Sushil Kumar Agarwal vs Meenakshi Sadhu . on 9 October, 2018

Equivalent citations: AIRONLINE 2018 SC 718, 2019 (2) SCC 241, AIR 2018 SC (SUPP) 1538, (2019) 1 CAL HN 6, (2018) 192 ALLINDCAS 142 (SC), (2018) 131 ALL LR 756, (2018) 13 SCALE 778, (2018) 192 ALLINDCAS 142, (2018) 2 WLC(SC)CVL 764, (2018) 4 CIVILCOURTC 841, (2018) 4 CURCC 352, (2018) 4 JLJR 271, (2018) 4 PAT LJR 259, (2018) 4 RECCIVR 775, (2018) 8 MAD LJ 446, (2019) 127 CUT LT 444, (2019) 142 REVDEC 724, (2019) 1 ALL RENTCAS 193, (2019) 1 CIVLJ 855, (2019) 1 ICC 156, (2019) 1 JCR 105 (SC), (2019) 1 MAD LW 449, (2019) 3 CALLT 3

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Bench: Dhananjaya Y Chandrachud, A M Khanwilkar

REPORT

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1129 OF 2012

SUSHIL KUMAR AGARWAL .....Appell

Versus

MEENAKSHI SADHU & ORS. .....Respond

JUDGMENT

Dr Dhananjaya Y Chandrachud, J

1. The present appeal1 is from the judgment of a Division Bench of the High Court of Calcutta2. The appellant, who is a builder, instituted a suit for specific performance of a development agreement, against the respondents, who are owners of the premises. The suit was dismissed by the City Civil Court. The High Court dismissed the first appeal.

1 Leave was granted on 12 January 2012.

2 The High Court delivered judgment on 18 February 2009.

2. The subject matter of the suit for specific performance is a development agreement dated 14 April 1992, entered into by the appellant with the predecessor-in-interest of the respondents (Late Kalidas Sadhu)3 in respect of premises situated at 243N, Acharya Prafulla Chandra Road, P.S. Burtolla, Kolkata – 700 006. The agreement recites that the owners had approached the appellant for construction of a building on the land and that the following terms, inter alia, were agreed upon by and between the parties:

> a) The appellant agreed to apply at his own costs and expenses for sanction of the plan of a proposed building complex on 14 cottahs 5 chittacks and 40 square feet, to the Calcutta Municipal Corporation (Clause-1 of the agreement);

b) The plan of the building complex would be prepared and submitted by the appellant to the Calcutta Municipal Corporation, after the approval of the respondent (Clause -2 of the agreement);

c) The appellant shall deposit with the respondent an amount of 4,00,000/-

without interest which shall be refundable upon the completion of the building (Clause-3 of the agreement);

d) If for any reason after the plan is sanctioned or for any act or omission on the part of the appellant, the construction cannot take place, the appellant shall refund the deposit in addition to all costs, charges and expenses incurred by the respondent (Clause-22 of the agreement); 3 Late Kalidas Sadhu was the original respondent. Upon his death, by an order dated 12 May 2018, the legal heirs of the original respondent were substituted as existing respondents.

e) The respondent shall retain 42% of the total constructed area as 'sole owned' and the balance 58% of the total constructed area shall remain secured for due payment of the construction costs. The total construction cost shall not exceed the value of 58% of the constructed area. The respondent agreed to pay the appellant the costs and expenses along with agreed remuneration upon completion of the construction and if the respondent failed to pay, the appellant was entitled to realise its money by selling 58% of the total constructed area (Clauses – 6, 10 and 11 of the agreement); and

f) The respondent was entitled to demand any loss and/or damage suffered by him for any illegal activities of the appellant and the appellant was also entitled to recover damages from the respondent for lapse and negligence, in addition to the right of the parties to claim specific performance (Clause

-24 of the agreement).

3. The appellant alleged that upon the execution of the agreement, he found that the premises were encumbered and that there were arrears of municipal tax and electricity dues, besides which there

were labour and industrial disputes and 'factory closure problems'. The respondent is alleged to have requested the appellant to make payments and assured that he will reimburse him before the sanction of the building plan was obtained. Accordingly, the appellant claims to have made a payment of 7,03,000/-.

4. On 18 March 2002, the respondent addressed a letter to the appellant and denied the execution of the agreement. The appellant, by a letter dated 4 April 2002 protested the denial and requested the respondent to give him the authority to obtain sanction of the building plans. Parties thereafter met and agreed to modify the terms of the agreement with revised terms under which (i) allocation of the owner would be 47% instead of 42%; and (ii) allocation of the developer would be 53% instead of 58%.

5. On 26 May 2003, the appellant issued to the respondent a notice for payment of his share of the sanctioned fees. On 3 June 2003 the owner wrote a letter to the appellant through his advocate, denying the contents of the notice on the ground that he had by a notice dated 19 May 2003 cancelled the agreement and requested the appellant to return all documents and collect the deposit.

6. On 6 August 2003, the appellant instituted a suit4 in the City Civil Court seeking a declaration that the cancellation of the agreement by the respondent was invalid and a permanent injunction restraining the respondent from entering into any agreement with a third party for sale of the premises. On 28 September 2005 the City Civil Court allowed an amendment of the plaint, by which a prayer for specific performance was included.

7. On 28 February 2007, the City Civil Court dismissed the Suit with the following observation:

> "No tangible evidence is forthcoming in the instant suit by which it can be said that the plaintiff (developer) obtained possession of the suit property i.e. the possession of the suit property is/has handed over to him after the execution of the agreement in question." The City Civil Court relied on a judgment of a Division Bench of the High Court of Calcutta in Vipin Bhimani v Smt Sunanda Das5, that a suit for specific performance of a development agreement at the instance of a developer is barred by the provisions of Section 14(3)(c) of the Specific Relief Act 1963 ("the Act"). Upon examining various clauses of the agreement, the City Civil Court concluded that the appellant had agreed to apply at his own cost and expense to the Calcutta Municipal Corporation for getting the plans of the proposed building approved. The City Civil Court noted that it was an admitted fact that sanction was not obtained by the appellant and therefore, it could not be said that he had obtained possession. As a result, the suit at the instance of the appellant was held to be barred by Section14(3)(c).

8. Aggrieved by the judgment and order of the City Civil Court, the appellant preferred an appeal6 before the High Court of Calcutta. On 18 February 2009 the Division Bench of the High Court dismissed the appeal, on the ground that the suit was not maintainable under Section 14(3)(c) of the Act. 5 (2006) 2 CHN 396 The High Court rejected the appellant's argument that even if Section

14(3)(c) stood in the way of getting a decree for specific performance, the Specific Relief Act not being exhaustive, there was no bar in granting a decree. The High Court held:

> "....if in the Act there is a clear prohibition in granting a decree for specific performance in a given situation, such provision is exhaustive and cannot be made nugatory by contending that the Act is not exhaustive and thus, the Court can ignore such provision."

9. The High Court also rejected the argument of the appellant that the agreement in question was not a contract for construction of building on the land in a real sense, as the respondent was not getting any consideration for building. The High Court held that the agreement was in substance a contract of construction within the meaning of sub-section (3)(c) of Section 14 and the consideration was payable only upon the completion of the work.

10. The issue which has been raised before this Court is whether Section 14(3)(c) of the Act is a bar to a suit by a developer for specific performance of a development agreement between himself and the owner of the property. In dealing with this issue, the court needs to assess whether the word "defendant" in Section 14(3)(c)(iii) has the effect of confining the scope of the suit for specific performance only to a particular class (consisting of owners) or whether a purposive interpretation to the legislation would be required, so as to provide a broader set of remedies to both owners and developers. In deciding this issue the court will need to scrutinise the nature of a development agreement.

11. Section 14 provides thus:

"14. Contracts not specifically enforceable-

(1) The following contracts cannot be specifically enforced, namely -

(a) a contract for the non-performance of which compensation in money is an adequate relief;

(b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;

(c) a contract which is in its nature determinable;

(d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

(2) Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

(3) Notwithstanding anything contained in clause (a) or clause

(c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases--

(a) where the suit is for the enforcement of a contract,-

(i) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once:

Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract; or

(ii) to take up and pay for any debentures of a company;

(b) where the suit is for-

(i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership;

or

(ii) the purchase of a share of a partner in a firm;

(c) where the suit is for the enforcement of contract for the construction of any building or the execution of any other work on land:

Provided that the following conditions are fulfilled, namely: -

(i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;

(ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and

(iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed." Section 14(1) provides categories of contracts which are not specifically enforceable. Sub-section (3) of Section 14 is an exception to clauses (a), (c) and (d) of sub-section (1). Though the species of contract stipulated in clauses

(a), (c) and (d) of sub-section (1) cannot be specifically enforced, a suit for specific performance of contracts of that description will be maintainable if the conditions set out in sub-clauses (i), (ii) and (iii) of clause (c) of Section 14(3) are satisfied.

12. The consistent position of the common law is that courts do not normally order specific performance of a contract to build or repair. But this rule is subject to important exceptions, and a decree for specific performance of a contract to build will be made only upon meeting the requisite requirements under law. According to Halsbury's Laws of England7, the discretion to grant specific 7 Halsbury's Laws of England, Fourth Edition, Volume 44(1), para 801 performance is not arbitrary or capricious; it is governed by principles developed in precedents. The judge must exercise the discretion in a judicious manner. Circumstances bearing on the conduct of the plaintiff, such as delay, acquiescence and breach or some other circumstances outside the contract, may render it inequitable to enforce it. The position as elucidated in Halsbury's Laws of England8 is thus:

"... the court does not normally order specific performance of a contract to build or repair. However, this rule is subject to important exceptions, and a decree for specific performance of a contract to build will be made if the following conditions are fulfilled: (1) that the building work is defined by the contract between the parties; (2) that the plaintiff has a substantial interest in the performance of the contract of such a nature that he cannot be adequately be compensated in damages; (3) that the defendant is in possession of the land on which the work is contracted to be done."

13. This principle was followed by the Court of Appeal in Wolverhampton Corporation v Emmons9, where the plaintiff, the urban sanitary authority, in pursuance of a scheme of street improvement, sold and conveyed to the defendant a plot of land abutting a street, the defendant covenanting with them that he would erect buildings within a certain time. Upon the defendant failing to perform the agreement, the plaintiffs brought a suit against him claiming specific performance. Romer L.J, held that a plaintiff can bring himself within the exception, if three things are shown to exist: (i) the building work, the performance of which the plaintiff seeks to enforce, is defined by the contract allowing the court to know the exact nature and extent of work; (ii) the plaintiff

8 Halsbury's Laws of England, Fourth Edition, Volume 44(1), para 806 9 [1901] 1 K. B. 515 must have a substantial interest in having the contract performed and the interest must be of such a nature that damages will not be an adequate compensation for the non-performance of the contract; and (iii) the defendant has obtained from the plaintiff by means of the contract the possession of the land on which the work is to be done. The case was held to come within the class of cases which had

been recognised as forming an exception to the general rule that specific performance of a building contract will not be ordered.

14. In a decision of the Chancery Division in Carpenters Estate v Davies10, an owner of land sold a certain portion of it to the purchaser for development, retaining land adjoining it, and agreed to lay roads and provide mains, sewers and drains on the land retained. The purchaser brought a suit for specific performance against the owner for not performing his obligations under the agreement. Farwell J., observed that the plaintiff is required to establish that the defendant is in possession of the land on which the work is contracted to be done. The facts of the case, indicated that the defendant was already in possession of the land, and there was no difficulty for her to carry out her obligations. Finding that the plaintiff proved all three conditions as laid out in Wolverhampton Corporation (supra), the court granted specific performance to the plaintiff.

10 (1940) Ch. D 160

15. The requirements to be satisfied by the plaintiff bringing forth a suit for specific performance have been analysed in Hudson's Building and Engineering Contracts11 and in Price v Strange12, where the rule has been settled that the court will order specific performance of an agreement to build if:

> (i) the building work is sufficiently defined by the contract, for example by reference to detailed plans;
>
> (ii) the plaintiff has a substantial interest in the performance of the contract of such a nature that damages would not compensate him for the defendant's failure to build; and
>
> (iii) the defendant is in possession of the land so that the plaintiff cannot employ another person to build without committing a trespass.

16. The expression "development agreement" has not been defined statutorily. In a sense, it is a catch-all nomenclature which is used to be describe a wide range of agreements which an owner of a property may enter into for development of immovable property. As real estate transactions have grown in complexity, the nature of these agreements has become increasingly intricate. Broadly speaking, (without intending to be exhaustive), development agreements may be of various kinds:

> (i) An agreement may envisage that the owner of the immovable property engages someone to carry out the work of construction on the 11 Hudson's Building and Engineering Contracts, Eleventh Edition, Volume 1, page 677 12 [1978] 1 Ch. 337 at page 359 property for monetary consideration. This is a pure construction contract;

(ii) An agreement by which the owner or a person holding other rights in an immovable property grants rights to a third party to carry on development for a monetary consideration payable by the developer to the other. In such a situation, the owner or right holder may in effect create an interest

in the property in favour of the developer for a monetary consideration;

(iii) An agreement where the owner or a person holding any other rights in an immovable property grants rights to another person to carry out development. In consideration, the developer has to hand over a part of the constructed area to the owner. The developer is entitled to deal with the balance of the constructed area. In some situations, a society or similar other association is formed and the land is conveyed or leased to the society or association;

(iv) A development agreement may be entered into in a situation where the immovable property is occupied by tenants or other right holders. In some cases, the property may be encroached upon. The developer may take on the entire responsibility to settle with the occupants and to thereafter carry out construction; and

(v) An owner may negotiate with a developer to develop a plot of land which is occupied by slum dwellers and which has been declared as a slum. Alternately, there may be old and dilapidated buildings which are occupied by a number of occupants or tenants. The developer may undertake to rehabilitate the occupants or, as the case may be, the slum dwellers and thereafter share the saleable constructed area with the owner.

When a pure construction contact is entered into, the contractor has no interest in either the land or the construction which is carried out. But in various other categories of development agreements, the developer may have acquired a valuable right either in the property or in the constructed area. The terms of the agreement are crucial in determining whether any interest has been created in the land or in respect of rights in the land in favour of the developer and if so, the nature and extent of the rights.

17. In a construction contract, the contractor has no interest in either the land or the construction carried out on the land. But, in other species of development agreements, the developer may have acquired a valuable right either in the property or the constructed area. There are various incidents of ownership of in respect of an immovable property. Primarily, ownership imports the right of exclusive possession and the enjoyment of the thing owned. The owner in possession of the thing has the right to exclude all others from its possession and enjoyment. The right to ownership of a property carries with it the right to its enjoyment, right to its access and to other beneficial enjoyments incidental to it. (B Gangadhar v BG Rajalingam13). Ownership denotes the relationship 13 (1995) 5 SCC 239 at para 6 between a person and an object forming the subject matter of the ownership. It consists of a complex of rights, all of which are rights in rem, being good against the world and not merely against specific persons. There are various rights or incidents of ownership all of which need not necessarily be present in every case. They may include a right to possess, use and enjoy the thing owned; and a right to consume, destroy or alienate it. (Swadesh Ranjan Sinha v Haradeb Banerjee14). An essential incident of ownership of land is the right to exploit the development, potential to construct and to deal with the constructed area. In some situations, under a development agreement, an owner may part with such rights to a developer. This in is essence is a parting of some of the incidents of ownership of the immovable property. There could be situations where pursuant to the grant of such rights, the developer has incurred a substantial investment,

altered the state of the property and even created third party rights in the property or the construction carried out to be carried out. There could be situations where it is the developer who by his efforts has rendered a property developable by taking steps in law. In development agreements of this nature, where an interest is created in the land or in the development in favour of the developer, it may be difficult to hold that the agreement is not capable of being specifically performed. For example, the developer may have evicted or settled with occupants, got land which was agricultural converted into non-agricultural use, carried out a partial development of the property and pursuant to the rights conferred under the agreement, created third party rights in favour of flat 14 (1991) 4 SCC 572 purchasers in the proposed building. In such a situation, if for no fault of the developer, the owner seeks to resile from the agreement and terminates the development agreement, it may be difficult to hold that the developer is not entitled to enforce his rights. This of course is dependent on the terms of the agreement in each case. There cannot be a uniform formula for determining whether an agreement granting development rights can be specifically enforced and it would depend on the nature of the agreement in each case and the rights created under it.

18 In Chheda Housing Development Corporation v Bibijan Shaikh Farid15, a Division Bench of the Bombay High Court while dealing with the question of whether specific performance should be granted of a development agreement held as follows:

> "In our opinion from a conspectus of these judgments, what is relevant would be the facts of each case and the agreement under consideration. Agreements considering what is discussed, amongst others, could be:
>
> (a) An Agreement only entrusting construction work to a party for consideration.
>
> (b) An Agreement for entrusting the work of development to a party with added rights to sell the constructed portion to flat purchasers, who would be forming a Co-operative Housing Society to which society, the owner of the land, is obliged to convey the constructed portion as also the land beneath construction on account of statutory requirements.
>
> (c) A normal agreement for sale of an immovable property.

An Agreement of the first type normally is not enforceable as compensation in money is an adequate remedy. An Agreement of the third type would normally be specifically enforceable 15 (2007) 3 Mah LJ 402 unless the contrary is proved. A mere agreement for development, which creates no interest in the land would not be specifically enforced."

19. The judgement of the Bombay High Court in Della Developers Private Limited v Noble Organics Private Limited16, deals with a case where a development agreement was executed between the petitioners and the respondents. A dispute arose between the parties and arbitration proceedings were initiated. An order was passed by the Arbitrator under Section 17 of the Arbitration and Conciliation Act 1996 against which an appeal was filed under Section 37. Before the High Court, the findings of the sole arbitrator under Section 17 were challenged. Upon examining the agreement, the

High Court held that the agreement created a right or interest in immovable property. On the issue of the maintainability of a proceeding initiated by the developer against the owner under Section 14(3)(c), the court reiterated the requirement of fulfilling the three conditions under Section 14(3)(c). Hon'ble Mr. Justice A M Khanwilkar (as my learned Brother then was) held as follows:

> "Insofar as present case is concerned, out of the three conditions specified in Section 14(3)(c), prima facie, from the terms of the Agreement as executed between the parties, there is nothing to indicate that the Petitioner in pursuance of the contract, was put in possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed."

20. In Ashok Kumar Jaiswal v Ashim Kumar Kar17, a Full Bench of the Calcutta High Court held that a development agreement with a clause for 16 (2010) 2 Bom CR 13 17 AIR 2014 Cal 92 conditional sale of the premises in question will also be an agreement for sale subject to certain conditions. While deciding whether a suit at the instance of a developer is maintainable in view of Section 14(3)(c), the Court, inter alia, held that in the absence of a definition of "developer" or "development agreement"

> the nature of the agreement which is the subject-matter of a suit must be considered in order to determine whether it is an agreement to merely provide construction of a building or whether the developer has obtained a share of, and interest in, the developed property which is the outcome of the agreement, creating a contract for transfer of immovable property. The Full Bench observed thus:
>
> "An owner without any funds or the independent resources to construct a new building on such owner's land may engage for such purpose with the consideration for the construction being paid by allocation of a part of the constructed area. There could be several variants of the same basic structure of a development agreement.....Such agreements are not merely for the construction of any building or for the mere execution of any other work on the land. The developer is not merely a contractor engaged to undertake the construction; the developer is, under the agreement with the owner, promised a part of the constructed premises as owner thereof together with the proportionate area of the land." The Full Bench held that a right to seek specific performance of a development agreement is not barred either expressly or by necessary implication by the 1963 Act and a broad interpretation should be given to allow an adequate remedy:
>
> "....it would be preposterous to say that only the owner can maintain a suit against the developer for enforcing his rights and not vice-versa. If the developer has a right under the contract he must be having a remedy in the form of approaching a forum for appropriate redressal. A question of maintainability of a suit is completely different from the question of whether the suit will succeed or not on the facts of the case and in the light of the applicable law. Section 14 (3)(c) of the Act can in no manner be interpreted as debarring a developer from approaching the legal forum for

redressal of his grievance."

21. In the present case, the respondent agreed to pay the appellant the costs and expenses along with the agreed remuneration upon completion of the construction. If the respondent failed to pay, the appellant was entitled to realise its money by selling 58% of the total constructed area. Clauses 6, 10 and 11 of the agreement indicate that the respondent would retain 42% of the total constructed area and the balance 58% would remain secured for due payment of the construction costs. It was further agreed, that the total construction costs shall not exceed 58% of the constructed area. The intention of the parties is clear from the agreement. This was an agreement to carry out the construction of the building for which payment of the construction costs and agreed remuneration had to be made. The agreement did not create an interest in the land for the developer. If the payment due to the developer was made, there would arise no security interest. Moreover, the security interest in respect of 42% of the constructed area would arise only if the construction came up and the payment due to the builder was not made. In present case, admittedly there is no construction at all.

22. Various High Courts have interpreted the requirements under Section 14(3)(c) of the Act and opined on the maintainability of a suit by the developer for specific performance against the owner of the property for a breach in the conditions of the development agreement. A common thread that runs through the analysis in decided cases is the following:

(i) The courts do not normally order specific performance of a contract to build or repair. But this rule is subject to important exceptions, and a decree for specific performance of a contract to build will be made only upon meeting the requirements under law;

(ii) The discretion to grant specific performance is not arbitrary or capricious but judicious; it is to be exercised on settled principles; the conduct of the plaintiff, such as delay, acquiescence, breach or some other circumstances outside the contract, may render it inequitable to enforce it;

(iii) In order to determine the exact nature of the agreement signed between the parties, the intent of the parties has to be construed by reading the agreement as a whole in order to determine whether it is an agreement simpliciter for construction or an agreement that also creates an interest for the builder in the property. Where under a development agreement, the developer has an interest in land, it would be difficult to hold that such an agreement is not capable of being specifically enforced; and

(iv) A decree for specific performance of a contract to build will be made if the following conditions are fulfilled:

> a) the work of construction should be described in the contract in a sufficiently precise manner in order for the court to determine the exact nature of the building or work;
>
> b) the plaintiff must have a substantial interest in the performance of the contract and the interest should be of such a nature that compensation in money for non-performance of the contract is not an adequate relief;

and

c) the defendant should have, by virtue of the agreement, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.

23. The issue before this Court is whether Section 14(3)(c)(iii) is a bar to a suit by a developer for specific performance of a development agreement between himself and the owner of the property. The condition under Section 14(3)(c)(iii) is that the defendant has, by virtue of the agreement, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed. If the rule of literal interpretation is adopted to interpret Section 14(3)(c)(iii), it would lead to a situation where a suit for specific performance can only be instituted at the behest of the owner against a developer, denying the benefit of the provision to the developer despite an interest in the property having been created. This anomaly is created by the use of the words "the defendant has, by virtue of the agreement, obtained possession of the whole or any part of the land" in Section 14(3)(c)(iii). Under a development agreement, an interest in the property may have been created in favour of the developer. If the developer is the plaintiff and the suit is against the owner, strictly applied, clause (iii) would require that the defendant should have obtained possession under the agreement. In such a case if the developer files a suit for specific performance against the owner, and the owner is in possession of the land by virtue of a lawful title, the defendant (i.e. the owner) cannot be said to have obtained possession of the land by way of the agreement. This would lead to an anomalous situation where the condition in Section 14(3)(c)(iii) would not be fulfilled in the case of a suit by a developer. Application of the literal rule of interpretation to Section 14(3)(c)(iii), would lead to an absurdity and would be inconsistent with the intent of the Act.

24. The conditions that should be present to justify a departure from the plain words of any statute, have been elucidated in Justice GP Singh's treatise on Principles of Statutory Interpretation18 (while discussing the decision of the House of Lords in Stock v Frank Jones (Tipton) Ltd.19):

> "...a court would only be justified in departing from the plain words of the statute when it is satisfied that (1) there is clear and gross balance of anomaly; (2) Parliament, the legislative promoters and the draftsman could not have envisaged such anomaly and could not have been prepared to accept it in the interest of a supervening legislative objective; (3) the anomaly can be obviated without detriment to such a legislative objective; and (4) the language of the statute is susceptible of the modification required to obviate the anomaly." 18 Principles of Statutory

Interpretation, 12th Edition - 2010, Lexis Nexis - page 144 19 (1978) 1 WLR 231 The principle has been also adverted to in Maxwell on Interpretation of Statutes20 :

> "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence." By giving a purposive interpretation to Section 14(3)(c)(iii), the anomaly and absurdity created by the third condition will have no applicability in a situation where the developer who has an interest in the property, brings a suit for specific performance against the owner. The developer will have to satisfy the two conditions laid out in sub clause (i) and (ii) of Section 14(3)(c), for the suit for specific performance to be maintainable against the owner. This will ensure that both owners and developers can avail of the remedy of specific performance under the Act. A suit for specific performance filed by the developer would then be maintainable. Whether specific performance should in the facts of a case be granted is a separate matter, bearing on the discretion of the court.

25. Having dealt with the first aspect of the matter, it is now necessary to determine whether, in the facts of the present case, the agreement between the appellant and the respondent is capable of specific performance. For this 20 Maxwell, Interpretation of Statutes, 11th Edition, page 221 purpose, it would be necessary to consider the terms and conditions of the agreement between the parties.

26. The condition under Section 14(3)(c)(i) is that the building or other work described in the contract is sufficiently precise to enable the court to determine the exact nature of the building or work. To examine the question as to whether the scope of the building or work described in the agreement is sufficiently defined, the Court needs to determine the exact nature of the work by referring to the relevant clauses of the agreement. Clause 8 of the agreement provides that the building shall be constructed in accordance with approved plans and built with "first class materials" with wooden doors, mosaic floor, basin and lavatories, tap water arrangement, masonry work, electric points, finished distemper and bath room fittings of glazed tiles up to 6" height and lift, "etc." Further, at clause 13 of the agreement, the parties have agreed that the contractor would construct a building at the premises consisting of "residential apartments of various sizes and denomination" in the said building complex in accordance with plans sanctioned by the Calcutta Municipal Corporation and the owner shall convey the proportionate share in the land to the respective buyers. Clause 22 of the agreement states that if for any reason after the plan is sanctioned or "for any act or omission on the part of the owner" the building cannot be constructed; the owner shall refund to the contractor 4,00,000/- in addition to all costs, charges and expenses incurred by the contractor. At clause 20 of the agreement, the parties have agreed that the apartments of the owner shall be constructed and be made in "similar condition" as that of the contractor with water connection, sewerage, electric wiring except "special fittings". Use of such vague terms in the agreement such as "first class materials", "residential apartment of various sizes and denomination", "etc.", "similar condition", and "special fittings", while discussing the scope of

work clearly shows that the exact extent of work to be carried out by the developer and the obligations of the parties, have not been clearly brought out. Parties have not clearly defined, inter alia, the nature of material to be used, the requirements of quality, structure of the building, sizes of the flats and obligations of the owner after the plan is sanctioned. Further, clause 9 of the agreement states that the owner shall pay the contractor costs, expenses along with agreed remuneration only after completion of the building on receiving the possession. However, the exact amount of remuneration payable by the owner to the contractor is not to be found in the agreement. The agreement between the parties is vague. The court cannot determine the exact nature of the building or work. The first condition in Section 14(3)(c)(i) is not fulfilled.

27. Another condition under Section 14(3)(c)(ii) is that the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief. The intent of the section is to make a distinction between cases where a breach of an agreement can be remedied by means of compensation in terms of money and those cases where no other remedy other than specific performance will afford adequate relief. Therefore, before granting the remedy of specific performance, we need to analyse the extent of the alleged harm or injury suffered by the developer and whether compensation in money will suffice in order to make good the losses incurred due to the alleged breach of the agreement by the owner. From the facts of the case, it is clear that the case of the developer is that he incurred an expenditure of 18,41,000/- towards clearing outstanding dues, security deposit and development, incidental and miscellaneous expenses. The alleged losses/damages incurred by the Plaintiff can be quantified. The plaintiff can be provided recompense for the losses allegedly incurred by payment of adequate compensation in the form of money. The developer has failed to satisfy the conditions under sub-clause

(i) and (ii) of Section 14(3)(c) of the Act. In such a case, specific performance cannot be granted.

28. By the Specific Relief (Amendment) Act 201821, Section 14 has been amended to read as follows:

> "14. The following contracts cannot be specifically enforced, namely:—
>
> (a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;
>
> (b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;
>
> (c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and
>
> (d) a contract which is in its nature determinable." 21Act 18 of 2018 However, the amended section has been notified on 19 September 2018 and the central government has appointed 1 October 2018 as the date on which the provision of Act 18 of 2018 will come into force22. However, in the present case, we are not called

> upon to examine the effect of this amended provision. In any case, we have indicated the reasons why Section 14(3)(c) was not attracted.

29. The appellants have relied on the decision of this Court in Her Highness Maharani Shantidevi P Gaikwad v Savjibai Haribai Patel23, where an agreement was entered into between the landowner and the developer for the purpose of construction of houses for the weaker sections on excess vacant land under a scheme sanctioned under Section 21 of the Urban Land (Ceiling and Regulation) Act 1976. This Court reversed the decision of the High Court that granted the decree of specific performance to the developer on the grounds that it was inequitable to enforce specific performance in view of a change in the Master Plan. The court noted that a contract which involved continuous supervision of the court, was not specifically enforceable. Further, in the opinion of the court, at best the plaintiff - builder could claim damages and the expenditure incurred by him for the implementation of the terms of the agreement. The above case has no applicability to the facts of the present case and is of no relevance as the issue in relation to the maintainability of a suit for specific performance by the builder against the owner has not been discussed. 22 S.O.4888(E) dated 19.09.2018 23 AIR 2001 SC 1462

30. The appellant has also placed reliance on the decision in Faqir Chand Gulati v Uppal Agencies Private Limited24, where the issue before this Court was whether a landowner, who enters into an agreement with the builder, for construction of an apartment building is a "consumer" entitled to maintain a complaint against the builder as a service provider under the Consumer Protection Act, 1986. The Court held:

> "We may notice here that if there is a breach by the landowner of his obligations, the builder will have to approach a civil court as the landowner is not providing any service to the builder but merely undertakes certain obligations towards the builder, breach of which would furnish a cause of action for specific performance and/or damages. On the other hand, where the builder commits breach of his obligations, the owner has two options. He has the right to enforce specific performance and/or claim damages by approaching the civil court. Or he can approach the Forum under Consumer Protection Act, 1986 for relief as consumer, against the builder as a service- provider." The issue involved before this Court was in relation to the interpretation of the Consumer Protection Act, 1986 and not on the maintainability of a suit filed by the developer against the owner for specific performance in view of Section 14(3)(c) of the Act. Therefore, the decision cannot be relied upon in relation to the issue before us.

31. Ordinarily, if there was an alternative plea for damages or monetary relief, we would have remanded the case to the High Court for consideration of the prayer. However, in the impugned judgment, the Division Bench has observed thus:

> 24 (2008) 10 SCC 345 "Although we find no merit in this appeal, we wanted to give liberty to the plaintiff for amendment of the plaint for the purpose of getting alternative relief by way of return of security of money and damages, if at all suffered,

> in terms of Section 22 of the Specific Relief Act; but Mr. Das, the learned Advocate appearing on behalf of the appellant after taking instruction from his client submitted before us that his client did not want to avail of such remedy and wanted to challenge our decision by preferring an appeal if we decided to refuse the prayer for specific performance of the contract. " The same statement has been made before this Court, as was made before the High Court. In the absence of any plea for damages or monetary relief by the respondents, there is no reason to remit the appeal back to the High Court.

32. For the above reasons we find no merit in this appeal. The appeal stands dismissed. There shall be no order as to costs.

. ... J [A M KHANWILKAR]
.....J [Dr DHANANJAYA Y CHANDRACHUD] New Delhi;

October 09, 2018.