

CASE DETAILS

SABBIR (DEAD) THROUGH LRS

v.

ANJUMAN (SINCE DECEASED) THROUGH LRS.

(Civil Appeal No. 6075 of 2023)

SEPTEMBER 22, 2023

[VIKRAM NATH AND AHSANUDDIN AMANULLAH, JJ.]

HEADNOTES

Issue for consideration: (i) Whether the suit for specific performance was filed within the period of limitation; (ii) Whether the respondents were ready and willing to perform their part of the contract.

Suit – Specific performance – Limitation – Readiness and willingness to perform contract – Respondents filed suit for specific performance – The suit was decreed – The First Appellate Court dismissed the suit – The respondents thereafter filed Second Appeal, which was allowed by the High Court – Propriety:

Held: Clause 3 of the agreement to sell (dated 31.07.1975) thereof stipulates that the appellants within 8 days from that date, for sale of the property, would apply for permission before the District Magistrate – Thereafter, it was stipulated that within 15 days from such intimation, the respondents shall get the Sale Deed executed either in their favour or in favour of a person of their choice and the expenses would be borne by the respondents – Appellants did not apply for any permission to sell – Respondents filed suit on 01.01.1981 for specific performance of the ATS – From the ninth (9th) day onwards, the onus had shifted on the respondents, if within 8 days the appellants had not even applied for permission – As soon as the first eight days expired, the respondents had to show due diligence by being vigilant and conscious of their rights and were required to act promptly – There is nothing on the record to fathom a valid or justifiable reason for the respondents to have waited for five and a half years before instituting the suit – Also, from their own pleadings in the plaint, even after five and a half years, there being no averment that the respondents were

ready and willing to perform their obligations under the ATS and pay the balance/remaining amount is enough for the suit of the respondents to be dismissed on the ground of limitation alone – The limitation for filing a suit for specific performance, as per Article 54 of the Schedule to the Limitation Act, 1963 is 3 years – In the instant case, the Agreement to Sell is dated 31.07.1975 and the suit was filed on 01.01.1981 – The judgment and order passed by the First Appellate Court, dismissing the suit, stands restored. [Paras 10, 11, 12, 13]

LIST OF CITATIONS AND OTHER REFERENCES

Ghewarchand v. Mahendra Singh (2018) 10 SCC 588 : [2018] 11 SCR 738; *Basawaraj v. Land Acquisition Officer* (2013) 14 SCC 81 : [2013] 8 SCR 227 – relied on.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6075 of 2023.

From the Judgment and Order dated 18.07.2018 of the High Court of Judicature at Allahabad in SA No. 1574 of 1984.

Appearances:

P. K. Jain, Saurabh Jain, S. P. Singh Rathore, P. K. Goswami, Arunansh Bharati Goswami, Kafeel Ahmed, Sujit Kumar Jha, Advs. for the Appellants.

Nizam Pasha, Ms. Aayushi Mishra, Mrs. Pragya Baghel, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT

ORDER

AHSANUDDIN AMANULLAH, J.

Leave granted.

2. Heard learned counsel for the parties.

3. Both the original parties to the agreement to sell being dead, are now represented through their Legal Representatives (LRs). Appellants are LRs of the defendant whereas the Respondents are the LRs of the plaintiff.

4. The present appeal is directed against the Final Judgment and Order dated 18.07.2018 (hereinafter referred to as the “Impugned Judgment”) passed by the High Court of Judicature at Allahabad (hereinafter referred to as “the High Court”) in Second Appeal No.1574 of 1984 by which the second appeal filed by the respondents was allowed; judgment of the First Appellate Court was set aside, and; judgment of the Trial Court was affirmed and restored.

THE FACTUAL PRISM:

5. An Agreement to Sell (hereinafter referred to as “ATS”) was executed in favour of the respondents by the appellants on 31.07.1975. The ATS envisioned that the appellants had to apply for permission to sell the property within eight days and upon permission being received, the same was to be intimated to the respondents and the Sale Deed was to be executed within 15 days from receipt of such intimation by the respondents. Earnest money of Rs.1,000/- was paid out of the total sale consideration of Rs.6,000/. The appellants did not apply for any permission to sell which led to the respondents filing Suit No. 5 of 1981 on 01.01.1981 for specific performance of the ATS. The suit was decreed by judgment dated 08.03.1982. The appellants filed Appeal No.118 of 1982 which was allowed by the First Appellate Court *vide* judgment dated 09.05.1984. The respondents thereafter filed Second Appeal No.1574 of 1984 which was allowed by the High Court on 02.04.2010. The appellants then carried the case to this Court, which remanded the matter to the High Court. On remand, the High Court again allowed the Second Appeal by its judgment dated 18.07.2018, reversing the finding(s) of the First Appellate Court. The High Court’s judgment dated 18.07.2018 is impugned herein.

SUBMISSIONS BY THE APPELLANTS:

6. Learned counsel for the appellants submitted that the Trial Court had totally mis-appreciated the facts and law while decreeing the suit. It was stated that the First Appellate Court, after appreciation of the facts in their correct perspective and applying the law to the same, rightly reversed

the Trial Court's view, and dismissed the suit. It was contended that the High Court without giving any cogent reasons, on wrong appreciation of the material/facts and law, had reversed the judgment of the First Appellate Court. Learned counsel submitted that our interference was called for. It was contended that the First Appellate Court had rightly come to the conclusion that in the background of the various clauses in the ATS, the respondents had not taken any steps despite the appellants not having applied for permission for five years; which showed that the respondents were not ready and willing to perform their part of the contract, and therefore, the suit was barred by limitation.

7. It was submitted that Clauses 3 & 4 of the ATS dated 31.07.1975 would indicate that the time for moving the court for specific performance started upon expiry of the 8th day from 31.07.1975 and thus, filing of the suit on 01.01.1981 was clearly beyond the period specified to institute such case.

SUBMISSIONS BY THE RESPONDENTS:

8. Learned counsel for the respondents submitted that the Trial Court had rightly held that the appellants had to apply for permission and upon getting the same had to intimate to the respondents and within fifteen days of such intimation, the respondents were to get the Sale Deed executed. As the appellants had not even applied and thus, no permission was ever obtained, they had not informed the respondents and therefore, the suit would not be hit by limitation. It was his submission that the suit was filed within the limitation period.

9. It was further contended that the respondents had orally shown their willingness to the appellants to pay the balance amount and get the Sale Deed executed in terms of the time-frame as per the ATS but the appellants stoutly refused to act as per the terms of the ATS. It was submitted that the respondents, who were the tenants, had even got the property reconstructed in the year 1978 by investing Rs.5,000/- after getting the maps approved by the concerned Municipal Corporation through the appellants.

ANALYSIS, REASONING AND CONCLUSION:

10. Having considered the matter, the Court finds that the Impugned Judgment cannot be sustained. The true typed copy of the ATS dated 31.07.1975 has been brought on record by the learned counsel for the

appellants. Clause 3 thereof stipulates that the appellants within 8 days from that date, for sale of the property, would apply for permission before the District Magistrate, Saharanpur, Uttar Pradesh and upon the same being granted shall communicate it to the respondents through registered post. Thereafter, it was stipulated that within 15 days from such intimation, the respondents shall get the Sale Deed executed either in their favour or in favour of a person of their choice and the expenses would be borne by the respondents. Further, Clause 4 stipulated that in case the appellants did not apply for permission within the stipulated time '*or*' after getting permission, did not inform the respondents and get the deed executed in favour of either the respondents or anyone of their choice then the respondents would have the right to get the sale of the property in question executed in their favour through the Court, and also take possession through the Court. A conjoint and harmonious reading of the relevant Clauses clearly indicates that the onus was on the appellants to apply within 8 days for permission and upon the permission being received, to intimate to the respondents, whereafter the respondents had to get the Sale Deed executed within 15 days. It was clarified that in the event of failure to do so i.e., either of not applying for permission '*or*' not intimating the respondents upon receipt of permission, the respondents had the right to move the Court for getting the sale executed as also for possession. Thus, from the ninth (9th) day onwards, the onus would shift on the respondents, if within 8 days the appellants had not even applied for permission. Since the consequences of non-performance of the duty cast upon the appellants of applying within 8 days or non-intimation of permission having been granted, in either contingency, a right accrued to the respondents to move Court.

11. In this background, the respondents cannot take the plea that they would be entitled to indefinitely wait till the appellants informed them about the permission. As soon as the first eight days expired, the respondents had to show due diligence by being vigilant and conscious of their rights and were required to act promptly. There being no notice given to the appellants by the respondents for five and a half years to indicate the reason why they kept waiting or that despite their willingness to comply with their portion of the obligations under the ATS, the appellants had not discharged their obligations under the ATS and why the respondents should not move before the Court for enforcement of the ATS, as contemplated thereunder,

coupled with the fact that in the entire plaint, there is not even a whisper with regard to the respondents having ever called upon the appellants or given notice to them that they were ready and willing to pay the balance amount and get the Sale Deed executed, in our considered view does not aid the respondents. We see nothing on the record to fathom a valid or justifiable reason for the respondents to have waited for five and a half years before instituting the suit.

12. From perusal of the plaint on the record it, transpires that there is a statement in Paragraph No.6 that till the month of October, 1980, the original respondent (since deceased) and her husband (now, as Legal Representative) had asked the appellants to execute the Sale Deed and then an eviction notice was served on the original respondent (since deceased) and her husband (now, as Legal Representative) and his brother. It has further been stated that this was after the respondents asked the appellants to execute the Sale Deed within 15 days after taking permission. Thus, nowhere it has been even indicated, in clear terms, that the respondents were ready and willing to pay the balance amount and get the Sale Deed executed in their favour. In view thereof, from their own pleadings in the plaint, even after five and a half years, there being no averment that the respondents were ready and willing to perform their obligations under the ATS and pay the balance/remaining amount is enough for the suit of the respondents to be dismissed on the ground of limitation alone. The ATS is dated 31.07.1975 and the suit was filed on 01.01.1981. The limitation for filing a suit for specific performance, as per Article 54 of the Schedule to The Limitation Act, 1963 is 3 years '*from the date fixed for performance or if no such date is fixed, when the plaintiff has notice that the performance is refused.*' In **Ghewarchand v Mahendra Singh, (2018) 10 SCC 588**, it was observed that when deciding upon the question of limitation, it is mainly required to see the plaint allegations and how the plaintiff has pleaded the accrual of cause of action for filing of the suit. Apropos limitation, this Court observed, in **Basawaraj v Land Acquisition Officer, (2013) 14 SCC 81** as under:

'12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to

*extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.*

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, p. 266:

"605. Policy of the Limitation Acts.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence."

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See Popat and Kotecha Property v. SBI Staff Assn. [(2005) 7 SCC 510], Rajender Singh v. Santa Singh [(1973) 2 SCC 705: AIR 1973 SC 2537] and Pundlik Jalam Patil v. Jalgaon Medium Project [(2008) 17 SCC 448: (2009) 5 SCC (Civ) 907].)

(emphasis supplied)

13. For reasons aforesaid, we set aside the Impugned Judgment. The judgment and order passed by the First Appellate Court, dismissing the suit, stands restored. The appeal is, accordingly, allowed.

14. The respondents had paid, in 1975, Rs.1,000 to the appellants. The respondents are entitled to refund thereof. We quantify such lump-sum

refund, factoring in the time elapsed, at Rs.1,50,000 to be paid on/before 01.01.2024 to the respondents by the appellants.

15. In the extant circumstances, there shall be no order as to costs.

Headnotes prepared by:
Ankit Gyan

Appeal allowed.