

Narinderjit Singh vs North Star Estate Promoters Ltd on 8 May, 2012

Equivalent citations: AIR 2012 SUPREME COURT 2035, 2012 AIR SCW 2999, 2012 (4) AIR JHAR R 180, 2012 (3) AIR KAR R 183, (2012) 2 WLC(SC)CVL 59, (2012) 1 CLR 1180 (SC), (2012) 116 REVDEC 621, (2012) 3 KER LT 10, (2012) 3 ICC 373, (2012) 5 ANDHLD 21, (2012) 92 ALL LR 913, (2012) 5 MAD LJ 151, (2012) 5 SCALE 197, (2012) 3 CIVILCOURTC 91, (2012) 115 ALLINDCAS 218 (SC), (2012) 3 ALL RENTCAS 11, (2013) 1 CIVLJ 10, (2012) 3 RECCIVR 168, 2012 (115) ALLINDCAS 218, AIR 2012 SC (CIVIL) 1622, (2012) 4 ALL WC 3993

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Bench: Sudhansu Jyoti Mukhopadhaya, G.S. Singhvi

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4307 OF 2012
(arising out of SLP (C) No.15051 of 2011)

Narinderjit Singh
... Appellant

versus

North Star Estate Promoters Limited
Respondent

...

WITH
CIVIL APPEAL NO. 4306 OF 2012
(arising out of SLP (C) No.15730 of 2011)

J U D G M E N T

G.S. SINGHVI, J.

1. Leave granted.

2. Having failed to convince the learned Single Judge of the Punjab and Haryana High Court to reverse the judgment and decree passed by the lower appellate Court for specific performance of Agreement for Sale dated 22.10.1996 executed by his father-cum-General Power of Attorney Col. Gurcharan Singh in favour of the respondent and to review the judgment passed in the second appeal, the appellant has filed these appeals. For the sake of convenience, the parties shall hereinafter be referred to as the appellant and the respondent.

3. The respondent filed suit for possession by way of specific performance of the agreement for sale impleading the appellant and his father as the defendants. The case set up by the respondent was that at the time of execution of agreement, its authorised representative had paid Rs.1,00,000; that on 22.11.1996, Rs.9,00,000 were offered to the appellant's father but he avoided to accept the amount despite telephonic message and phonogram sent on 23.11.1996 and personal visit to his office and residence. It was further pleaded that even though the respondent was always ready and willing and is still ready and willing to perform its part of the agreement, the appellant intentionally committed breach of the terms and conditions thereof and failed to perform his obligation by not extending cooperation in obtaining colonization licence from Punjab Urban Development Authority and ITC Certificate under Section 34-A of the Income Tax Act.

4. In the joint written statement filed by the appellant and his father, the locus standi of the respondent to file the suit was questioned on the premise that it had been incorporated on 1.11.1996, i.e. after execution of the agreement. On merits, it was pleaded that the appellant's father, who was about 88 years old and was sick had not executed the agreement and the same was a fictitious document prepared by the respondent in collusion with Col. Gurcharan Singh and Vijay Bhardwaj. The appellant and his father denied the receipt of the earnest money and the offer allegedly made by the respondent's representative to pay Rs.9 lacs.

On the pleadings of the parties, the trial Court framed the following issues:

“1. Whether plaintiff is entitled for decree for possession by way of specific performance of agreement to sell dated 22.10.1996? OPP.

2. Whether plaintiffs are not entitled to relief claimed for?

OPD.

3. Relief”

6. After considering the evidence produced by the parties, the trial Court recorded the following findings:

(i) the respondent has succeeded in proving execution of the Agreement for Sale.

(ii) the appellant and his father could not prove that the Agreement was a forged and fabricated document.

(iii) the respondent succeeded in proving that its representative had paid a sum of Rs.1,00,000 as earnest money and offered to pay Rs.9,00,000 which defendant No.2 did not accept.

(iv) that the plaintiff was ready and willing to perform its part of the agreement.

However, the trial Court declined the relief of specific performance by observing that the price of the land had considerably increased and it would be unfair to compel the appellant to execute the sale deed at the rate agreed to by the parties. For arriving at this conclusion, the trial Court relied upon the judgments of this Court in *Sargunam (Dead) by L.R. v. Chidambaram* (2005) 1 SCC 162 and *Janardhanam Prasad v. Ramdas* (2007) 15 SCC 174 and of the Division Bench of the Punjab and Haryana High Court in *Mohan Singh v. Kulwinder Singh* 2006 (2) P.L.J. 748 and of the Allahabad High Court in *Ramawati Devi v. Idris Ahmad* 2008 (2) Civil Court Cases 332. The trial Court finally held that the respondent is entitled to refund of the earnest money with interest at the rate of 12% per annum.

7. The respondent challenged the judgment and decree of the trial Court by filing an appeal. The appellant and his father did not file appeal or cross objection to challenge the findings recorded by the trial Court on the issues of execution of the agreement and readiness and willingness on the respondent's part to perform its part of the agreement.

8. The lower appellate Court independently analysed the pleadings and evidence of the parties and agreed with the trial Court that the respondent had succeeded in proving execution of the agreement and its readiness and willingness to pay the balance amount and perform its part of the obligation. The lower appellate Court further held that even though the respondent's representative had offered to pay Rs.9,00,000, defendant No.2 avoided to accept the same and deliver possession of the suit property as per clause (5) of the agreement for sale. The lower appellate Court disagreed with the trial Court that the respondent is not entitled to decree of specific performance because cost of the suit property had increased and observed that there was no justification to relieve the appellant of his obligation to execute the sale deed in terms of the agreement.

9. The second appeal filed by the appellant was dismissed by the learned Single Judge of the Punjab and Haryana High Court who concurred with the lower appellate Court that the trial Court was not justified in invoking the provisions of Section 20 (2) (c) of the Specific Relief Act, 1963 (for short, 'the Act') for the purpose of declining substantive relief to the respondent. The learned Single Judge relied upon the judgments of this Court in *K. Narendra v. Riviera Apartments (P) Ltd.* (1999) 5 SCC 77, *Sargunam (Dead) by LRs. v. Chidambaram* (supra) 1 SCC 162 and *Gobind Ram v. Gian Chand* 2000 (7) SCC 548, and held that inadequacy of consideration or the fact that the contract is onerous to the defendant is not sufficient to deny the relief of specific performance.

10. Shri J. L. Gupta, learned senior counsel for the appellant argued that even though the finding recorded by the trial Court and the lower appellate Court on the issue of readiness and willingness of the respondent was concurrent, the learned Single Judge of the High Court committed serious error by approving the same ignoring that the respondent had neither pleaded nor any evidence was produced to prove that it had sufficient financial resources to pay the balance price. Learned senior counsel emphasised that the respondent was not only required to specifically plead but also prove its readiness and willingness to pay the balance price and the lower appellate Court was not justified in granting the decree of specific performance merely because the respondent had produced evidence to show that its representative had offered Rs.9 lacs to the appellant's father. Shri Gupta further argued that the so called refusal of the appellant's father to receive the amount of Rs.9,00,000 and

hand over possession of the suit property was inconsequential because the application made by the respondent for grant of licence to develop residential colony had been rejected by the Punjab Urban Development Authority. Learned senior counsel submitted that the delay of three years in filing of the suit was an important factor which ought to have been considered by the High Court for restoring the judgment and decree passed by the trial Court. In support of his arguments, the learned senior counsel relied upon the judgments of this Court in *K. S. Vidyanadam v. Vairavan* (1997) 3 SCC 1 and *J. P. Builders v. A. Ramadas Rao* (2011) 1 SCC

429. In the end, Shri Gupta referred to the provisions of the Punjab Apartment and Property Regulation Act, 1995 and submitted that the appellant did not hand over possession of the suit property to the respondent for the purpose of development of residential colony because the latter failed to get the requisite licence and any violation of the provisions of the Act would have amounted to an offence.

11. Shri Dushyant Dave, learned senior counsel for the respondent supported the impugned judgment and argued that the High Court did not commit any error by dismissing the second appeal and approving the judgment of the lower appellate Court which had set aside the trial Court's verdict on the issue of the applicability of Section 20(2)(c) of the Act because the respondent was always ready and willing to perform its part of the agreement and the escalation, if any, in the price of the land could not, by itself, be made a ground for denying the relief of specific performance. Learned senior counsel submitted that the finding recorded by the trial Court on the issue of the respondent's readiness and willingness will be deemed to have become final because the appellant did not challenge the same by filing an appeal against the judgment of the trial Court or cross-objection in the appeal preferred by the respondent.

12. We have considered the respective submissions. A reading of the agreement executed by the appellant's father in favour of the respondent shows that he had agreed to sell 51 Bighas 9 Biswas land situated in village Dhakauli, Tehsil Rajpura, District Patiala at the rate of Rs.14,00,000 per Killa, i.e. 4 Bighas. Clauses 1, 2, 3, 4, 5 and 7 of the Agreement read as under:

“1. That the total sale price of the above said land has been fixed at Rs.14,00,000/- (Fourteen Lac Only) per Killa i.e. (4-0) (Bighas).

2. That the said purchaser Company has paid to the said Seller a sum of Rs.1,00,000/- (Rupees One Lac Only) in cash in the shape of currency Notes as earnest money for which amount the said Seller hereby acknowledges the receipt in the presence of marginal witnesses.

3. That the purchaser company will develop the land for residential colony and the said purchaser company will pay further advance of Rs.9,00,000/- (Rupees Nine Lac Only) as part payment on or before 23rd Nov., of 1996, further part payment of Rs. 10,00,000/- (Rupees Ten Lac Only) on or before 24.12.1996, further part payment of Rs.28,00,000/-

(Rupees Twenty Eight Lac Only) on or before 23.4.1997 i.e. equivalent to the registration value of two acres of land and the balance payment of Rs.42,00,000/- (Rupees Forty Two Lac Only) will be made on or before 23.7.1997 equivalent to the value of three acres and the final payment will be made to the Seller on or before 23.10.1997.

4. That the Seller and purchaser parties will be bound to execute one or more sale deeds in favour of the purchaser company or its nominees as per schedule mentioned in para no.3 without any delay and hesitation and registration will be made from one end of the land in continuous manner and the earnest money and part payment of Rs.20,00,000/- (Rupees Twenty Lac Only) will be adjusted in the last and final sale deeds. The Seller party will present personally for execution of sale deed in favour of the nominees in the office of Joint Sub Registrar, Dera Bassi as per time and date fixed between both the parties.

5. That the said Seller will handover the vacant physical possession of the said land for the purpose of development activities to the purchaser company at the time of after receiving the part payment of Rs.9,00,000/- (Rupees Nine Lac Only).

6. xx xx xx xx

7. That the Seller party will fully cooperate with the purchaser company to apply and obtain the colonization licence from the PUDA, Chandigarh. The Seller party will give a Special Power of Attorney for this purpose to the nominee of the company.”

13. The question whether the respondent was ready and willing to perform its part of the agreement is required to be decided in the light of the pleadings of the parties, evidence produced by them and their conduct. In paragraph 5 of the plaint, the respondent categorically pleaded that it was always ready and willing and is still ready and willing to perform its part of the contract and on 22.11.1996 Rs. 9,00,000/- had been offered to the appellant’s father but the latter refused to accept the amount. The thrust of the case set up by the appellant was that his father had neither executed the agreement nor received the earnest money. According to him, the agreement was an end product of criminal conspiracy hatched by the respondent with the help of Col. Harjit Singh and Vijay Bhardwaj for defrauding him. The appellant also pleaded that the agreement relied upon by the respondent was a fake and fabricated document. In reply to the averments contained in para 5 of the plaint that the respondent was always ready and willing and is still ready and willing to perform its part of the contract, the following statement was made in the written statement:

“5. Para no.5 of the plaint is wrong and therefore denied. The question of readiness and willingness on the part of the defendants does not arise at all. Question of receiving of Rs. nine lac also does not arise at all.”

14. The trial Court comprehensively analysed the pleadings and evidence of the parties and held that the respondent has succeeded in proving execution of the agreement by the appellant’s father and receipt of Rs.1,00,000/- by him. The trial Court then considered the question whether the respondent was ready and willing to pay the balance price and observed:

“.....Perusal of the terms and conditions of the agreement to sell in question reveals that the plaintiff had to pay an amount of Rs.9 lacs as part payment amount on or before 23.11.1996 and the defendant No.2 in turn was schedule to deliver the vacant physical possession of the property in dispute to the plaintiff i.e. on 23.11.1996. The specific stand taken by the plaintiff is that he remained ready with the said amount of Rs.9 lacs to be paid to the defendants on 23.11.1996, but, the defendants refused to accept the said amount on pretext or the other. The plaintiff sent a telephonic message through STD to the defendant No.2 besides sending the other phonogram message to the defendant No.2 on the same day at 11.00 a.m. More significantly, the plaintiff had prepared a draft of Rs.9 lacs bearing No.BC/F322341 dated 23.11.1996 in this regard. Had the plaintiff not been having ready cash amount of Rs.9 lacs and not ready and willing to pay the amount of Rs.9 lacs to the defendants, then, he would have prepared the said draft. Rather, defendants have denied the execution of any such agreement dated 22.10.1996 and therefore, defendants cannot take the plea that plaintiff never offered an amount of Rs.9 lacs. The defendants are also estopped from taking the plea that plaintiff was not ready and willing to perform his part of the contract and that the plaintiff did not have the capacity to make the payment when the defendants have denied the very execution of the agreement in question. It may be pertinent to mention here that plaintiff had also served a legal notice upon the defendants through his counsel Sh.G.K.Verma, Advocate on 24.11.1996, but, the defendants refused to accept the said notice. The plaintiff was scheduled to make further payment on different dates to the defendants after 23.10.1996, but, since the defendants have denied the execution of the agreement, therefore, the question where, the plaintiff was ready with the subsequent payment of Rs.10 lacs, Rs.18 lacs and Rs.42 lacs to be paid on subsequent dates becomes meaningless and loses its significance. DW1 Narinderjit Singh has himself stated that document was forged and fabricated, but, he has failed to prove this averment on record. Although, the defendants have examined an expert witness namely DW3 Navdeep Gupta, who has stated that agreement to sell dated 22.10.1996 did not contain the signatures of defendant No.2 Gurcharan Singh, but, his testimony cannot be given much weightage in the wake of the positive oral as well as documentary evidence led by the plaintiff. Rather, the plaintiff has also examined PW6 Jassy Anand, Finger Prints and Handwriting Expert, who has specifically stated on oath before the Court that in the present case, she has examined the disputed signatures of defendant No.2 on the agreement in question with the standard signatures and he was of the opinion that signatures of Col. Gurcharan Singh, defendant No.2 tallied with the disputed signatures of Col. Gurcharan Singh, defendant No.2 on the agreement in question which means that signatures on the disputed agreement and the signatures on the authentic documents were done by one and the same person. So, the agreement in question dated 22.10.1996 EX.PW3/A duly stands proved in accordance with provisions of law. It stands sufficiently proved on record that defendants on 22.10.1996 had executed an agreement to sell in favour of the plaintiff after receiving earnest amount of Rs.one lacs from the plaintiff in the presence of marginal witnesses.” (emphasis supplied)

15. The appellant did not question the aforesaid findings of the trial Court by filing an appeal. Not only this, he did not file cross-objection in the appeal filed by the respondent. Therefore, the lower appellate Court was not required to consider whether execution of the agreement for sale has been proved and whether respondent was ready and willing to perform its part of the agreement, but it considered both the questions and observed:

“The learned trial Court has specifically held that due execution of the agreement in question has been proved and there is no defect in the findings recorded by the learned trial Court in this regard. The version of the appellant/plaintiff in this regard has been proved by PW3 Vijay Bhardwaj who is marginal witness of the agreement in question. So far as readiness and willingness on the part of the appellant/plaintiff to perform its contract is concerned, the learned trial Court has recorded findings in favour of the appellant/plaintiff and the said findings are based on proper appreciation of evidence. The evidence produced by the appellant/plaintiff shows that the appellant/ plaintiff had got issued a demand draft of Rs.9,00,000/- on 23.11.1996 for payment of the said amount to the defendants/respondents but they did not receive the said amount. The appellant/ plaintiff had sent message and also phonogram Ex.PW3/1 to the defendants/respondents on 23.11.1996 vide receipt ex.PW3/H. Even a notice Ex.PW3/D was sent to the defendants/respondents through courier vide receipt Ex.PW3/C and even a legal notice had been sent to the defendants/respondents by the appellant/plaintiff through its counsel.

Further the statement of M.K.Jain Director of the appellant/plaintiff in this regard finds corroboration from the testimony of Vijay Bhardwaj. On the other hand, the defendants/respondents have denied the agreement in question and it is not their plea that appellant/plaintiff was not ready and willing to perform its contract. Under these circumstances, the evidence produced by the appellant/plaintiff to prove their readiness and willingness to perform their part of contract can be accepted without any hesitation and in this regard I find support from the judgment of Hon'ble Punjab and Haryana High Court in Santa Singh Vs. Binder Singh and Ors 2006(4) Civil Court Cases-608 wherein it was held as under:-

"Since the case of the defendant is that of one of denial, therefore, the statement of the plaintiff that he was ready and willing to perform his part of the contract is sufficient to infer that plaintiffs were ready and willing to perform their part of contract. It was a meager amount of Rs.2000/- alone which was required to be paid at the time of registration of the sale deed. The substantial amount was paid at the time of execution of the agreement. More than Rs.12000/- was kept for payment to the mortgagee. Therefore, the argument raised by the learned counsel for the appellant that the plaintiffs have led evidence to prove his ready and willingness to perform the contract is not tenable.”

16. The learned Single Judge also considered the issue of readiness and willingness of the respondent to perform its part of the agreement and observed:

“The factum of readiness and willingness to perform the plaintiff’s part of the contract is to be adjudged with the conduct of the parties and the attending circumstances. In the present case, it may be noticed that according to the terms and conditions of the agreement in question, the plaintiff-respondent was to make a payment of Rs.9,00,000/- to the appellant on 23.11.1996 and on receipt of the aforesaid payment, the appellant was to allow the plaintiff-respondent to carry out the development activities. However, it has been established on record that the appellant refused to receive the aforesaid amount of Rs.9,00,000/- on 23.11.1996. There is no evidence on record that the appellant ever allowed the plaintiff-respondent to carry out development activities in the land in question. Thus, thereafter, there was no occasion for the plaintiff-respondent to further perform its part of the contract on subsequent dates as argued. Still there is no evidence on record placed by the appellant to prove the fact that the plaintiff-respondent was not ready to get the sale deed executed on subsequent dates as per the terms and conditions of the agreement in question. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness, may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price whereas determining the willingness to perform his part of the contract, the conduct of the parties has to be scrutinized. In the present case, there is no evidence placed on record to show that the plaintiff-respondent was not having the capacity to pay the purchase price for execution of the subsequent sale deeds. The plaintiff-respondent had demonstrated his willingness to pay Rs.9,00,000/- on 23.11.1996 by placing on record the demand draft of Rs.9,00,000/- in favour of the appellant. However, as noticed above, since the appellant refused to accept the same, the plaintiff- respondent was prevented from performing its part of the agreement by offering money for execution of the sale deeds on subsequent dates.”

17. In our view, the concurrent findings recorded by the trial Court and the lower appellate Court on the issues of execution of the agreement by the appellant’s father and the respondent’s readiness and willingness to perform its part of the agreement were based on correct evaluation of the pleadings and evidence of the parties and the learned Single Judge of the High Court did not commit any error by refusing to upset those findings. The argument of the learned senior counsel for the appellant that in the absence of specific pleading about continued readiness and willingness of the respondent to perform its part of the agreement and availability of funds necessary for payment of the sale consideration, the High Court should have set aside the concurrent finding recorded by the Courts below sounds attractive but on a careful scrutiny of the record we do not find any valid ground to entertain the same. In *R.C. Chandiok v. Chuni Lal Sabharwal* (1970) 3 SCC 140, this Court observed that “readiness and willingness cannot be treated as a straitjacket formula and the issue has to be decided keeping in view the facts and circumstances relevant to the intention and conduct of the party concerned”. The same view was reiterated in *D'Souza v. Shondrilo Naidu*, (2004) 6 SCC 649. In *N.P. Thirugnanam v. R. Jagan Mohan Rao (Dr)* (1995) 5 SCC 115, the Court found that the appellant was dabbling in real estate transaction without means to purchase the property and observed:

“Section 16(c) of the Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract.”

18. In *J. P. Builders v. A. Ramadas Rao* (supra), the Court has merely reiterated the principles already laid down and no new proposition has been laid down which may help the cause of the appellant.

19. It is significant to note that the appellant and his father had set up the case of total denial. They repeatedly pleaded that the agreement for sale was a fictitious document and the respondent had fabricated the same in connivance with Col. Harjit Singh and Vijay Bhardwaj. However, no evidence was adduced by the appellant to substantiate his assertion. That apart, he did not challenge the finding recorded by the trial Court on the issue of readiness and willingness of the respondent to perform its part of the agreement. Therefore, we do not find any valid ground much less justification for exercise of power by this Court under Article 136 of the Constitution of India to interfere with the judgment of the lower appellate Court which was approved by the High Court.

20. We are also inclined to agree with the lower appellate Court that escalation in the price of the land cannot, by itself, be a ground for denying relief of specific performance. In *K. Narendra v. Riviera Apartments (P) Ltd.* (supra), this Court interpreted Section 20 of the Act and laid down the following propositions:

“Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary and the court is not bound to grant such relief merely because it is lawful to do so; the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. Performance of the contract involving some hardship on the defendant which he did not foresee while non-performance involving no such hardship on the plaintiff, is one of the circumstances in which the court may properly

exercise discretion not to decree specific performance. The doctrine of comparative hardship has been thus statutorily recognized in India. However, mere inadequacy of consideration or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not constitute an unfair advantage to the plaintiff over the defendant or unforeseeable hardship on the defendant.” (emphasis supplied)

21. In the present case, the appellant had neither pleaded hardship nor produced any evidence to show that it will be inequitable to order specific performance of the agreement. Rather, the important plea taken by the appellant was that the agreement was fictitious and fabricated and his father had neither executed the same nor received the earnest money and, as mentioned above, all the Courts have found this plea to be wholly untenable.

22. In the result, the appeals are dismissed and the following directions are given:

i) Within three months from today the respondent shall pay Rs.5 crores to the appellant. This direction is being given keeping in view the statement made by Shri Dushyant Dave, learned senior counsel for the respondent on 03.05.2012 that his client would be willing to pay Rs.5 crores in all to the appellant as the price of the land.

ii) Within next three months the appellant shall execute and get the sale deed registered in favour of the respondent and hand over possession of the suit property.

.....J. [G.S. SINGHVI]J.
[SUDHANSU JYOTI MUKHOPADHAYA] New Delhi, May 08, 2012.
