R Lakshmikantham vs Devaraji on 10 July, 2019

Equivalent citations: AIRONLINE 2019 SC 2325, AIRONLINE 2019 SC 2607

Author: R. F. Nariman

Bench: Surya Kant, R. F. Nariman

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2420 OF 2018

R LAKSHMIKANTHAM Appe

VERSUS

DEVARAJI Resp

J U D G M E N T

R. F. NARIMAN, J.

In the present appeal, despite service of notice, nobody appears for the respondent. We have heard Dr. (Ms.) Pooja Jha, learned counsel appearing for the appellant.

The High Court, in the present appeal, has, by the impugned judgment dated 03.02.2017, set aside the concurrent judgments of the Courts below, and allowed the appeal of the erstwhile defendant, who is the respondent before us, and hence, set aside the decree for specific performance that was passed in the plaintiff's favour.

By an agreement to sell dated 22.09.2002, the suit- property was to be sold for a sum of Rs.3,65,000/-. Certain clauses of the agreement are important and are set out Reason: "1. The sale price of the property mentioned in the schedule hereunder shall be Rs.3,65,000/-(Rupees Three Lakhs and Sixty Five Thousand only). CIVIL APPEAL NO. 2420 OF 2018

2. The party of the second part has paid a sum of Rs.5,000/-(Rupees Five Thousand only) towards advance by cash and the party of the first part hereby admit and acknowledge the receipt of the same.

3. The balance sale consideration shall be paid by the party of the second part to the party of the first part within three months from today. The party of the first part agrees to execute sale deed on the day on which the balance sale consideration is paid.

4. The party of the second part agrees to pay part of the sale consideration of Rs.60,000/-(Rupees Sixty Thousand only) to the party of the first on or before 10th day of October.

5. The party of the first part had handed over the original title documents to the mortgagee and the party of the second part shall settle the loan, receive the documents from the mortgagee and keep the same in his custody.

… ....

8. If there is no encumbrance to the schedule property and when the party of the second part is willing to pay the balance sale consideration, the party of the first shall execute sale deed in favour of the party of the second part or her nominee. If the party of the first part refuses to do so, the party of the second part is entitled to take legal action." It is stated that at the time of the sale agreement, the suit property was worth roughly a sum of Rs.6 lakhs, but the parties finally agreed and the defendant, in particular, agreed to sell the aforesaid property for Rs.3.65 lakhs. A perusal of the agreement to sell would show that though clause 3 requires that the balance sale consideration will be paid within three months from the date of the agreement CIVIL APPEAL NO. 2420 OF 2018 and that the seller will execute the sale deed on the date on which balance sale consideration was paid yet, clauses 5 and 8 clearly show that the original title deeds which are with the mortgagee had yet to be handed over and the mortgage had yet to be redeemed. It is only when this is done that clause 3 would kick in, showing that the time of three months is obviously not of essence.

Soon after the agreement, the plaintiff sent a registered letter dated 18.12.2002 to the present address of the defendant reminding the defendant that Rs.5000/- had been received on the date of signing the agreement and Rs.60,000/- had been received on 14.10.2002. Despite this, the original title documents were not obtained from the mortgagee and hence the mortgage could not be discharged. The letter then goes on to state that repeated calls were made and that the plaintiff is ready with the balance money, and that the defendant should come forward immediately to discharge the mortgage, get all documents from the mortgagee, and register the sale deed. This registered A.D. letter was returned to the sender stating that the addressee did not receive the same for the past one week. The same was the fate of another legal notice on the very next date, i.e., 19.12.2002. Finally, on 07.07.2003, the plaintiff sent a legal notice referring to the earlier legal notice of 19.12.2002 and called upon the defendant to immediately comply with the terms of the agreement. To this notice, CIVIL APPEAL NO. 2420 OF 2018 which was admittedly received by the defendant at the very same address, no reply was given. Thereafter, the present suit for specific performance was filed by the plaintiff in February, 2005.

Given these facts, the trial Court, by its judgment dated 12.09.2008, held that the suit agreement was proved and that three notices sent by the plaintiff were also proved, it being clear that the

defendant was attempting to wriggle out of his obligations under the agreement. Though the suit was filed belatedly, the trial Court felt that as the defendant did not furnish the address of his mortgagee or take steps to clear the mortgage, it was clear that the defendant was attempting to wriggle out of the agreement. Further, the plaintiff's readiness and willingness was proved by the fact that he has necessary funds as on the date of the agreement, and thereafter, as was stated by him in his letter dated 18.12.2002. This being the case, the Court ordered specific performance as the balance sale consideration had already been deposited into the Court on the date of the filing of the Suit. The first appeal from the aforesaid judgment was dismissed on 20.12.2010 by the Principal District Judge. The District Judge found concurrently for the plaintiff on all the points argued and hence dismissed the first appeal.

By the impugned judgment, the High Court reversed the concurrent judgments and held, on a construction of the CIVIL APPEAL NO. 2420 OF 2018 agreement, that since only three months were given to complete the sale transaction, time was of essence. It also went on to hold that the two letters dated 18.12.2002 and 19.12.2002 could not have been said to have been served on the defendant and hence were not proved. The High court recorded the defendant's advocate's statement that it was not going into other aspects except that plaintiff was not ready and willing throughout to perform the sale agreement. Despite this, the High Court held that since the Suit itself was filed belatedly, it would not be enough for the plaintiff to show that he had the necessary funds. It would also have been necessary for him to show that he was otherwise ready and willing throughout, which cannot be said to be correct considering that there was a long time gap between 22.09.2002 and 07.07.2003 inasmuch as the intermediate letters/notices were not proved. The High Court also further stated that the property value was Rs.10 lakhs on the date of the sale agreement, though this was not proved by the defendant, and then went on to state that since readiness and willingness had to be held against the Plaintiff, and since the Suit itself was belated, specific performance cannot be granted on the facts of this case and, as stated earlier, reversed the concurrent findings of the Courts below.

We have heard learned counsel for the appellant. The High Court has, in the second appeal, obviously CIVIL APPEAL NO. 2420 OF 2018 gone wrong on a number of counts. First, to hold that time was of essence in the agreement, is wholly incorrect. Clause 3 has to be read along with clauses 5 and 8, which clearly show that in the nature of reciprocal promises, the promise made by the seller in clause 5 has to be performed first, viz., that the title documents have to be obtained from the mortgagee after the mortgage is cleared. It is only then that the consideration above Rs.70,000/-, being the balance consideration for the sale, has to be paid. Secondly, the High court is wholly incorrect in stating that the two letters of 18.12.2002 and 19.12.2002 cannot be said to have been proved. Both the letters were registered A.D. letters sent to the very address of the defendant, which the defendant states is the address on which it received the legal notice dated 07.07.2003. Further, the moment the registered letter once sent is returned with the remarks mentioned hereinabove, it shall be deemed to have been served on the defendant on the address so stated, unless the contrary is proved. The defendant did not come forward with anything to show that this was not the proper address. In fact, that this is the proper address is shown by the fact that he acknowledged the receipt of the legal notice dated 07.07.2003 on this very address.

The High Court order is not correct in stating that readiness and willingness cannot be inferred because the letters dated 18.12.2002 and 19.12.2002 had not been sent to CIVIL APPEAL NO. 2420 OF 2018 the defendant. The High Court also erred in holding that despite having the necessary funds, the plaintiff could not be said to be ready and willing. In the aforesaid circumstances, the High Court was also incorrect in putting a short delay in filing the Suit against the plaintiff to state that he was not ready and willing. In India, it is well settled that the rule of equity that exists in England, does not apply, and so long as a Suit for specific performance is filed within the period of limitation, delay cannot be put against the plaintiff – See Mademsetty Satyanarayana v. G. Yelloji Rao and others AIR 1965 Supreme Court 1405 (paragraph 7) which reads as under:

> "(7) Mr. Lakshmaiah cited a long catena of English decisoins to define the scope of a Court's discretion. Before referring to them, it is necessary to know the fundamental differnece between the two systems-English and Indian-qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay – the time lag depending upon circumstances – may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; if it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises." The High Court also went into error in stating that the value of the property was Rs.10 lakhs at the time of the sale agreement. PW-1 in his cross examination admitted that it was Rs.10 lakhs on the date when PW1 was cross-examined.
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> CIVIL APPEAL NO. 2420 OF 2018 The value of the property on the date of the sale agreement was only Rs.6 lakhs, and it was open for the parties to negotiate the said price upwards or downwards, which was what the parties did in the facts of the present case.
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> Nothing can, therefore, be derived from the erroneous assumption that a valuable property had been sold at a throwaway price.
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> For all these reasons, therefore, we allow the appeal and set aside the judgment of the High Court and restore that of the Courts below.
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> ....., J.
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> [R. F. NARIMAN] ....., J.
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> [SURYA KANT] New Delhi;
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> July 10, 2019.