of the defendant Nos. 5 and 6 from the above mentioned owners, for an extent of Acs. 127.27 gts. of land.

5. The agreement dated 19.03.1994 and the registered GPA, in favour of the respondent no. 1/purchaser (Siddamsetty Infra Projects Pvt. Ltd.) could not materialize. Parties entered into two fresh agreements dated 26.03.1997 and 27.03.1997 inter alia appellant (hereinafter referred to as 'vendors') herein to purchase an extent of Acs. 40.08 gts. The agreement dated 26.03.1997 pertained to Acs. 35.15 gts. land for a consideration of Rs.38,37,500/- while the agreement dated 27.03.1997 pertained to Acs 1.33 gts of land for a consideration of Rs.1,82,500/-

6. The total suit scheduled property thus consists of Acs. 40.08 gts of land situated in Sy No. 301 (part), 302, 303, 304 (part) of Budvel Village, Rajendranagar Mandal, R.R. District for which a total consideration of Rs.40,20,000/- was agreed upon between the parties. Out of the total agreed consideration, Rs.34,80,850/- was paid by the purchaser to the vendors by way of cash and cheques, which fact is not disputed.

7. The remaining amount of Rs.5,39,150/- was to be paid within 3 months, as per clause 3 of the agreements. This amount had admittedly not been paid within the stipulated time. On 31.03.2000, the purchaser allegedly sent the first notice dated 08.02.2000 to the vendors seeking specific performance of the agreement. Thereafter, a second notice was sent by the plaintiff on 06.07.2002. The purchaser, having no other alternative, filed the present suit, being OS No. 88 of 2002, before the Additional District Judge, Ranga Reddy District, LB Nagar, Hyderabad, seeking specific performance. The trial Court framed 5 issues for consideration which are as under:

1. Whether the purchaser is entitled for Specific Performance of agreement dt. 27.3.1997 and 26.3.1997 directing the vendors to execute a registered sale deed in favour of purchaser in respect of suit land?
2. Whether the time is essence of the contract as pleaded by the vendors, if so whether the purchaser is not entitled for Specific Performance of agreement of sale as pleaded by him?
3. Whether the suit filed by the purchaser is barred by limitation?
4. Whether the purchaser is entitled for alternative reliefs of delivery of possession and for refund of Rs. 34,80,850/- with interest @36% per annum as pleaded in the plaint?
5. To what relief?

8. In response to issues (1) and (2), taking into consideration the evidence available on record, the trial Court held that the purchaser was never put in possession of the property. On the issue of payment, it was held that the purchaser never made the total payment of Rs. 34,70,000/- under the agreement of sale. It was discovered during the course of cross and chief examination, that the purchaser had issued a cheque for Rs. 5,00,000/- which was dishonoured. This information was not shared by the purchaser and hence the purchaser had suppressed material evidence.

9. The trial Court further held that the burden of proof lies on the person who pleads that time is the essence of the contract. It was further observed that in respect of an immovable property, time is not the essence of the contract unless the same is explicitly mentioned in the agreement of sale and the parties through their conduct have treated time as the essence of the contract. The lower Court observed that Clause 3 in the contract stipulates a time bar of 3 months for the payment of the sale consideration and furnishing of necessary certificates by the purchaser and the vendor respectively. The vendor through their conduct had never intended to treat time as the essence of the contract. On delay of payments made by the purchaser, the vendor never issued any notice to them. This showed that the vendor never intended to treat time as the essence of the contract. The vendor also painted a picture that it did procure the necessary documents as required under clause 3 of the contract, but it never did the same. The vendor made a false plea about the duty to be performed by it under clause 3 of the contract.

10. The trial Court further held that while there exists a false plea on the part of the vendor, the same however does not benefit the case of the purchaser because there are grave laches on his part too. The purchaser himself having approached the Court with unclean hands, he cannot get the benefit of the false plea made by the vendor.

11. The trial court also came to the conclusion that the purchaser was never ready to pay the balance sale consideration, if so, he would have either issued a notice to the vendor making out his willingness to pay. Hence, on the basis of all the above mentioned observations, it was held that the purchaser is not entitled for specific performance of the agreements of sale and that the parties never intended to treat time as an essence of the contract.

12. With regard to issue (3), the trial Court held that part one of Article 54 of the Limitation Act, 1963 will come into operation, as per which the three year period has to be computed from the date so stipulated, which comes to on or before 27.06.2000, in the present case. The current suit however was presented on 09.08.2002, after a lapse of two years. Even for the recovery of the advance amount, the suit was barred by time as provided under Article 47 of the Limitation Act. When the main suit itself is barred, then alternative relief also cannot be granted. Hence, the trial Court held that the suit is barred by limitation. In the light of the above findings, the trial Court dismissed the suit holding that the plaintiff is not entitled for the relief of specific performance.

13. Aggrieved by the aforesaid order of the trial Court, the plaintiff/purchaser approached the High Court by way of a first appeal, being A.S. No. 998/2010. The High Court framed 7 issues for adjudication of the matter which are as under; □

1. Whether the suit is barred by limitation?

2. Whether the purchaser proved it's possession over the suit schedule property?

3. Whether the plaintiff was ready and willing to perform his part of the contract and paid balance sale consideration within the stipulated time in the suit agreements?

4. Whether the trial court is right in holding that the time is not the essence of the contract and whether the same can be attacked by the defendants without filing cross objections?

5. Whether the trial court is right in not exercising its discretion for granting relief of specific performance?

6. Whether Section 10 of the Act as substituted by Act 18 of 2018 is prospective or retrospective in nature?

7. To what relief?

14. In response to point (1), the High Court has held that Clause 3 of the agreements did not stipulate time as the essence of the contract. Moreover, the vendor has not exercised the option of

forfeiting the advance amount as per Clause 3 of the agreements. The High Court further held that the trial Court has erred in making the distinction between time fixed for payment of sale consideration and time for performance of contract.

15. On point (2), the High Court held that the vendors surrendered almost all their rights over the suit schedule property and allowed the purchaser to exercise his rights over the suit property as per the contract. It was wrongly held by the trial Court that since the name of the purchaser was deleted in Exs. B10 & B11, the purchaser was not in possession of the property. On the basis of this, the trial Court also held that the purchaser did not approach the court with clean hands. One more point that came in favour of the purchaser was that one of the parties to the sale agreement had categorically admitted that the purchaser was put in possession of the property. This fact was never contested by any party. The High Court held that just because the possession aspect is not mentioned in Exs. A2, A3, A4, A5, A29 & A30 or in the first notice, it cannot be said that the purchaser was not in possession of the suit schedule property.

16. On point (3), the High Court observed that the vendors were at fault for not obtaining the necessary certificates as per Clause 3 of the contract for completing the sale transaction. Further, to show his bonafides, the purchaser filed an application for permission to deposit the balance sale consideration of Rs. 5,39,150/□ and the same was ordered and became final. The High Court further held that no person would drag on the matter for this long for a payment of 10% of total sale consideration. The purchaser was ready and willing to perform his contract, had already paid 90% of the sale consideration within the stipulated period and had deposited the balance amount in Court. Hence, the purchaser was ready and willing to perform his contract, and through his acts, proved his bonafides.

17. On point (4), the High Court held that the trial Court had correctly assessed the judgments and the fact situation and held that time is not the essence of the contract in the present case.

18. On point (5), the High Court held that the trial Court should have exercised its discretion and should have granted specific performance in favour of the purchaser. It was held that the vendors took a false plea in their written statements as well as in their chief examinations stating that they did not receive the sale consideration. The vendors further took the false plea that the necessary documents and certificates as per clause 3 of the contract were obtained from the concerned departments, and hence the said point was answered in favour of the purchaser.

19. On point (6), the High Court held that when a provision is replaced by way of substitution, the substituted legislation operates retrospectively and not prospectively. It further held that specific relief in essence is a part of the law of procedure, and hence it is a retrospective law. The High Court then went on to state that an appeal is a continuation of the suit, and hence any change in law between the date of passing of the decree and the decision of the appeal must be taken into consideration. Based on the above analysis, the High Court held that Section 3 of the Amended Act is retrospective in nature and applies to pending proceedings.

20. On point (7), the High Court held that since the purchaser succeeded on all points, it partly allowed the appeal and directed the vendors to register the suit property in favour of the purchaser, to the extent of the amount paid by the purchaser, i.e., 90% of the total sale consideration, within a period of 3 months. Further, it was ordered that the sum of Rs.5,39,150/- deposited by the purchaser, by virtue of the trial Court order dated 11.07.2005 in IA No. 925/2005, was to be refunded to the purchaser with interest, if any accrued thereon.

21. Aggrieved by the impugned judgment, both the vendors and the purchaser are in appeal before this Court.

22. Mr. Dushyant Dave and Mr. Harin P. Raval, learned Senior Counsel appearing on behalf of the purchaser, submitted as follows:

i. The High Court was correct in exercising its jurisdiction and the impugned judgment is based on both, oral and documentary evidence. The reasons given for granting the relief of specific performance are in accordance with the settled principles of law.

ii. Both the trial Court and the High Court have concurrently found that time is not the essence of the contract. No time was fixed for the performance of the contract itself. The period of 3 months stipulated under Clause 3 of the agreements to sell, is only for payment of the sale consideration. As a result, when no date is fixed for the performance of the contract, the limitation period commences from the date of specific refusal. In the case at hand, specific refusal of the vendors to perform their obligations had occurred on 14.04.2000 and 22.07.2002 and therefore, the suit was filed well within the limitation period.

iii. The purchaser has clearly established that they were always ready and willing to perform their part of the contract. They have admittedly paid 90% of the sale consideration within 3 months of the agreements to sell.

The purchaser also issued two legal notices dated 08.02.2000 and 06.07.2002 to the vendors indicating their readiness to pay the balance amount. The vendors avoided receiving the sale consideration despite the purchaser's repeated requests. Additionally, the vendors did not procure the requisite permissions.

iv. Defendant No.5 has admitted in her pleadings that the purchaser was put in possession of the suit property. Such statement was neither challenged by the vendors in the rejoinder and nor was it mentioned in the evidence led by the DWs that her statement is incorrect. Moreover, Defendant No.5 is a proper party to the suit. v. The stand of the parties on possession cannot be a ground on which the Court can refuse grant of specific performance. Delivery of possession is ancillary to the relief sought and such an issue would be inconsequential.

vi. In the light of the amendment to Section 10 of the Specific Relief Act, the jurisdiction to grant specific performance of a contract is no longer discretionary and it is mandatory for Courts to grant such relief, unless the case at hand falls within the statutorily carved out exceptions.

23. Mr. Mukul Rohatgi and Mr. Harish Salve, learned Senior Counsel appearing on behalf of the vendors, submitted as follows:

i. The purchaser did not approach the Court with clean hands. The balance amount was not paid within the stipulated time period and the trial Court found the purchaser's statement regarding possession to be false inter alia, for the following reasons:

(a) In the suit, there was an alternate prayer seeking possession. If the purchaser was already in possession, such a prayer would not have been made.

(b) The purchaser has not mentioned any specific date as to when they were put in possession of the property.

(c) As per the draft sale deed prepared by the purchaser, there is no mention of the fact that they had already been granted possession of the property. In fact, the draft sale deed indicates that the purchaser would be put in possession on execution of the sale deed.

(d) PW2 (neighbour) deposed that the purchaser had laid roads, constructed two rooms, put up fencing, etc. on the property. However, the same is falsified by the documents on record. The photographs of the property show that there are no road or rooms on the property.

Additionally, no such pleading is made in the suit. ii. The suit filed by the purchaser is barred by limitation and the trial Court held so correctly. The parties executed the agreements to sell on 26.03.1997 and 27.03.1997 and the purchaser was to pay the balance amount within 3 months, i.e., by 27.06.1997. It is the purchaser's case that the vendors evaded execution of the sale deed as early as in June 1997. Therefore, the limitation would start running in June 1997 and expire in June 2000. The suit, however, was filed only on 09.08.2002 and is, therefore, clearly barred by limitation. The purchaser's oral evidence also shows that the right to sue accrued in the year 1997 itself.

iii. Additionally, the notice purportedly dated 08.02.2000, was actually despatched on 31.03.2000 and was purposely backdated.

iv. The purchaser was not ready and willing to perform the contract. The evidence on record indicates that the purchaser not only failed to pay the balance consideration within the stipulated 3 months, but also failed to pay the same within a period of 3 years of the agreement.

v. A suit for specific performance cannot be decreed in a piecemeal manner. The High Court ought to have accepted the trial Court's decision and rejected the purchaser's appeal. Moreover, grant of specific relief only to the extent of 90% itself indicates that the purchaser was not ready and willing to perform the contract and consequently, is not entitled to the decree. vi. The High Court, while overturning the trial Court's judgement, stated that the discretion to grant specific performance was taken away by the 2018 amendment to Section 10 of the Specific Relief Act. However, both the Delhi High Court and Karnataka High Court have rightly taken the view that the amendment, being substantive, would be applicable prospectively. The impugned judgement erroneously states that the amendment is merely procedural and would apply retrospectively. vii. The High Court has misconstrued Section 12 of the Specific Relief Act. The section would not be applicable to the present case as the question of 'inability to perform a contract' does not arise.

viii. Reliance on Defendant No.5's pleadings in support of the plaintiff is misplaced. She has nothing to do with the agreements in question and had filed a collusive written statement. Moreover, knowing such a statement is collusive, she never entered the witness box.

24. We have heard the learned Senior counsel appearing on either side and perused the entire material available on record. In the light of the arguments advanced, the following issues fall for consideration.

A. Whether the suit for specific performance is barred by limitation?

B. Whether the amended Section 10 of the Specific Relief Act is prospective or retrospective in operation? C. Whether the purchaser is entitled to the relief of specific performance?

D. In any case, whether the purchaser is entitled to take benefit of Section 12 of the Specific Relief Act in view of the part payment made in respect of the contract? Issue A

25. Before dealing with issue "A", we would like to highlight certain facts which may be relevant. On 26.03.1997 and 27.03.1997 two agreements to sell were executed between the vendors and purchaser for two separate parcels of land in survey no. 301(part) , 302, 303, 304(part). The sale considerations for the aforesaid land were Rs.38,37,500/□and Rs. 1,82,500/□respectively. Out of the above sale considerations, the vendors received an advance of Rs.34,70,000/□and Rs.10,850/□ in furtherance of the performance of the aforesaid agreement.

26. A notice dated 08.02.2000 was despatched by the purchaser on 31.03.2000, calling upon the appellants herein to execute the sale deed at a convenient date, suitable to the vendors herein.

27. The vendor replied to the aforesaid notice by letter dated 14.04.2000 by stating that the purchaser never offered to pay the balance sale consideration and issuance of the notice dated 08.02.2000, was nothing but a subterfuge to get over the limitation.

28. Thereafter, a suit was filed by the purchaser only on 09.08.2002. In the suit, the averments made by the purchaser as to the limitation are as under:

“LIMITATION: The suit is within limitation in continuation of efforts. Some defendants are agreeing to execute the sale deed and some defendants are continuing and evading the execution of the sale deed. Time is not the essence of the contract. The suit is within limitation in view of reply notice.”

29. The Defendant No.6 Vendors herein filed a written statement dated 25.10.2002, wherein they replied to the question of limitation as under:

“8 (Pg NO. 175) .It is submitted that, in reply to Para no. 10 of the plaint that, the plaintiff has got issued legal notice dated 8.02.2000 to the defendant & the defendant no. 8 and posted the said notice on 31.3.2000 under the registered post, the said fact is revealed that, the Plaintiff purposefully made the notice dated as 8.2.2000 which was posted on 31.03.2000 with ulterior motive. The Plaintiff to cover up the limitation period of 3 years creates the date 8.02.2000. It is not true that, the defendant and the defendant no. 8 Smt. Kamreddy Geetha Reddy are not the joint GPA holder of the vendors. It is false that, there was no response from defendant no. 6 and defendant no. 8 to the said notice, in fact the defendant got issued a reply legal notice dated 14.04.2000 to the said alleged legal notice dated 8.2.2000. After receipt of the reply legal notice the Plaintiff kept quiet for nearly 2 ½ years and got issued another legal notice dated 6.7.2002. The defendant had got issued reply legal notice on 22.7.2002 to the notice dated 6.7.2002 by stating that the agreements are barred by limitation and the plaintiff never in possession of the suit property and moreover he has not performed his part performance in paying the balance sale consideration within the stipulated period and the notice dated 8.02.2000 was posted on 31.02.2000 with malafide intention.”

30. In the above light, the first question that this Court needs to consider pertains to the aspect of limitation. The First Schedule to the Limitation Act, 1963 provides for the period of limitation in the following manner:

DESCRIPTION OF SUIT PERIOD OF TIME FROM WHICH PERIOD LIMITATION BEGINS TO RUN

54. For specific Three years The Date fixed for the performance of a performance, or, if no contract such date is fixed, when the plaintiff has notice that performance is refused.

The High Court, while dealing with the aspect of limitation, has given a reasoning that Clause 3 of the agreements to sell did not have a specific calendar date for performance of the contract, but rather, provided only for payment of the entire sale consideration within 3 months from the date of the agreements. Further, the High Court construed the obligation of the vendors to produce requisite certificates and permission as a condition for the purchaser to complete the sale transaction. In view of the same, the High Court concluded that the first part of Article 54 was incorrectly applied by the trial Court and accordingly held that the suit was not barred by limitation.

31. At the outset, this Court has perused Clause 3 of the agreements, which is in two parts. The first part provides for the purchaser's obligation, while the second part details the obligation of the vendors to provide the requisite certificates. Although both the obligations were required to be completed within the stipulated period of three months, there is a substantive difference between these two sets of obligations. The obligation upon the vendors concerned was production of certain certificates, such as income tax exemption certificate and agriculture certificate. No consequences were spelt out for non-performance of such obligations. Whereas the obligation on the purchaser, was to make the complete payment of the sale consideration within three months. The clause further mandates forfeiture of the advance amount if the payment obligation is not met within the time period stipulated therein. In this context, this Court in *Chand Rani (dead) by Lrs. v. Kamal Rani (dead) by Lrs*¹, held as under:

“25. From an analysis of the above case law it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the Court may infer that it is to be performed in a reasonable time if the conditions are:

1. from the express terms of the contract;
2. from the nature of the property; and
3. from the surrounding circumstances, for example: the object of making the contract.”

32. Coming to the aforesaid indicators, the language of the agreements makes it clear that severe consequences of forfeiture would ensue if the payment is not made within three months of the date of the agreements. It may be noted that as per Clause 21, the parties had entered into an earlier agreement to sell dated 1 (1993) 1 SCC 519 19.03.1994, which did not materialize and accordingly the agreed price therein was no longer applicable. It is in this context that the fresh agreements were entered into between the parties, so as to provide a last opportunity for them to successfully enter into a sale-purchase agreement. The aforesaid intention of the parties is also made clear through Clause 23 of the agreement to sell, which reads as under:

“23. The parties of the second part herein undertake on any pretext they will not make any claim for enhancing the agreed sale consideration.”

33. The aforesaid clause clearly freezes any enhancement of the agreed sale consideration, which cannot be independent of a fixed time period. A contrary interpretation would render the contract commercially unreasonable and unworkable. The moratorium on the enhancement of rates prescribed under Clause 23 should be interpreted to be predicated on a fixed time and be executable within a reasonable period. The same should not be utilized to render the commercial wisdom between the parties otiose, which is inherent in drafting such clauses.

34. From the above analysis, it is clear that the contract was strictly conditioned on a time frame. At this stage, it may be relevant to quote Section 55 of the Contract Act, which reads as under:

“55. Effect of failure to perform at fixed time, in contract in which time is essential When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.”

35. In view of the aforesaid provisions, the vendors were entitled to rescind the contract as there was a breach of condition, i.e, ‘time was the essence’. Coming back to the point of limitation, it is clear that Article 54 of the Limitation Act mandates that in this case at hand, the date fixed for payment of consideration was three months from the date of the agreements (i.e. 26.03.1997 and 27.03.1997). In any case, the time period for filing the suit had commenced from 26/27.6.1997 and would have expired after three years, i.e., in the end of June 2000.

36. The purchaser has contended that the legal notice issued by them on 31.03.2000, would be sufficient to get past the bar of limitation, as the purchaser has paid the advance amount to a large extent. Although this argument seems to be very attractive at first blush, the same cannot be sustained in the eyes of the law for the reason that when a condition of a contract is breached and the consequences ensue for that breach, a party cannot claim equity to escape such consequences.

37. In this context, we may note that Article 54 of the Limitation Act provides for two consequences based on the presence of fixed time period of performance. It is only in a case where the time period for performance is not fixed that the purchaser can take recourse to the notices issued and the vendors’ reply thereto. In the case at hand, the aforesaid circumstances do not come into play as a fixed time period was clearly mandated by Clause 3 read with Clause 23 of the agreements to sell, as explained above.

38. In light of the above, we may note that the suit filed by the purchaser was clearly barred by limitation in view of the first part of Article 54 of the Limitation Act and no amount of payment of advance could have remedied such a breach of condition.

39. Having come to the aforesaid conclusion, there would not have been any reason for this Court to continue the analysis on merits. However, we feel that even on merits, the purchaser’s case cannot be countenanced in law and we accordingly adumbrate on the following aspects.

Issue B

40. At the outset, we may notice that this question assumes great significance as application of the 2018 Amendment Act to the present set of circumstances would determine whether specific performance ought to be applied mandatorily or the aforesaid decision is a discretion of the Court to examine whether equity demands such application instead of granting damages if any.

41. We may note that the Specific Relief Act, 1963 is the second legislation, replacing the earlier 1877 enactment of the Specific Relief Act. The 1963 Act was enacted after consideration of the Law Commission in its Ninth Report. The 1963 Act more or less followed the English position on equitable remedy of specific performance. In Common Law, the remedy of specific performance was unknown in the initial days and courts only granted damages for the value of goods if there was any breach of contract. Accordingly English Courts, in the early years, granted monetary relief. In order to rectify the harsh stance of law, Courts of Equity in England started granting relief of specific performance if the Court of Equity found that granting damages would be inadequate or some special equitable rights of the plaintiff under a trust have been breached.

42. In any case, grant of such relief, which emanated from equitable principles, remained discretionary. This principle is clearly explained by Swinfen Eady M.R., in *Whiteley Limited v. Hilt*², in the following manner:

“The power vested in the Court to order the delivery up of a particular chattel is discretionary, and ought not to be exercised when the chattel is an ordinary article of commerce and of no special value or interest, and not alleged to be of any special value to the plaintiff and where the damages would fully compensate.” 2 (1918) 2 K.B. 808

43. However, this was not the position under the Civil Law. Under the Civil Law of contracts, adherence to the sanctity of contract is enforced with greater rigour by inverting the situation. The reason for choice of damages and specific performance range from legal to economic. It is in this context that the Courts cannot engage on the merits of having damages or specific performance or a hybrid. It is best left to the legislature to choose the course best suited to the economy without sheepishly following the typecast approach in England or Civil Law systems.

44. The High Court, in the impugned order, has taken a different approach in categorising the Specific Relief Act, 1963 as procedural and holding that the 2018 amendment is also a procedural provision which requires to be given retrospective effect. The High Court places reliance on an old case of *Radheshyam Kamila v. Kiran Bala Dasi*³, wherein the High Court, while relying upon the commentary of Pollock & Mulla on Indian Contract Act and Specific Relief Act (4th edition) specifically observed that “specific relief, as a form of judicial process, belongs to the law of procedure”. In this context, the Court came to a conclusion that such procedural amendment ought to be given retrospective effect.

45. We do not subscribe to the aforesaid reasoning provided by the High Court for the simple reason that after the 2018 amendment, specific performance, which stood as a discretionary remedy, is not codified as an enforceable right which is not dependent anymore on equitable principles expounded

by judges, rather it is founded on satisfaction of the requisite ingredients as provided under the Specific Relief Act. For determination of whether a substituted law is procedural or substantive, reference to the nature of the parent enactment may not be material. Instead, it is the nature of the amendments which determine whether they are in the realm of procedural or substantive law.

46. The High Court's reliance on Adhunik Steels Limited v.

Orissa Manganese and Minerals (P) Ltd.⁴, was also misplaced. In that case, the Court was concerned with the interpretation of Section 9 of the Arbitration Act, that deals with granting of 4 (2007) 7 SCC 125 injunctions. The specific question before the Court was whether the provisions of the CPC or the provisions of the Specific Relief Act have a bearing on Section 9 of the Arbitration and Conciliation Act, 1996.

47. While discussing the nature of the Specific Relief Act, in the aforesaid case, this Court had observed as under: □“16. Injunction is a form of specific relief. It is an order of a court requiring a party either to do a specific act or acts or to refrain from doing a specific act or acts either for a limited period or without limit of time. In relation to a breach of contract, the proper remedy against a defendant who acts in breach of his obligations under a contract, is either damages or specific relief. The two principal varieties of specific relief are, decree of specific performance and the injunction (See David Bean on Injunctions). The Specific Relief Act, 1963 was intended to be “an Act to define and amend the law relating to certain kinds of specific reliefs”. Specific relief is relief in specie. It is a remedy which aims at the exact fulfilment of an obligation. According to Dr. Banerjee in his Tagore Law Lectures on Specific Relief, the remedy for the non□performance of a duty are (1) compensatory, (2) specific. In the former, the court awards damages for breach of the obligation. In the latter, it directs the party in default to do or forbear from doing the very thing, which he is bound to do or forbear from doing. The law of specific relief is said to be, in its essence, a part of the law of procedure, for, specific relief is a form of judicial redress. Thus, the Specific Relief Act, 1963 purports to define and amend the law relating to certain kinds of specific reliefs obtainable in civil courts. It does not deal with the remedies connected with compensatory reliefs except as incidental and to a limited extent. The right to relief of injunctions is contained in Part III of the Specific Relief Act. Section 36 provides that preventive relief may be granted at the discretion of the court by injunction, temporary or perpetual. Section 38 indicates when perpetual injunctions are granted and Section 39 indicates when mandatory injunctions are granted. Section 40 provides that damages may be awarded either in lieu of or in addition to injunctions. Section 41 provides for contingencies when an injunction cannot be granted. Section 42 enables, notwithstanding anything contained in Section 41, particularly Clause (e) providing that no injunction can be granted to prevent the breach of a contract the performance of which would not be specifically enforced, the granting of an injunction to perform a negative covenant. Thus, the power to grant injunctions by way of specific relief is covered by the Specific Relief Act, 1963.” However, the conclusion in the above paragraph, taken in isolation, would not support the final outcome in the aforesaid case, wherein it was held that an injunction order granted under Section 9 of the Arbitration and Conciliation Act would involve consideration of settled principles under the Code of Civil Procedure or the Specific Relief Act. It was nowhere stated in the aforesaid case that the Specific Relief Act of 1963 *stricto sensu* provided for only procedural mechanism. We find it difficult to read the aforesaid

case in the manner alluded to by the High Court.

48. In any case, the amendment carried out in 2018 was enacted to further bolster adherence to the sanctity of contracts. This approach was radical and created new rights and obligations which did not exist prior to such an amendment. Section 10, after amendment, reads as under:

10. Specific performance in respect of contracts.—The specific performance of a contract shall be enforced by the court subject to the provisions contained in sub□ section (2) of section 11, section 14 and section 16.

49. This provision, which remained in the realm of the Courts' discretion, was converted into a mandatory provision, prescribing a power the Courts had to exercise when the ingredients were fulfilled. This was a significant step in the growth of commercial law as the sanctity of contracts was reinforced with parties having to comply with contracts and thereby reducing efficient breaches.

50. Under the pre□amended Specific Relief Act, one of the major considerations for grant of specific performance was the adequacy of damages under Section 14(1)(a). However, this consideration has now been completely done away with, in order to provide better compensation to the aggrieved party in the form of specific performance.

51. Having come to the conclusion that the 2018 amendment was not a mere procedural enactment, rather it had substantive principles built into its working, this Court cannot hold that such amendments would apply retrospectively.

52. In *Shyam Sunder and others V. Ram Kumar and Another* 5, this Court held as under:

“28. From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation, such legislation does not affect the substantive rights of the parties on the date of the suit or adjudication of the suit unless such a legislation is retrospective and a court of appeal cannot take into consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of the suit. However, the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned, they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of 5 (2001) 8 SCC 24 provisions of an enactment is followed by fresh legislation by an amending Act, such legislation is prospective in operation and does not affect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statute and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending Act which affects the procedure is presumed to be retrospective, unless the amending Act provides otherwise. We have carefully looked into the new substituted Section 15

brought in the parent Act by the Amendment Act, 1995 but do not find it either expressly or by necessary implication retrospective in operation which may affect the rights of the parties on the date of adjudication of the suit and the same is required to be taken into consideration by the appellate court. In *Shanti Devi v. Hukum Chand* [(1996) 5 SCC 768] this Court had occasion to interpret the substituted Section 15 with which we are concerned and held that on a plain reading of Section 15, it is clear that it has been introduced prospectively and there is no question of such section affecting in any manner the judgment and decree passed in the suit for pre-emption affirmed by the High Court in the second appeal. We are respectfully in agreement with the view expressed in the said decision and hold that the substituted Section 15 in the absence of anything in it to show that it is retrospective, does not affect the right of the parties which accrued to them on the date of the suit or on the date of passing of the decree by the court of first instance. We are also of the view that the present appeals are unaffected by change in law insofar it related to determination of the substantive rights of the parties and the same are required to be decided in the light of the law of pre-emption as it existed on the date of passing of the decree.”

53. From the aforesaid decision, it is clear that when a substantive law is brought about by amendment, there is no assumption that the same ought to be given retrospective effect. Rather, there is a requirement for the legislature to expressly clarify whether the aforesaid amendments ought to be retrospective or not.

54. In the light of the aforesaid discussion, it is clear that ordinarily, the effect of amendment by substitution would be that the earlier provisions would be repealed, and amended provisions would be enacted in place of the earlier provisions from the date of inception of that enactment. However, if the substituted provisions contain any substantive provisions which create new rights, obligations, or take away any vested rights, then such substitution cannot automatically be assumed to have come into force retrospectively. In such cases, the legislature has to expressly provide as to whether such substitution is to be construed retrospectively or not.

55. In the case at hand, the amendment act contemplates that the said substituted provisions would come into force on such date as the Central Government may appoint, by notification in the Official Gazette, or different dates may be appointed for different provisions of the Act. It may be noted that 01.10.2018 was the appointed date on which the amended provisions would come into effect.

56. In view of the above discussion, we do not have any hesitation in holding that the 2018 amendment to the Specific Relief Act is prospective and cannot apply to those transactions that took place prior to its coming into force.

ISSUE C

57. From the above, it is clear that the 2018 Amendment Act is prospective and cannot be applied to the present set of facts. Under the earlier law, grant of specific performance was discretionary. However, it was mandated that such discretion ought to be used in a principled manner without

leaving scope for any arbitrary application. In *Saradamani Kandappan v. S. Rajalakshmi and others*, this court held as under: [6 (2011) 12 SCC 18]

42. Therefore there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the current position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices. We do not propose to undertake that exercise in this case, nor referring the matter to a larger Bench as we have held on facts in this case that time is the essence of the contract, even with reference to the principles in *Chand Rani* [(1993) 1 SCC 519] and other cases. Be that as it may.

43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in *K.S. Vidyanadam* [(1997) 3 SCC 1]:

(i) The courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) The courts will apply greater scrutiny and strictness when considering whether the purchaser was “ready and willing” to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time limits stipulated in the agreement. The courts will also “frown” upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three-year period is intended to assist the purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser.”

58. From the aforesaid, it is clear that the purchaser ought to have been vigilant in the case at hand to enforce his right and could not have been lackadaisical in his approach. From the facts, it is clear that the purchaser had entered into an agreement way back on 26/27.03.1997, which had a clause mandating completion of the contract by payment of the remaining consideration within three months. The aforesaid clause was drafted, as alluded to earlier, for providing one last opportunity for the purchaser to make good their lapse which had happened on the earlier occasion. In this context, the time for performance of the contract including the payment lasted till the month of June 1997.

59. It was necessary that the purchaser should have taken immediate steps to complete the transaction and if such steps were immediately completed then the

purchaser would have a clear right for seeking enforcement for 3 years reckoned from the last date decided for completion of the contract.

60. The notice dated 08.02.2000, issued on behalf of the purchaser implicitly acknowledges the fact that time was considered as the essence even by the purchaser themselves and due to breach of the same, they sought novation of the agreement to sell in the following manner:

“However the due efforts by my client’s proved little light hope when you have strongly urged my clients to come up with the balance of sale consideration in view of the fact that other interested parties are not available at that moment and you asked my clients to renew their efforts by end of Jan’ 2000 and thereafter you have promised to complete the transaction by executing the sale deed in favour of my client.” (emphasis supplied)

61. Aforesaid notice, at best reflects an intention by the vendor to renegotiate the terms, which was not accepted in toto by the vendor.

62. The next aspect which this Court needs to consider is whether the parties had requisite willingness and readiness to perform the contract. The aforesaid requirement is one of the essential ingredients under Section 16 of the Specific Relief Act, 1963 which reads as under:

16. Personal Bars to relief. □ Specific Performance of a contract cannot be enforced in favour of a person □...

(c) who fails to aver and prove that he has performed or 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.

63. It is clear that in order to prove readiness and willingness, the burden is on the purchaser to prove that they were always ready and it is only the vendor who refused to perform the contract for extraneous considerations. In order to support their averments, the purchaser (Sunil Siddam Setty) entered into the witness box and deposed as PW1.

64. In his cross examination, PW1 deposed as below:

“We have paid a sum Rs. 10,850/□ towards advance of sale consideration on 27.03.1997, when one of the agreement of sale was executed. It is true one cheque which was issued by us for a sum of Rs. 5,00,000/□ was bounced. When the said fact was brought to our notice, we issued a demand draft for the sum of Rs. 5,00,000/□ within 10 of [sic.] 15 days and obtained a separate receipt for that amount from Deft. No. 6 by name Katta Sujatha Reddy. It is mentioned in the agreement for sale dt.

26.03.1997 the transaction has to be completed within three months. Witness volunteers and says; the three month time was stipulated with some conditions.

It is mentioned in another agreement of sale dated 27.03.1997 that the sale transaction has to be completed within three months with some conditions.

... Q. How many times you met the Defendant and demanded for execution in the year 1997?

Ans.□... We did not issue any notice to the defendants in the year 1997 by demanding them to receive the balance of sale consideration and execute sale deed in our favour.

It is not true to suggest that I was not ready and willing to perform my part of contract and that I never had balance of sale consideration and that I did not demand the defendants within stipulated period to receive the balance of sale consideration and to execute the sale deed and that due to it, I am not entitled to get the relief of specific performance of agreement of sale as prayed in my suit. ... I did not get issued any written notice to D5 prior to 06.07.2002. Witness volunteers and says: that the entire transaction had taken place in good faith and they never anticipated court proceedings at that time.

(emphasis supplied)

65. From the above it is clear that the purchaser did not voluntarily adhere to the time stipulation under the contract. In order to by□pass the condition of time being the essence, the purchaser invoked the standard of good faith. Aforesaid standard prescribes a higher duty of care for parties entering into a contract. Unless such duty is expressly stipulated, good faith standard cannot be implicitly read into any contract.

66. This Court does not subscribe to acceptance of a general standard of good faith to imply broader good faith obligations only to give a go□by to the explicit conditions for maintaining the sanctity of contract. Such broad standards will have potentially far reaching consequences. This Court agrees that such an implicit reading would come into play post the 2018 Amendment to the Specific Relief Act which enables specific performance of contracts to uphold their sanctity. However, from the facts and circumstances of this case, we cannot accept that such higher standards of good faith was relevant.

67. On the aspect of the vendor's obligation to provide requisite and necessary documents, DW1 (Smt. Katta Sujatha Reddy), has averred that all the documents were available. It is only after the purchaser was satisfied about the sound title that he entered into the agreement to sell.

68. In the light of the above, it is clear that Section 16(c) of the Specific Relief Act would only come into force if the purchaser was ready and willing to perform the contract within the three month period prescribed under Clause 3 of the agreements. The aforesaid conclusion is also bolstered by the fact that specific performance can only be granted when essential terms of contract are not violated in terms of Section 16(b).

69. From the above, we can safely conclude that the purchaser was not ready or willing to perform his part of the contract within the time stipulated and accordingly, specific performance cannot be granted for the entire contract.

70. The last aspect which we need to consider in this matter is whether possession was with the purchaser after entering into agreements to sell in 1997. On this aspect, the High Court has decided in favour of the purchaser by relying upon the evidence of PW1 and the proceedings before the Revenue Authorities. However, we are of the opinion that the High Court has not duly considered the statement of PW1 in its proper perspective. PW1 during the course of cross-examination, has not specifically pointed out as to when was the purchaser put into possession of the property. PW1 has not further proved that there was any development cost incurred by him for developing the aforesaid land.

71. The claim of PW2 that the disputed land was developed by the purchaser, is clearly unacceptable in the light of exhibits A22 to A26 which are the photographs of the property that show that no development had taken place, as averred by the purchaser. Reliance on the revenue records concerning mutation may not be of any significance when the question of possession is to be decided solely on the facts as available on the records.

72. In this context, we do not propose to burden this judgment with a detailed discussion of the testimonies of DW2 and DW3 which clearly go to show that the purchaser was never in possession of the aforesaid land.

73. If the agreement of sale is coupled with possession, it requires stamp duty and stamp duty has to be paid as per Schedule 1A of Article 47A of the Stamp Act. Further, asking for the relief of recovery of possession also shows that the plaintiff was not in possession of the property. The trial Court has rightly answered this point against the plaintiff and the Appellate Court, on an erroneous appreciation of the facts and law, reversed the said findings.

ISSUE D

74. The last aspect which has been argued before us concerns application of Section 12 of the Specific Relief Act, 1963. This issue arises from the fact that the purchaser is said to have paid 90 percent of the sale consideration and in lieu thereof, the High Court has held that the purchaser is entitled to ninety percent of the scheduled land.

75. Although this argument appears to be attractive in the first gloss, however a deeper examination of the same would paint a contrary picture. Section 12 of the Specific Relief Act, 1963 reads as under:

12. Specific performance of part of contract.

— (1) Except as otherwise hereinafter provided in this section, the court shall not direct the specific performance of a part of a contract.

(2) Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed by only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

(3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either—

(a) forms a considerable part of the whole, though admitting of compensation in money; or

(b) does not admit of compensation in money, he is not entitled to obtain a decree for specific performance; but the court may, at the suit of other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party—

(i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and a case falling under clause (b), 1[pays or had paid] the consideration for the whole of the contract without any abatement; and

(ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

(4) When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part.

Explanation.—For the purposes of this section, a party to a contract shall be deemed to be unable to perform the whole of his part of it if a portion of its subject matter existing at the date of the contract has ceased to exist at the time of its performance.

76. The aforesaid provision has been interpreted by this Court on several occasions. In the case of *Jaswinder Kaur v. Gurmeet Singh*⁷, this Court held as under: “20. Section 12(1) provides that specific performance can be granted on part of a contract only in the circumstances mentioned in the section. Section 12(2) deals with breach the contract if a party is unable to perform the whole of its part and such part bears a small proportion to the whole in value and admits compensation in money. The expression “unable to perform” in Section 12(2) for instance would mean that a part of the property destroyed after contract or act of God or an act by which it would cease to exist. In such a case party to a contract shall be deemed to be unable to perform the whole or its part of the contract. Such a person would come within the words “party in default”. The inability to perform may arise by deficiency in quantity of subject□matter or deficiencies or some legal prohibition or such other causes. None of such causes is present in the instant case.

21. Section 12 of the Act does not apply where the inability to perform specific performance on part of contract arises because of the plaintiff's own conduct as held in Abdul Rahim v. Maidhar Gazi [Abdul Rahim v. Maidhar Gazi, 1928 SCC OnLine Cal 20 : AIR 1928 Cal 584] . In Graham v. Krishna Chunder Dey [Graham v. Krishna Chunder Dey, 1924 SCC OnLine PC 63 : (1924) 52 IA 90 : AIR 1925 PC 45] it has been laid down that the Explanation in the section exhaust all the circumstances in which specific performance can be granted. Section 12(2) deals with the situation where a party is unable to perform and such part is only a small proportion in value and capable of compensation in form of money. It was not a case covered in Section 12(2) at all. Under Section 12(3) party in default is entitled to specific performance on payment of whole consideration or for the part left unperformed but here in the instant case the plaintiff being in default could not be said to be entitled to invoke Section 12(3) also.”

77. From the above, it is clear that there was no inability on part of the parties to perform the rest of the contract or the remaining part was waived. In this case, the purchaser breached the essential condition of the contract, which altogether disentitles him to claim specific performance. There is no doubt that the claim of purchaser is hit by delay and laches on their part as they did not take appropriate measures within the stipulated time and filing of the suit was delayed by almost five years. In this context, in Rachakonda Narayana v. Ponthala Parvathamma⁸, this Court held as under:

“8. A perusal of sub-section (3) of Section 12 shows that the first part of the said provisions mandates refusal of specific performance of a contract on certain conditions. However, the latter part of the provisions permits a court to direct the party in default to perform specifically so much of his part of the contract as he can perform if the other party pays or has paid the agreed consideration for the whole of the contract and relinquishes all claims to the performance of the remaining part of the contract and all the rights to compensation for the loss sustained by him. If a suit is laid by the other party, the court may direct the defaulting party to perform that part of the contract which is performable on satisfying two preconditions i.e. (i) the plaintiff pays or has already paid the whole of the consideration amount under the agreement, and that (ii) the plaintiff relinquishes all claims to the performance of the other part of the contract which the defaulting party is incapable to perform and all rights to compensation for loss sustained by him. Thus, the ingredients which would attract specific performance of the part of the contract, are: (i) if a party to an agreement is unable to perform a part of the contract, he is to be treated as defaulting party to that extent, and

(ii) the other party to an agreement must, in a suit for such specific performance, either pay or has paid the whole of the agreed amount, for that part of the contract which is capable of being performed by the defaulting party and also relinquish his claim in respect of the other part of the contract which the defaulting party is not capable to perform and relinquishes the claim of compensation in respect of loss sustained by him.

If such ingredients are satisfied, the discretionary relief of specific performance is ordinarily granted unless there is delay or laches or any other disability on the part of the other party.

(emphasis supplied)

78. Therefore, we do not think that it is an appropriate case for granting relief to the purchaser in terms of Section 12 of the Specific Relief Act, 1963 as the claim of the purchaser is barred by delay, laches and limitation.

79. We are of the firm opinion that the contract was breached due to the conduct of the plaintiff/purchaser, who were not willing to perform the contract after entering into a time sensitive agreement. In any case, it is an admitted fact that plaintiff had paid only part consideration. Though there is a forfeiture clause in the agreement, this Court with a view of rendering complete justice between the parties, deems it appropriate to direct the vendors/appellants to repay the said amount with interest @ 7.5% p.a. from the date such payment was made by the purchaser to the vendors, till the entire amount is paid back. We further direct the vendors to pay the entire amount to the credit of the suit account within six months from the date of receipt of a copy of the order.

80. The appeal is allowed on the above terms and the parties are left to bear their own costs.

C.A. NO.5823/2022 (ARISING OUT OF SLP (C) NO. 19920/2021) AND C.A. NO.5824/2022 (ARISING OUT OF SLP(C) NO.19286/2021)

81. In light of the above judgment, the present appeals are disposed of accordingly.

.....CJI.

(N. V. RAMANA)J. (KRISHNA MURARI)J. (HIMA KOHLI)
NEW DELHI;

AUGUST 25, 2022.