

A

KAMAL KUMAR

v.

PREMLATA JOSHI & ORS.

(Civil Appeal No. 4453 of 2009)

B

JANUARY 07, 2019

[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]

C *Constitution of India – Art.136 – Scope of interference – Concurrent findings of fact by lower courts – Held: The concurrent findings of facts recorded by the two Courts below on all the material issues are binding on Supreme Court when there is no perversity or illegality in the findings – In the instant case, suit for specific performance of contract was filed in relation to the suit land – Courts below held that the plaintiff failed to prove his readiness and willingness to perform his part of the contract – The issue of*
D *readiness and willingness, is the most important issue for considering the grant of specific performance of the contract and the same having been held by the two Courts below on appreciation of evidence against the plaintiff, it is binding on Supreme Court – It being essentially a question of fact, Supreme Court is not inclined to again appreciate the entire evidence while hearing the appeal*
E *under Art.136 of the Constitution – It is more so when the appellant was also not able to point out any material perversity or/and illegality in the finding so as to call for any interference therein by Supreme Court – Specific performance – Specific Relief Act, 1963 – ss.16(c), 20, 21, 22 and 23.*

F

Specific Performance – Essential requirement to establish grant of specific performance – Grant of relief of specific performance is a discretionary and equitable relief – The material questions, which are required to be gone into for grant of the relief of specific performance, are whether there exists a valid and
G *concluded contract between the parties for sale/purchase of the suit property; whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract; whether the plaintiff has, in fact, performed his part of the contract and, if so,*
H *how and to what extent and in what manner he has performed and*

whether such performance was in conformity with the terms of the contract; whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff; and lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money etc. and, if so, on what grounds – These questions are part of the statutory requirements – These requirements have to be properly pleaded by the parties in their respective pleadings and proved with the aid of evidence in accordance with law – It is only then the Court is entitled to exercise its discretion and accordingly grant or refuse the relief of specific performance depending upon the case made out by the parties on facts – Specific Relief Act, 1963 – ss.16(c), 20, 21, 22 and 23.

Dismissing the appeal, the Court

HELD: 1. In the instant case, the findings apart from being concurrent are such that they are capable of being recorded on appreciation of evidence adduced by the parties. These findings are neither against the pleadings nor the evidence and nor any principle of law. These findings are also not shown to be perverse to the extent that no judicial person can ever record such findings. [Para 9][56-G-H; 57-A]

2. In the case at hand, the two Courts below have gone into the material questions in the light of pleadings and evidence and recorded a categorical finding against the plaintiff holding that the plaintiff was neither ready and nor willing to perform his part of the contract and, therefore, he was not entitled to claim the relief of specific performance of the contract against the defendants in relation to the suit land. It was also held that the plaintiff was not entitled to claim any relief of refund of earnest money because it was liable to be adjusted as agreed between them. [Para 12][57-F-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4453 of 2009.

From the Judgment and Order dated 08.01.2008 of the High Court of Madhya Pradesh at Jabalpur in F.A. No. 808 of 2000.

- A Navin Prakash, Adv. for the Appellant.
Sumit Kumar Sharma, Niraj Sharma, Advs. for the Respondents.
The Judgment of the Court was delivered by
- B **ABHAY MANOHAR SAPRE, J.** 1. This appeal is directed against the final judgment and order dated 08.01.2008 passed by the High Court of Madhya Pradesh at Jabalpur in F.A. No.808 of 2000 whereby the Division Bench of the High Court dismissed the first appeal filed by the appellant herein and affirmed the judgment and decree dated 31.08.2000 passed by the Additional District Judge, Harda in Civil Suit No.19-A/97.
- C 2. Few facts need mention *infra* for the disposal of this appeal.
3. The appellant is the plaintiff whereas the respondents are the defendants in the civil suit out of which this appeal arises.
- D 4. The appellant filed the civil suit against the respondents claiming specific performance of the contract in relation to the suit land. The respondents contested the suit.
- E 5. By judgment/decreed dated 31.8.2000, the Trial Court dismissed the suit. The plaintiff felt aggrieved and filed first appeal before the High Court of M.P. at Jabalpur. By impugned judgment, the High Court dismissed the appeal and affirmed the judgment and decree of the Trial Court, which has given rise to filing of this appeal by way of special leave by the appellant(plaintiff) before this Court.
- F 6. Heard Mr. Navin Prakash, learned counsel for the appellant and Mr. Sumit Kumar Sharma, learned counsel for the respondents.
7. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in this appeal.
- G 8. In our considered opinion, the concurrent findings of facts recorded by the two Courts below on all the material issues are binding on this Court. It is much more so when we are unable to notice any kind of perversity or illegality in the findings.
- H 9. In other words, the findings apart from being concurrent are such that they are capable of being recorded on appreciation of evidence adduced by the parties. These findings are neither against the pleadings nor the evidence and nor any principle of law. These findings are also

not shown to be perverse to the extent that no judicial person can ever
record such findings. A

10. It is a settled principle of law that the grant of relief of specific
performance is a discretionary and equitable relief. The material
questions, which are required to be gone into for grant of the relief of
specific performance, are First, whether there exists a valid and concluded B
contract between the parties for sale/purchase of the suit property; Second,
whether the plaintiff has been ready and willing to perform his part of
contract and whether he is still ready and willing to perform his part as
mentioned in the contract; Third, whether the plaintiff has, in fact,
performed his part of the contract and, if so, how and to what extent and C
in what manner he has performed and whether such performance was
in conformity with the terms of the contract; Fourth, whether it will be
equitable to grant the relief of specific performance to the plaintiff against
the defendant in relation to suit property or it will cause any kind of
hardship to the defendant and, if so, how and in what manner and the
extent if such relief is eventually granted to the plaintiff; and lastly, D
whether the plaintiff is entitled for grant of any other alternative relief,
namely, refund of earnest money etc. and, if so, on what grounds.

11. In our opinion, the aforementioned questions are part of the
statutory requirements (See Sections 16 (c), 20, 21, 22, 23 of the Specific
Relief Act, 1963 and the forms 47/48 of Appendix A to C of the Code of E
Civil Procedure). These requirements have to be properly pleaded by
the parties in their respective pleadings and proved with the aid of
evidence in accordance with law. It is only then the Court is entitled to
exercise its discretion and accordingly grant or refuse the relief of specific
performance depending upon the case made out by the parties on facts. F

12. In the case at hand, we find that the two Courts below have
gone into these questions in the light of pleadings and evidence and
recorded a categorical finding against the plaintiff holding that the plaintiff
was neither ready and nor willing to perform his part of the contract and,
therefore, he was not entitled to claim the relief of specific performance G
of the contract against the defendants in relation to the suit land. It was
also held that the plaintiff was not entitled to claim any relief of refund of
earnest money because it was liable to be adjusted as agreed between
them.

13. In other words, both the Courts below held that the plaintiff
has failed to prove his readiness and willingness to perform his part of H

- A the contract. The issue of readiness and willingness, in our view, is the most important issue for considering the grant of specific performance of the contract and the same having been held by the two Courts below on appreciation of evidence against the plaintiff, it is binding on this Court. It being essentially a question of fact, this Court is not inclined to again appreciate the entire evidence while hearing the appeal under Article 136 of the Constitution. It is more so when we find that the appellant was also not able to point out any material perversity or/and illegality in the finding so as to call for any interference therein by this Court.
- B

14. In view of the foregoing discussion, we find no merit in this appeal. The appeal thus fails and is accordingly dismissed.

C

Devika Gujral

Appeal dismissed.