Manjunath Anandappa Urf. Shivappa ... vs Tammanasa & Ors on 13 March, 2003

Author: S.B. Sinha

Bench: Brijesh Kumar, S. B. Sinha

CASE NO.:
Appeal (civil) 5662 of 1998

PETITIONER:
Manjunath Anandappa urf. Shivappa Hanasi

RESPONDENT:
Tammanasa & Ors.

DATE OF JUDGMENT: 13/03/2003

BENCH:
Brijesh Kumar & S. B. Sinha.

JUDGMENT:

J U D G M E N T S.B. SINHA, J :

Defendant No. 3 is the appellant herein. Defendant No. 1 is admittedly the owner of the property in suit. Defendant No. 2 is the constituted attorney of Defendant No. 1, who, on or about 1.10.1978 is said to have entered into an agreement for sale with the Plaintiff in respect of the suit property bearing No. C.T.S. No. 1921/A of Gadag Betageri City Municipal area for a total consideration of Rs. 30,000/- out of which a sum of Rs. 20,000/- was allegedly paid as advance. In terms of the said agreement, the plaintiff allegedly was put in possession of the suit property.

The Deed of sale, pursuant to the said agreement was to be executed within 3 years from the date thereof on payment of the balance sum of Rs. 10,000/-. Defendant No. 3, the appellant herein, purchased the suit property by reason of a registered deed of sale dated 15.5.1984 for valuable consideration of Rs. 50,000/-. The plaintiff on or about 15.5.1984 admittedly made an enquiry in the C.T.S. Office to obtain the C.T.S. extract of the suit property, when he came to learn that the defendant already executed a registered sale deed in respect of the suit property in favour of the appellant whereupon he served a notice dated 8.8.1984 upon Defendant Nos. 1 and 2 demanding specific performance of the said agreement of sale dated 1.10.1978. As regards cause of action, in the Plaint it was stated:

"The cause of action to this suit arose on 8.8.1984 when the plaintiff got served the

> notice to the defendants demanding specific performance of agreement of sale dated 1.10.1978 and when the defendants failed to execute the sale deed in favour of the plaintiff."

It is not in dispute that the plaintiff in his plaint did not make any averment as regard his readiness and willingness to perform his part of the contract as is mandatorily required in terms of Section 16(c) of the Specific Relief Act, 1963. He merely alleged:

> "After the said agreement of sale, the Plaintiff demanded the Defendant No. 2 to bring the Defendant No. 1 and to execute a registered sale deed both together after receiving the balance of sale consideration. But Defendant No. 2 went on postponing the same by one or the other reasons. At last this Plaintiff demanded Defendant Nos.1 and 2 by giving notice. Even though the Defendant No. 2 has received the notice, he has not replied anything. The notice sent to the Defendant No. 1 returned unclaimed. Inspite of the notice, Defendant No. 1 and 2 failed to execute the registered sale deed in respect of the suit property in favour of the Plaintiff."

No notice admittedly was served on Defendant No. 1, the owner of the property.

The learned trial judge dismissed the suit holding inter alia that the plaintiff having not averred his readiness and willingness to perform his part of contract in the plaint, he is not entitled to a decree for specific performance of contract. The learned trial judge further, having regard to the conduct of the plaintiff, refused to grant the discretionary relief in favour of the plaintiff. The First Appellate on an appeal from the said judgment agreed with the said findings.

In the second appeal filed by the plaintiff, the High Court, however, reversed the said findings. Therein, the only substantial question of law which was framed was as regards the readiness and willingness on the part of the plaintiff to perform his part of contract. The High Court answered the said question merely stating: "The question of law that was framed was regarding the willingness and readiness on the part of the plaintiff to perform his part of the contract. But that question does not arise for consideration for simple reason that Defendants 1 & 2 did not contest the case. It, however, entered into the question as to whether the appellant herein was a bonafide purchaser for value. The said question was answered in the negative solely on the ground that the appellant did not examine himself in the suit."

Mr. Mahale, the learned counsel appearing on behalf of the appellant has raised a short question in support of this appeal. The learned counsel would contend that in view of the fact that the plaintiff failed and/or neglected to aver in the plaint his readiness and willingness to perform his part of contract, the High Court must be held to have erred in passing the impugned judgment solely on the ground that defendant No. 1 did not contest the suit. The learned counsel would submit that an averment in terms of Section 16(c) of the Specific Relief Act, 1963 is mandatory. Strong reliance in this regard was placed on Syed Dastagir vs. T.R. Gopalakrishna Setty reported in (1999) 6 SCC 337.

The learned counsel would next contend that, in any event, having regard to the fact that the trial court as also the first appellant court did not exercise their discretionary jurisdiction in terms of Section 20 of the said Act, the high court should not have interfered therewith.

Mr. Mohale, urged that although time was not the essence of contract, but it was obligatory on the part of the plaintiff to file a suit within a reasonable time. Reliance in this connection has been placed on K.S. Vidyanadam & Ors. vs. Vairavan reported in (1997) 3 SCC 1.

Mr. Amarendra Sharan, the learned senior counsel appearing on behalf of the respondents, on the other hand, would submit that having regard to the statements by the Plaintiff made in Paragraph 6 of the plaint, as referred to hereinbefore, as also in his deposition wherein he stated that even on that day he was ready to pay the balance amount of consideration to the Defendants, it must be held that there has been a substantial compliance of the requirements of Section 16(c) of the Specific Relief Act, 1963. The learned counsel in support of the said contention would place strong reliance in Motilal Jain vs. Ramdasi Devi & Ors. (2000) 6 SCC 420.

The learned counsel would further urge that the pleading should not be strictly construed. Reliance in this connection was placed on Kidar Lall Seal & Anr. vs. Hari Lall Seal (1952) SCR 179.

The basic fact of the matter is not in dispute. The agreement was entered into on or about 1.10.1978. Apart from the vague statements made in Paragraph 6 of the plaint as noticed hereinbefore, the plaintiff has not placed any material on record to show that at any point of time and far less within a period of 3 years from the date of the said agreement, he ever asked Defendant No. 1 to execute a deed of sale in his favour or tendered the balance amount of consideration to her. The plaintiff admittedly served a notice dated 8.8.1984 upon the Defendant No. 2 alone, that is much after the expiry of the said period of 3 years. He, only upon having come to learn that Defendant No. 1 had transferred the property in suit in favour of the appellant herein, filed the suit. Admittedly the Defendant No. 1 did not receive any notice.

Section 16(c) of the Specific Relief Act reads thus:

> "Specific performance of a Contract cannot be enforced in favour of a person .
>
> who fails to aver and prove that he has 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 terms of the performance of which has been prevented or waived by the defendant."

In terms of the aforementioned provision, it is incumbent upon the plaintiff both to aver and prove that he had all along been ready and willing to perform the essential terms of contract which were required to be performed by him.

Forms 47 and 48 of the Appendix A of the Code of Civil Procedure prescribe the manner in which such averments are required to be made by the plaintiff. Indisputably, the plaintiff has not made any

averment to that effect. He, as noticed hereinbefore, merely contended that he called upon defendant No. 2 to bring defendant No. 1 to execute a registered sale deed. Apart from the fact that the date of the purported demand has not been disclosed, admittedly no such demand was made upon defendant No. 1. We may notice, at this juncture, that the plaintiff in his evidence admitted that defendant No. 1 had revoked the power of attorney granted in favour of defendant No. 2. In his deposition, he merely stated that such revocation took place after the agreement for sale was executed. If he was aware of the fact that the power of attorney executed in favour of defendant No. 2 was revoked, the question of any demand by him upon the defendant No. 2 to bring the defendant No. 1 for execution of the agreement for sale would not arise at all. Furthermore, indisputably the said power of attorney was not a registered one. Defendant No. 2, therefore, could not execute a registered deed of sale in his favour. The demand, if any, for execution of the deed of sale in terms of the agreement of sale could have been, thus, made only upon the Defendant No. 1, the owner of the property. The balance consideration of Rs.10,000/- also could have tendered only to Defendant No. 1. As indicated hereinbefore, the purported notice was issued only on 8.8.1984, that is, much after the expiry of period of three years, within which the agreement of sale was required to be acted upon.

Even in his deposition, he merely said: "As per the agreement the defendant No. 2 did not execute the sale deed. I issued a notice calling upon the defendant Nos. 1 and 2 to execute the sale deed after receiving the balance consideration. However they did not come forward to execute the sale deed despite the receipt of the notice. Even today I am ready to pay the balance consideration of Rs.10,000/-." These statements do not satisfy the requirements of Section 16(c) of the Specific Relief Act.

The requirement to comply with the mandatory provisions of Section 16(c) of the Specific Relief Act came up for consideration of this Court in Ouseph Varghese vs. Joseph Aley & Ors. (1969) 2 SCC 539 wherein it was held:

> "The plaintiff did not plead either in the plaint or at any subsequent stage that he was ready and willing to perform the agreement pleaded in the written statement of defendant. A suit for specific performance has to conform to the requirements prescribed in Forms 47 and 48 of the 1st Schedule in the Civil Procedure Code. In a suit for specific performance it is incumbent on the plaintiff not only to set out agreement on the basis of which he sues in all its details, he must go further and plead that he has applied to the defendant specifically to perform the agreement pleaded by him but the defendant has not done so. He must further plead that he has been and is still ready and willing to specifically perform his part of the agreement. Neither in the plaint nor at any subsequent stage of the suit the plaintiff has taken those pleas. As observed by this Court in Pt. Prem Raj vs. D.L.F. Housing and Construction (Private) (Ltd.) and Another, (Civil Appeal No. 37/66, decided on 4-4-1968) [reported in 1968 (3) SCR 648] that it is well settled that in a suit for specific performance the plaintiff should allege that he is ready and willing to perform his part of the contract and in the absence of such an allegation the suit is not maintainable."

Without noticing the said decision, however, another two Judges bench in R.C. Chandiok and Anr. vs. Chuni Lal Sabharwal and Ors. reported in (1970) 3 SCC 140 stated:

> "6.Readiness and willingness cannot be treated as a straight jacket formula. These have to be determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned. In our judgment there was nothing to indicate that the appellants at any stage were not ready and willing to perform their part of the contract."

In Abdul Khader Rowther vs. P.K. Sara Bai and Ors. reported in AIR 1990 SC 682 this Court followed Ouseph Varghese (supra) holding:

> "His plaint does not contain the requisite pleadings necessary to obtain a decree for specific performance. This equitable remedy recognized by the Specific Relief Act cannot be had on the basis of such pleadings and evidence."

The question again came up for consideration before a three Judge bench of this Court in Syed Dastagir vs. T.R. Gopalakrishna Setty reported in (1999) 6 SCC 337.

Therein also the earlier decisions of this Court in Abdul Khader Rowther (supra) and Ouseph Varghese (supra) were not referred to. However, inter alia noticing R.C. Chandiok (supra), this Court observed:

> "13. It was held in the case of R.C. Chandiok v. Chuni Lal Sabharwal (1970) 3 SCC 140 that readiness and willingness cannot be treated as a strait-jacket formula. This has to be determined from the entirety of the facts and circumstances relevant to the intention and conduct of the party concerned. Finally, we have no hesitation to hold that the pleading as made by the plaintiff not only shows his readiness and willingness to perform his part of the obligation under the contract but by tendering the total amount shows he has performed his part of the obligation. We also construe such a plea to be a plea of "readiness and willingness" as required under Section 16(c). In view of the aforesaid findings we hold that the High Court committed an error by defeating the claim of the plaintiff on the basis of a wrong interpretation of his plea in terms of the said section."

In that case the requisite averments of the plaintiff in the Plaint was to the following effect:

> "6.The defendant has entered into an agreement with the plaintiff on 1-8-1960 ... for a consideration of Rs. 9500.00 ... the plaintiff has agreed to that on adjustment of the mortgage amount of Rs. 5000.00 and Rs. 500.00 paid towards advance payment of the sale price, that on payment of the obtaining sum of Rs. 4000.00 and off, he would execute a proper sale deed conveying the suit schedule properties. ... the defendant has accordingly received a sum of Rs. 3680.00 ... from the plaintiff and has endorsed the same on the agreement on 21-12-1965. He has further received Rs. 100.00 on

> 21-3-1966 and Rs. 100.00 on 4-5-1966 and in all Rs. 3880.00. These payments are also duly written up in the account-book of the defendant. The plaintiff approached the defendant to receive the balance amount of Rs. 120.00 towards the sale price and execute the proper sale and he agreed. He evaded and hence a legal notice was issued on 23-2-1967 calling upon him to perform his part of the contract. ... He (plaintiff) has today deposited in court Rs. 120.00 under RO No. being the balance due to the defendant."

The said averments were held to be in spirit and substance although may not be in letter and form of "readiness and willingness" on the part of the Plaintiff stating:

> "10. ..It is true that in the pleading the specific words "ready and willing to perform" in this nomenclature are not there but from the aforesaid plea, could it be read that the plaintiff was not ready and willing to perform his part of that obligation ? In other words, can it be said that he has not pleaded that he is "ready and willing" to perform his part ? Courts cannot draw any inference in the abstract or to give such hypertechnical interpretation to defeat a claim of specific performance which defeats the very objective for which the said Act was enacted. The section makes it obligatory to a plaintiff seeking enforcement of specific performance that he must not only come with clean hands but there should be a plea that he has performed or has been and is ready and willing to perform his part of the obligation. Unless this is there, Section 16(c) creates a bar to the grant of this discretionary relief. As we have said, for this it is not necessary to plea by any specific words, if through any words it reveals the readiness and willingness of the plaintiff to perform his part of the obligation then it cannot be said there is non-compliance of the said section."

(Emphasis supplied) This Court further noticed that despite Explanation appended to Section 16(c), the plaintiff can always tender the amount to the defendant to deposit in the court for performance towards the contract under the obligation of the contract with a view to exhibit to perform his part of obligation.

The aforementioned decision was referred to again by a two Judge bench of this Court in Motilal Jain vs. Ramdasi Devi and Ors. reported in (2000) 6 SCC 420. In that case also this Court took into consideration the averments made by the plaintiff in Paragraphs 6 to 11 of the plaint and opined:

> "9.It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfil his part of the obligations under the contract which is the subject-matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit for specific performance of contract for sale.
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> In the instant case a perusal of paras 6 to 11 of the plaint does clearly indicate the readiness and willingness of the plaintiff. The only obligation which he had to comply

> with was payment of balance of consideration. It was stated that he demanded the defendant to receive the balance of consideration of Rs. 8000 and execute the sale deed. The defendant was in Patna (Bihar) at the time of notices and when he came back to his place the plaintiff filed the suit against him. In support of his case, he adduced the evidence of PW 1 and PW 2. The plaintiff had parted with two-thirds of the consideration at the time of execution of Ext. 2. There is no reason why he would not pay the balance of one-third consideration of Rs. 8000 to have the property conveyed in his favour."

In Pushparani S. Sundaram and Ors. vs. Pauline Manomani James and Ors. reported in (2002) 9 SCC 582 it is stated:

> "5So far there being a plea that they were ready and willing to perform their part of the contract is there in the pleading, we have no hesitation to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of Section 16(c) of the Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance about willingness or readiness of the plaintiff. This at the most could be the desire of the plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But Section 16(c) of the said Act makes it clear that mere plea is not sufficient, it has to be proved.
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> 6. Next and the only other circumstance relied upon is about the tendering of Rs. 5000, which was made on

2.3.1982 which was even prior to the grant of the exemption. Such small feeder to the vendor is quite often made to keep a vendor in good spirit. In this case the only other payment made by the plaintiff was Rs.5000 at the time of execution of the agreement of sale. Thus, the total amount paid was insignificantly short of the balance amount for the execution of the sale deed. Thus in our considered opinion the said two circumstances taken together, is too weak a filament to stand even to build an image of readiness and willingness. Section 16(c) of the Specific Relief Act requires that not only there be a plea of readiness and willingness but it has to be proved so. It is not in dispute that except for a plea there is no other evidence on record to prove the same except the two circumstances. It is true that mere absence of a plaintiff coming in the witness box by itself may not be a factor to conclude that he was not ready and willing in a given case as erroneously concluded by the High Court."

(emphasis supplied) The decisions of this Court, therefore, leave no manner of doubt that a Plaintiff in a suit for specific performance of contract not only must raise a plea that he had all along been and even on the date of filing of suit was ready and willing to perform his part of contract, but also prove the same. Only in certain exceptional situation where although in letter and spirit, the exact words had not been used but readiness and willingness can be culled out from reading all the averments made in the Plaintiff as a whole coupled with the materials brought on record at the trial

of the suit, to the said effect, the statutory requirement of Section 16(c) of the Specific Relief Act may be held to have been complied with.

Having regard to the facts and circumstances of the case and keeping in view the decisions of this Court, as referred to hereinbefore, we are of the opinion that the plaintiff cannot be said to have even substantially complied with the requirements of law.

Kidar Lall Seal & Anr. vs. Hari Lall Seal (1952) SCR 179, whereupon reliance has been placed by Mr. Amarendra Saran, has no application in the instant case. Therein, this Court was concerned with the 'inartistical wordings' of the relief claimed by the plaintiff, having regard to Order XXXIV of the Civil Procedure Code. It was held:

> "But reading the two reliefs together, I am of opinion that though the claim is inartistically worded the plaintiff has in substance asked for a mortgage decree up to a limit of Rs. 40,253-11-10 with interest against each defendant. No other kind of decree could be given under Order XXXIV. Therefore, though he has not used the word 'subrogation' he has asked in substance for the relief to which a subrogee would be entitled under the Transfer of Property Act."

There is another aspect of the matter which cannot be lost sight of. The plaintiff filed the suit almost after six years from the date of entering into the agreement to sell. He did not bring any material on records to show that he had ever asked defendant No. 1, the owner of the property, to execute a deed of sale. He filed a suit only after he came to know that the suit land had already been sold by her in favour of the appellant herein. Furthermore, it was obligatory on the part of the plaintiff for obtaining a discretionary relief having regard to Section 20 of the Act to approach the court within a reasonable time. Having regard to his conduct, the plaintiff was not entitled to a discretionary relief.

In Veerayee Ammal vs. Seeni Ammal reported in (2002) 1 SCC 134 the law is stated in the following terms:

> "11. When, concededly, the time was not of the essence of the contract, the appellant-plaintiff was required to approach the court of law within a reasonable time. A Constitution Bench of this Hon'ble Court in Chand Rani v. Kamal Rani (1993) 1 SCC 519 held that in case of sale of immovable property there is no presumption as to time being of the essence of the contract. Even if it is not of the essence of contract, the court may infer that it is to be performed in a reasonable time if the conditions are (i) from the express terms of the contract; (ii) from the nature of the property; and (iii) from the surrounding circumstances, for example, the object of making the contract. For the purposes of granting relief, the reasonable time has to be ascertained from all the facts and circumstances of the case.
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> 12. In K. S. Vidyanadam v. Vairavan (1997) 3 SCC 1 this Court held : (SCC p. 11, para 14) "Even where time is not of the essence of the contract, the plaintiff must perform his part of the contract within a reasonable time and reasonable time should be

> determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property."

13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's The Law Lexicon it is defined to mean :

> "A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea"."

In Lourdu Mari David and Ors. vs. Louis Chinnaya Arogiaswamy and Ors. reported in (1996) 5 SCC 589 this Court observed:

> "2. It is settled law that the party who seeks to avail of the equitable jurisdiction of a court and specific performance being equitable relief, must come to the court with clean hands. In other words the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief."

Yet again, both the trial court and the first appellate court refused to exercise their discretionary jurisdictions in favour of the plaintiff. The High Court, in our opinion, should not have interfered therewith without arriving at a finding that the discretion has been exercised by the Courts below on wrong legal principle.

In Lalit Kumar Jain and Anr. vs. Jaipur Traders Corporation Pvt. Ltd. reported in (2002) 5 SCC 383 this Court observed:

> "9. We are of the view that the High Court failed to address itself to certain crucial factors which disentitles the plaintiff to equitable relief. The High Court reversed a well-considered judgment of the trial court without adverting to the reasoning of the trial court except in a cursory manner. In the view we are taking, it is not necessary for us to dilate on various legal issues debated before us. We shall proceed on the basis that in law the plaintiff could annul the contract of sale before the act of registration got completed and title passed to the appellants. We shall further assume that the plaintiff in fact rescinded the contract with effect from the date of expiry of

> the time stipulated in the fourth and final notice dated 3-7-1973. If such rescission or termination of contract is not justifiable on facts or having regard to the conduct of the plaintiff, the equitable relief under Section 27 or 31 of the Specific Relief Act has to be denied to the plaintiff, no further question arises for consideration. In such a case, the appellants' plea has to be accepted and the suit is liable to be dismissed."

Yet again in Nirmala Anand vs. Advent Corporation (P) Ltd. and Ors. reported in (2002) 8 SCC 146 this Court observed:

> "6. It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance."

[See also M.V. Shankar Bhat & Anr. Vs. Claude Pinto Since (Deceased) By L.Rs and Ors. 2003 (2) SCALE 124] It is now also well settled that a court of appeal should not ordinarily interfere with the discretion exercised by the courts below.

In Uttar Pradesh Co-operative Federation Ltd. vs. Sunder Bros. reported in AIR 1967 SC 249 the law is stated in the following terms:

> "8. It is well-established that where the discretion vested in the Court under s. 34 of the Indian Arbitration Act has been exercised by the lower court the appellate court should be slow to interfere with the exercise of that discretion. In dealing with the matter raised before it at the appellate stage the appellate court would normally not be justified in interfering with the exercise of the discretion under appeal solely on the ground that if it had considered the matter at the trial stage it may have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. As is often said, it is ordinarily not open to the appellate court to substitute its own exercise of discretion for that of the trial Judge; but if it appears to the appellate court that in exercising its discretion the trial court has acted unreasonably or capriciously or has ignored relevant facts then it would certainly be open to the appellate court to interfere with the trial court's exercise of discretion. This principle is well-established; but, as has been observed by Viscount Simon, L.C., in Charles Osenton & Co. v. Johnston 1942 AC 130 at p. 138:
>
> "The law as to the reversal by a court of appeal of an order made by a Judge below in the exercise of his discretion is well- established, and any difficulty that arises is due only to the application of well-settled principles in an individual case"."

Yet again in Gujarat Steel Tubes Ltd., etc. vs. Gujarat Steel Tubes Mazdoor, Sabha and others (AIR 1980 SC 1896) the law is stated in the following terms:

> "73. While the remedy under Article 226 is extraordinary and is of Anglo-Saxon vintage, it is not a carbon copy of English processes. Article 226 is a sparing surgery but the lancet operates where injustice suppurates. While traditional restraints like availability of alternative remedy hold back the court, and judicial power should not ordinarily rush in where the other two branches fear to tread, judicial daring is not daunted where glaring injustice demands even affirmative action. The wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject belongs to the court's province and the remedy is appropriate to the judicial process. There is a native hue about Article 226, without being anglophilic or anglophobic in attitude. Viewed from this jurisprudential perspective, we have to be cautious both in not overstepping as if Article 226 were as large as an appeal and not failing to intervence where a grave error has crept in. Moreover, we sit here in appeal over the High Court's judgment. And an appellate power interferes not when the order appealed is not right but only when it is clearly wrong. The difference is real, though fine."

For the foregoing reasons, we are of the opinion that the impugned judgment cannot be sustained. It is set aside accordingly. This appeal is allowed with costs. Counsel's fee assessed at Rs.5,000/-

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