Ram Lal Puri vs Gokalnagar Sugar Mills Co. Ltd. on 13 December, 1966

Author: Chief Justice

Bench: Chief Justice

JUDGMENT

I.D. Dua, J.

(1) These two letters Patent Appeals (Letters Patent Appeal Nos. 26-D and 27-D of 1964) arise out of the same proceedings and being directed against one main judgment of a learned Single Judge, may be disposed of by one judgment. The only question falling for our determination relates to the plea of limitation and lies within a narrow compass, namely, whether Article 97 of the Limitation Act applies to the case or whether it is governed by the residuary Article 120, no other Article being applicable in terms. Of course at one stage Shri hardy learned Counsel for the respondents also attempted to apply Article 62 of the Limitation Act but this attempt was not seriously persisted in.

(2) Turning now to the facts on 26-11-1946, Messrs. Gokal Nagar Sugar Mills Co. Ltd. (Hereafter called the vendor Company) entered into an agreement to sell the building in question situated in Lahore (now in West Pakistan) for a consideration of Rs.1,35,000/- to Shri Ram Lal Puri (hereinafter called the vendee) who paid Rs.20,000/- by way of earnest money at the time of the agreement. The sale was to be completed by 5-4-1947. On 1-4-1947, the vendee sought extension of time for the completion of the sale upto 20-4-1947, to which the vendor company agreed. On 17-4-1947, the vendee paid Rs.30,000 as an additional advance seeking extension of time by another month which was agreed to. Nothing further happened to the matter and both sides, it seems, kept quiet. The vendor company remained at Lahore till 11-8-1947 and the country was partitioned on 15-8-1947, forcing the parties to leave Lahore and to come to India. The vendee also tried without success to have his claim of Rs.50,000/- verified against the property in question.

On 8-12-1952, he presented his application under Section 10 of the Displaced Persons (Debts Adjustment) Act, Lxx of 1951 seeking payment of Rs.50,000 as debt due to him from the vendor-company within the contemplation of debt as defined in Section 2(6) of the said Act. The Tribunal seemed to be of the view that there was no hitch or hesitation on the part of the vendor-company in giving effect to the agreement to sell and it was the petitioner who never made any effort to finalise the agreement. The property in dispute was later declared evacuee property by the Custodian on Pakistan, but the vendor-company was not to blame for this delay. It was due to the vendee's own default.

If then proceeded to hold that though there was frustration of the contract for which the vendor-company was not justified in forfeiting anything more than the money paid by the petitioner by way of earnest money inasmuch as the company realised the sale price of the property in dispute

from subsequent vendees. Even the subsequent vendees, as observed by the learned Tribunal has filed claim in respect of the property in dispute which had already been verified and accepted by the authorities. The sum of Rs.30,000/- paid by the petitioner after the payment of the earnest money, could, therefore, not be forfeited and the vendor-company was not entitled to retain it.

On this view, the vendee's application was allowed to the extent of Rs.30,000/- and a decree passed for the said amount. On the plea of limitation, the conclusion of the learned Tribunal was expressed in the following words:

> "The petition was filed on 8-12-1962. By virtue of the provisions of Section 36(a) of the Displaced Persons (Debts Adjustment) Act, 1951, the limitation was extended by one year from the commencement of the said Act, viz. 10th December, 1952. The petitioner's claim is, therefore, within time."

The matter was taken on appeal to the Punjab high Court by both sides, the vendee claiming the sum of Rs.30,000/- in addition and the vendor-company seeking dismissal of the vendee's application in its entirety. While dealing with the question of limitation, the learned Single Judge proceeded to observe that the vendor-company had agreed with the vendee for extending the time for the completion of the sale upto 20-5-1947, but thereafter both the parties remained quiet till the partition of the country supervened which apparently means that both parties did not take any step to finalise the sale.

The learned Single Judge, then noticed that on 1st December, 1947, the West Punjab Ordinance 7 of 1947 called the West Punjab Protection of Evacuee Property Ordinance 1947, was enforced by Clause 4 of which management of the evacuee property was taken over by the Custodian and under Clause 9 an evacuee lost his right to transfer the property subject to the conditions stated therein. This ordinance was replaced by ordinance 18 of 1948 called the Pakistan (Protection of Evacuee property) Ordinance 1948 which was in turn superseded by the Pakistan (Administration of Evacuee Property) Ordinance, 1949, in both of which Ordinances, similar provision as in the initial Ordinance was repeated. On 1-12-1947, accordingly, the vendor -company had, in the opinion of the learned Single Judge, ceased to be in a position to have the right and control to transfer the property in dispute under the contract of sale in question.

In view of this state of evacuee legislation in Pakistan, the learned Tribunal was held by the learned Single Judge not be right in finding that breach of contract had occurred on the part of the vendee in not completing the contract of sale before the partition of the country. The vendee's claim was held to be governed by Section 65 of the Contract Act and being a statutory liability and there being no Article of the Limitation Act specifically covering such a liability, the only Article which the learned Single Judge felt could apply to the case would be Article 120. However, after so observing he referred to the decision of the Madras High Court in Unichaman v. Ahmed Kutti, (1898) ILR-21 Madras 242 and felt inclined to take the view that the liability in question was originally a common law liability, with the result that even though it was later declared to be a liability under a statutory provision, it would not be a case of statutory liability.

On this view, the liability in question was considered not to be exclusively statutory, with the result that it was held to be governed by Article 97. The vendee's entire claim was accordingly held barred by time.

(3) On Letters Patent Appeal in this Court, on behalf of the vendee-appellant, it has been strongly argued that in the case in hand, the contract to sell became void on account of the evacuee legislation in Pakistan and, therefore, under Section 65 of the Indian Contract Act, the vendee became entitled to be restored the advantage received by the vendor-company under the said agreement to sell. The learned Single-Judge, according to the appellant's counsel, was not quite right in being influenced by the consideration that independently of the Indian Contract Act, there would have been under the common law of England some obligation in similar circumstances to restore to the vendee the advantage received by the vendor under a contract which later became void.

It is further pressed on us that if this consideration is eliminated so argues the learned counsel, then Article 120 would cover the case, and indeed the submission proceeds that even the learned Single Judge would have applied this Article had he not been influenced by what in his view was also the common law of England. In the alternative, Shri S.N. Chopra has submitted that even under Art. 97 which prescribes the period of three years, the vendee's claim would be within time because under Section 36(b) of Act Lxx of 1951, the period of limitation has been extended for proceedings like the present.

(4) I may now appropriately read Section 65 of the Indian Contract Act and the three Articles of Limitation Act, namely Article, 62, 97 and 120, to which reference has been made at the bar.

> "65. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it."
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> "62. For money payable by the defendant to the Three years when the money is received.
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> plaintiff, for money received by the defendant for the plaintiff's use.
>
> 97. For money paid upon an existing consideration, Three years from the date of failure. which afterwards fails."
>
> "120. Suit for which no period of limitation is Six years, when the right to sue accrues. provided elsewhere in this schedule.
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> Now the law of limitation being a disabling provision, the various Articles deserve to be construed on their plain language and a suitor approaching the Courts for adjudication of his claim is entitled to a trial on the merits unless his claim is clearly

time-barred by plain reading of some provision of the Limitation Act. The statute of limitation is of course a statute of repose and is inspired by a desire not to keep indefinitely alive controversies. Dictates of substantial justice demand such a course. It is, however, not permissible to strain or stretch the language of the Limitation Act with a view to bar a suitor and the Limitation Act seems to me to call for a strict construction in favour of right to proceed if the language on plain reading permits it. It is in this background that the facts of the case and the arguments advanced at the bar have to be considered.

(5) The vendee's claim can properly be divided into two parts: one relating to the earnest money of Rs.20,000/- paid at the time of execution of the agreement to sell and the other relating to Rs.30,000/- paid later as additional advance when extension of time was sought. In the agreement to sell, it is recited that the purchaser had paid Rs.20,000/- as earnest money by cheque No. A 647572 on the Punjab Cooperative Bank Ltd., Lahore, and the balance of the price was to be paid before the Sub-Registrar at the time of the registration of the sale deed. It would thus seem that the payment of Rs.20,000/- was only by way of earnest money. The character of earnest money is well recognised and no longer seems to be in doubt.

Payment of earnest money, as the expression itself shows, is intended to serve as a proof of bona fides of the vendee so that if the transaction falls through by reason of the fault or failure of the vendee, this amount is liable to forfeiture. On the other hand, in case the transaction goes forward, the earnest money becomes a part of the purchase price. Distinction between earnest money and money paid in advance as part of the purchase price is thus both real and well-recognised. The amount of Rs.20,000/- paid in this case could, therefore, not be considered to be paid as a part of the purchase price under the contract which characteristic it could assume only when the transaction to sell went forward to the stage of completion.

It is therefore, not easy to hold that this amount could be said to have been paid upon an existing consideration which afterwards failed. In terms, therefore, Art. 97 would seem to be inapplicable. Article 62 would also seem to be inapplicable to the case of earnest money for it is somewhat difficult to hold that this money was received by the vendor-company for the vendee's use.

A faint attempt was at one stage also made by Shri Hardy to bring the case within Article 115 which provides a period of three years for compensation on the breach of any contract, express or implied, not in writing registered and not specially provided for in the Limitation Act but this residuary Article dealing with compensation for breaches of unregistered contracts would seem to me to be clearly inapplicable because the present is not a case of recovery of compensation. The only Article in the present case would thus be Article 120, the general residuary Article. This seems to me to be the position on the language of the relevant statutory provisions.

Shri Hardy has placed reliance on some decided cases to support his submission, though it is conceded that none of those decisions directly deal with the case of restoration of the earnest money in any comparable circumstances with the present case. In Ram Labhaya v. Municipal Committee,

Amritsar, , a Bench decision of the Punjab High Court, on which Shri Hardy has placed considerable reliance, it has been observed that Article 62 of the Limitation Act would be applicable, where agreement was void in its inception, the terminus a quo being the date on which it was made and if at the time of the agreement there was no failure of consideration and the parties continued to perform their obligation under it for some time it is Article 97 which would be applicable.

When obligations have, however been performed by the parties under an agreement which is void, then it is a clear instance where special circumstances exist or have been proved for taking the case out of the ordinary rule that time must begin to run from the date of the agreement which is void in its inception. That was a case of a contract for the supply of grams and food grains and the appellant there had furnished security to the Municipal Committee for the performance of the contract and it was this security deposit the recovery of which was the subject matter of the litigation. The trial Court had applied Article 62 but the High Court applied Article 97.

The reported case is obviously distinguishable because in that case public auction was held on 24-4-1952 for a contract of supply of grams from 1-5-1952 to 31-3-1953. The plaintiff's offer, who was the only bidder, was accepted by the Municipal Committee by a resolution dated 24-4-1952. The plaintiff was required to give security and on 8-7-1952, the Committee was informed that Rs.2,535/- had been actually deposited on that account and the remaining half was to be adjusted against the bills to be submitted by the plaintiff for the supply of goods. On 8-8-1952 an agreement was executed in which the terms and conditions were fully set out and admittedly supplies had been made from May, 1952 to August, 1952. The commodity which was the subject-matter of the agreement having been decontrolled, the prices shot up in August, with the result that the plaintiff stopped making further supplies at agreed rates.

The Municipal Committee instituted a suit on 8-11-1954 for damages for alleged breach of contract. In this state, it was held, that the agreement on 8-7-1952 was not enforceable at law and was null and void. It was in these circumstances that the question of the recovery of the security deposit arose. It is obvious that the case of security deposit with which the Bench in the reported decision was concerned is distinguishable from the case of earnest money which concerns us. In any event, in the reported case, the suit was held to be within time even under Article 97 of the Limitation Act. The next decision pressed into service by Shri Hardy is Rayangonda Anna Patil v. Jankibai, .

In that case, defendant No. 1 agreed to sell certain lands to the plaintiff for a sum of Rs.25,000/- within four months of the date of the agreement, which was 30-12-1945. Rs.22,500/- were paid to the vendor, the remaining amount was to be paid at the time of the execution of the sale-deed. By a subsequent agreement dated 26-4-1946, the time limit for execution of the sale-deed was extended and the sale was agreed to be executed within four months of the date when the vendor would obtain possession of the lands from a third person against whom a decree for possession had been obtained. The plaintiff sued for specific performance of the agreement on 19-2-1951 or in the alternative for refund of consideration or for recovery of the suit amount by way of damages.

It was alleged in the suit that defendant had obtained possession of the lands by the end of August, 1949. The provision of Bombay Tenancy and Agricultural lands Act were made applicable to the area

on 1-5-1949 and the defendant was found to have obtained possession of the lands in question on 6-12-1946. On these facts, it was held that sale in contravention of Sections 63 and 64 of the Bombay Tenancy and Agricultural Lands Act being void, an agreement to sell property, which it carried out would result in such a sale, did not give rise to any liability to sell property enforceable at law. Both the agreements of which specific performance was sought by the plaintiff, were thus held to be unenforceable from May 1, 1949 onwards.

The claim for refund of the moneys paid by the plaintiff was, therefore, held to have been made within three years of the date upon which the agreement became incapable of specific performance and, therefore, within time under Article 97. The facts of this case again are not similar with those of the case in hand and, therefore, the ratio of that decision would, in my view, be inapplicable to the present case.

An attempt has been made by Shri Hardy to bring the present case within the fold of Article 97 by reading the definition of consideration contained in Section 2(d) of the Indian Contract Act and submitting the payment of earnest money must be held to be money paid upon an existing consideration which afterwards failed because the property which was agreed to be sold later became incapable of sale. The argument is prima facie attractive but it overlooks the fact that the earnest money had been paid as a collateral security for performing his part of the contract by the vendee. The earnest money, therefore, could not be said to have been paid on an existing consideration which afterwards failed.

The Bench decision of the Allahabad High Court in Udit Narain Misra v. Muhammad Minnat, Ullal, (1903) Ilr 25 All 618 does not deal with earnest money as such and has, therefore, no direct bearing on this part of the case. The amount there was apparently paid as portion of the consideration for the sale. Article 97 was thus rightly applied. This very judgment of the Allahabad High Court was taken on appeal to the Privy Council in Anna Bibi v. Udit Narain Misra, (1909), Lr 36 Ind Appellant 44 (PC), and the judgment of Lord Macnaghten speaking for the Board merely recorded that their Lordships were of the opinion that the judgment of the High Court was quite correct. This scarcely advances the position further.

It is true that in a Single Bench Session of the Allahabad High Court in Munni Babu v. Koer Kamta Singh, Air 1923 All 321, it has been observed that limitation for a suit for return of earnest money runs from the dismissal of suit for specific performance of a contract, but there the parties relied on Arts. 62 and 97. The arguments at the bar in that case were apparently centered round these two Articles and the aspect regarding the scope of earnest money was also not canvassed and, therefore, not considered by the learned Judge.

It is accordingly unnecessary to say anything more about that decision. N.V. Jagannadhayya v. Ramanatha Mohapatra, Air 1955 Orissa Ii, dealt with the case of forfeiture in a contract for sale of goods and while considering the relevant scope and effect of Arts. 97 and 115, it was observed that Art. 115 applies to a case of damages for breach of contract by the defendant and Article 97 to a case where that which is to pass from one contracting party to the other cannot by reason of circumstances since the contract, pass to the other party and, therefore, the plaintiff calls upon the

defendant to fulfill the terms of his contract either expressly or impliedly, that he will, in such circumstances, return anything which has been already paid on account of the contract.

These observations obviously are not attracted to the case in hand. In the course of the judgment reference was of course made to Article 120 and it was observed that before that Article can be invoked one must see that no other Article of the Limitation Act is specifically applicable to the case. With this proposition there can clearly be no quarrel. This decision is apparently of little assistance to the respondent. Dhanraj Mills Ltd. V Laxmi Cotton Traders, Bombay, Air 1960 Bom 404, also lays down the undisputed proposition that Article 120 applies when no other Article can be held applicable.

That case again relates to the contract of sale of certain bales of cotton goods and the controversy centered round the applicability of Articles 62, 97, or 115 of the Limitation Act. On the applicability of any of these Articles, the suit had to be held barred by the law of limitation. This decision too is of little assistance in solving the problem which faces us. Lalji Singh v. Ramrup Singh, Air 1934 Pat. 148, leads no better assistance. The controversy in that case centered round the applicability of either Article 115, 116 or 97. The question of the nature of earnest money was neither canvassed nor adjudicated upon for the purpose of determining the Article of the Limitation Act applicable to suits for its recovery in circumstances like those which concern us. This decision too throws no light on the point before us.

A passing reference has been made by Shri Hardy to a Bench decision of the Punjab High Court in Sardarilal v. Shrimati Shakuntala Devi, for the purpose of supporting his suggestion that the entire earnest money has to be forfeited in case of defaults on the part of the vendee and, therefore the payment of earnest money must be considered to have been made on existing consideration which afterwards fails. This decision does not support the submission made. It is well-settled that the earnest money merely represents the outside limit of the amount liable to be forfeited by the seller in case of default by the buyer the amount to be forfeited depending on the circumstances of a given case. In the reported decision, all that has really been laid down is that part payment of the purchase price cannot be forfeited because that is not a guarantee for the performance of the contract.

(6) In view of the foregoing discussion, I am inclined, as at present advised, to think that the vendee's claim in respect of the earnest money is not in terms covered either by Article 97 or by any other specific Article of the Indian Limitation Act. It is, therefore, governed by the residuary Article 120 and applying this Article, the claim would concededly be well within time. I may point out that the view taken by the learned Single Judge that the liability created under Section 63 of the Contract Act being initially a common law liability, its incorporation in the statute is immaterial, has not, speaking with all respect, appealed to us and indeed Shri Hardy has also frankly expressed his inability to support this view.

Quite a good portion of our Contract Act has its roots in the common law of England but that can scarcely be a cogent ground for holding that a liability created under the Contract Act would for that reason not be a statutory liability, though on the view we have taken of the character of earnest money in the present case, this aspect loses much of its importance.

(7) Coming now to the remaining sum of Rs.30,000/- paid as additional advance, it appears to us that on the evidence on the record, this amount was intended by the vendee to be paid towards the purchase price. It is undoubtedly true that under the contract to sell the balance money was to be paid at the time of registration of the sale-deed, but the correspondence between the parties which led to the payment of Rs.30,000 clearly suggests that this payment was more appropriately made on the then existing consideration of the transfer of the property and not merely by way of earnest as is suggested on behalf of the vendee. Claims for this account has accordingly to be considered on a different footing from that of earnest money, as indeed this amount has no other characteristic than of payment towards the purchase price. This amount would thus be governed by the three-year period of limitation as prescribed by Article 97.

(8) This brings me to the alternative argument raised by Shri Chopra that limitation in this case was extended by virtue of section 36(a) Displaced Persons (Debts Adjustment) Act. It is however conceded that he can take advantage of this provision only, if the West Punjab Ordinance 7 of 1947 and its successor West Punjab Act 7 of 1948 are ignored or if 23-12-1947, when the Custodian of Evacuee Property in Pakistan took possession of the evacuee property there, is considered to be the date when the contract in question became void. The submission in support of this argument is based on the fact on the record the earlier Pakistan legislation which is foreign law, is not properly proved and therefore, it cannot be legally looked at.

Before the learned Single Judge it may be pointed out the earlier Pakistan legislation was referred to on behalf of the parties without objection and considered by the Court. The earlier Ordinance and the succeeding Act quite clearly render the performance of the contract to sell unlawful. See Sections 1 and 9 of the Ordinance and the Act. As no objection on this score was raised before the learned Single Judge, we would have felt little hesitation in remedying this technical omission by admitting additional evidence in proof of the Pakistan law, but the learned counsel for the appellant has not persisted in his objection.

The West Punjab Ordinance 7 of 1947 was enforced on 1-12-1947 replacing the earlier ordinance which had been enforced on 9-8-1947 and the West Punjab Act 7 of 1948 was enforced in February 1948. It is observed that the prohibition whereby the sale of evacuee property in question was made void came into force long before 8-12-1952 with the result the appellant's application cannot be saved on the basis of the alternative argument founded on Section 36(a) of Act Lxx of 1951. This submission accordingly fails.

(9) I may before closing point out that though in the judgment of the learned Tribunal there is a mention of the property in question having been subsequently sold by the vendor-company to the Punjab Sugar Mills Company and a claim having been verified at the instance of the subsequent vendee, no point has been sought to be founded at the bar on this aspect.

(10) In view of the foregoing discussion, this appeal succeeds in part and we allow the vendee's claim with respect to the earnest money amounting to Rs.20,000. The impugned order is modified to that extent. In the peculiar circumstances of this case, the parties are left to bear their own costs throughout.

Hegde, C.J.

(11) I agree.

(12) Appeal partly allowed.