

A KOLLI SATYANARAYANA (DEAD) BY LRS.

v.

VALURIPALLI KESAVA RAO CHOWDARY (DEAD)
THR. LRS. AND OTHERS

B (Civil Appeal No. 1013 of 2014)

SEPTEMBER 27, 2022

[B. R. GAVAI AND C. T. RAVIKUMAR, JJ]

C *Specific performance: Sale agreement – Decree for specific performance – Time limit specified in the agreement – Significance of – Held: When the parties prescribe certain time limit for taking steps by one or the other party, the said time limit cannot be ignored altogether on the ground that time is not the essence of the contract.*

Allowing the appeal, the Court

D **HELD: 1.1 Taking into consideration the fact that the agreement of sale provided that in the event the permission from the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 to sell the suit property was not obtained within 75 days, the purchaser would be entitled to get back his advance money paid after 75 days but not later than 90 days under**
E **any circumstances, the findings of the Single Judge of the High Court cannot be said to be erroneous. After the defendant terminated the agreement on 12th April 1982 stating therein that since the permission from the ULC Authorities could not be obtained, she had cancelled the agreement of sale, the plaintiff**
F **did not take any step till 19th February 1984. Only after the ULC permission was granted on 7th February 1984, the plaintiff had issued a legal notice to the defendant on 19th February 1984. The Division Bench, after elaborately discussing the terms and conditions stipulated in the agreement of sale, also agreed with the view taken by the Single Judge. [Para 13, 14][335-D-F]**
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1.2 Though, the Division Bench of the High Court denied the relief for specific performance to the plaintiff, it has directed the respondents-defendants to refund the advance amount of

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Rs.15,000/- along with accrued interest or a sum of A
Rs.3,00,000/- in all. [Para 15][335-F-G]

1.3 There is no reason to differ with the concurring
judgments passed by the Single Judge as well as the Division
Bench of the High Court denying a decree for specific
performance. However, taking into consideration the facts and B
circumstances and that the defendant had, in fact, received an
amount of Rs.15,000/- as early as 1978, the respondents-
defendants are directed to pay an amount of Rs.15,00,000/- to
the appellants-plaintiffs, within the stipulated period. [Para
16][335-G-H; 336-A-B] C

K. S. Vidyadnam and Others v. Vairavan (1997) 3 SCC
1 : [1997] 1 SCR 993 – referred to.

Case Law Reference

[1997] 1 SCR 993 referred to Para 12 D
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1013
of 2014.

From the Judgment and Order dated 17.10.2008 of the High Court
of Andhra Pradesh at Hyderabad in Letter Patents Appeal No. 26 of
1999. E

C. Nageswara Rao, Sr. Adv., Byrapaneni Suyodhan, Ms. Tatini
Basu, Advs. for the Appellants.

Sridhar Potaraju, Ms. Shiwani Tushir, Rajat Srivastava, Advs. for
the Respondents.

The Judgment of the Court was delivered by F

B. R. GAVAI, J.

1. This appeal challenges the judgment dated 17th October 2008
passed by the learned Division Bench of the High Court of Judicature,
Andhra Pradesh at Hyderabad in Letters Patent Appeal No. 26 of 1999, G
thereby partly allowing the appeal filed by the present appellants.

2. Facts in brief giving rise to the present appeal are as under:

The defendant is the owner of the suit property. The defendant
executed an agreement of sale in favour of the plaintiff for sale of the
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- A suit property. The total consideration was fixed at Rs.45,315/-. The plaintiff paid an amount of Rs.15,000/- by way of Demand Draft dated 7th July 1978 as advance payment. The defendant addressed a letter to the plaintiff on 13th October 1978 stating therein that, she was ready to execute the sale deed and that she was coming to Hyderabad the week thereafter for the said purpose. The said communication was responded to by the plaintiff on 20th October 1978, requesting to confirm whether the necessary permission from the Competent Authority (hereinafter referred to as the “ULC Authorities”) under the Urban Land (Ceiling and Regulation) Act, 1976 (for short “ULC Act”) to sell the suit property had been obtained or not. Immediately thereafter, the plaintiff purchased stamp papers on 23rd October 1978. On 8th December 1978, the defendant applied to the Secretary to Government of Andhra Pradesh, Revenue Department for granting exemption under Section 20 of the ULC Act for selling the suit property. Another communication was addressed by the plaintiff on 30th December 1978, requesting the defendant to inform him as soon as the requisite permission under the ULC Act has been obtained. On 3rd March 1980, the defendant addressed a communication to the plaintiff stating therein that the concerned official had promised her to do the needful.

3. On 12th April 1982, the defendant addressed a communication to the plaintiff stating therein that the requisite permission from the ULC Authorities could not be obtained and therefore, she had cancelled the agreement of sale dated 29th July 1978. The defendant had also enclosed a Demand Draft of Rs. 15,000/- for the purpose of refund of advance amount. The plaintiff replied to the defendant vide communication dated 2nd May 1982 that, the contract was binding and returned the said Demand Draft. He reiterated that he was always ready to make the payment and execute the sale deed. It was also contended by him that because of the spiralling price rise, the defendant was going back on the promise. The defendant, on 2nd June 1982 addressed a letter to the plaintiff, stating therein that, she was forfeiting the advance payment of Rs.15,000/- since the plaintiff had not claimed the refund within 90 days from the date of the agreement of sale. Thereafter, there were certain other communications between the parties.

4. The Government of Andhra Pradesh, vide G.O. Ms. No. 161 dated 7th February 1984, granted exemption to the defendant under the provisions of Section 20 of the ULC Act. After coming to know about

the same, on 19th February 1984, the plaintiff issued a legal notice to the defendant for execution of the sale deed in pursuance of the agreement of sale dated 27th July 1978. Since the defendant did not respond, the plaintiff filed a suit bearing OS No. 139 of 1984 before the trial court seeking specific performance of the agreement of sale dated 29th July 1978. The trial court, vide judgment and decree dated 29th April 1988, decreed the suit directing the defendant to execute the sale deed within 2 months from the date of the judgment and decree.

5. Being aggrieved thereby, the defendant (since deceased) through legal representatives filed an appeal being Appeal No. 1415 of 1998 before the High Court. The learned Single Judge of the High Court, vide judgment dated 24th September 1998, allowed the appeal and dismissed the suit of the plaintiff. Being aggrieved thereby, the plaintiff filed an appeal being LPA No.26 of 1999 before the Division Bench of the High Court. The learned Division Bench of the High Court, vide impugned judgment dated 17th October 2008, denied the relief to the plaintiff for specific performance. However, it held that the plaintiff was entitled to get the refund for the advance payment of Rs.15,000/- along with the accrued interest or a sum of Rs.3,00,000/- in all. Being aggrieved thereby, the plaintiff has approached this Court.

6. We have heard Shri C. Nageswara Rao, learned Senior Counsel appearing on behalf of the appellants and Shri Sridhar Potaraju, learned counsel appearing on behalf of the respondents.

7. Shri Rao submitted that the learned Single Judge of the High Court has erred in reversing the well-reasoned judgment and decree passed by the trial court. He further submitted that the Division Bench of the High Court also erred in upholding the judgment passed by the learned Single Judge denying specific relief. The learned Senior Counsel submitted that the findings of the learned Single Judge as well as the Division Bench of the High Court are based upon misinterpretation of evidence. He submitted that the learned Single Judge and the Division Bench have, through their own interpretation, imported a condition which is not in existence.

8. Shri Sridhar, on the contrary, submitted that the learned Single Judge as well as the Division Bench of the High Court has concurrently held that the conduct of the plaintiff was not such which entitled him for specific relief. He further submitted that no interference is warranted in the present appeal.

A 9. The learned Single Judge, while reversing the judgment and decree passed by the trial court, has relied on Clauses 3 and 5 of the agreement of sale dated 29th July 1978, which read thus:

B “3. The sale deed shall be executed within three months from the date of this agreement or within one month from the date of receipt of intimation from ‘the vendor’ stating that the necessary permission from the concerned authority under Urban Land Ceiling Act is obtained or within such further period as mutually agreed upon on payment of the balance of consideration. If the balance of consideration is not paid within the stipulated period of agreed period rendering it difficult for ‘the vendor’ to execute the sale deed, this agreement of sale shall stand cancelled.

C 4.

D 5. That ‘the vendor’ shall obtain permission for alienation under Urban Land Ceiling Act or any other Act as early as possible but not later than 75 days from the date of this agreement and ‘the vendor’ shall be sole responsible for obtaining the above permission, ‘the purchaser’ shall be entitled to get back the advance paid after 75 days from the date of the agreement, but not later than 90 days under any circumstances.”

E 10. Upon interpretation of the aforesaid clauses, the learned Single Judge of the High Court came to a conclusion that a reading of the said clauses made it clear that the parties intended that that the permission should be obtained by the defendant within 75 days. It held that in the event the permission was not obtained by the defendant within the stipulated time, the plaintiff was entitled to get back his advance money.

F It has found that under the agreement of sale, even for the said purpose, the limit of 90 days was fixed. After the said period of 90 days, the plaintiff was not even entitled to get back the advance money and the defendant was entitled to forfeit the same.

G 11. The learned Single Judge further found that the conduct of the parties to the contract was also significant. It found that both the parties tried to get the exemption from the Government of Andhra Pradesh under Section 20 of the ULC Act for about a year after the agreement of sale dated 29th July 1978. It is further to be noted that though the defendant had communicated to the plaintiff on 12th April 1982 that, since the requisite permission from the ULC Authorities could not be

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obtained and as such, she had cancelled the agreement, the plaintiff did not file any proceeding against the defendant. It was only after a period of almost 2 years when the defendant obtained the permission after cancellation of the earlier agreement, the plaintiff chose to file the suit. A

12. In the case of *K.S. Vidyadnam and Others v. Vairavan*¹, this Court has held that the court should look at all the relevant circumstances including the time limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised. It has been held that in case of urban properties, the prices have been rising sharply. It has been held that while exercising its discretion, the court should bear in mind that when the parties prescribe certain time limit(s) for taking steps by one or the other party, it must have some significance and that the said time limit(s) cannot be ignored altogether on the ground that time is not the essence of the contract. B C

13. Taking into consideration the fact that the agreement of sale provided that in the event the permission was not obtained within 75 days, the purchaser shall be entitled to get back his advance money paid after 75 days but not later than 90 days under any circumstances, the findings of the learned Single Judge cannot be said to be erroneous. After the defendant terminated the agreement on 12th April 1982 stating therein that since the permission from the ULC Authorities could not be obtained, she had cancelled the agreement of sale, the plaintiff did not take any step till 19th February 1984. Only after the ULC permission was granted on 7th February 1984, the plaintiff had issued a legal notice to the defendant on 19th February 1984. D E

14. The Division Bench of the High Court, after elaborately discussing the terms and conditions stipulated in the agreement of sale, also agreed with the view taken by the learned Single Judge. F

15. Though, the Division Bench of the High Court denied the relief for specific performance to the plaintiff, it has directed the respondents-defendants to refund the advance amount of Rs.15,000/- along with accrued interest or a sum of Rs.3,00,000/- in all. G

16. We do not find any reason to differ with the concurring judgments passed by the learned Single Judge as well as the Division Bench of the High Court denying a decree for specific performance. However, taking into consideration the facts and circumstances and an

¹ (1997) 3 SCC 1

- A undisputed position that the defendant had, in fact, received an amount of Rs.15,000/- as early as 1978, we direct the respondents-defendants to pay an amount of Rs.15,00,000/- to the appellants-plaintiffs. The said amount shall be paid within a period of 3 months from the date of this judgment.
- B 17. In the result, the appeal is allowed in the aforesaid terms. Pending application(s), if any, shall stand disposed of in the above terms. No order as to costs.

Nidhi Jain

Appeal allowed.