

Sunity Chandra Bose vs Nil Ratan Sinha on 15 March, 1985

Equivalent citations: AIR1985CAL282, 89CWN909, AIR 1985 CALCUTTA 282, (1985) 89 CAL WN 909 (1985) 1 CAL HN 445, (1985) 1 CAL HN 445

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Bench: G.N. Ray

JUDGMENT

Sankari Prasad Das Ghosh, J.

1. The suit, out of which this appeal arises, was for specific performance of a contract for sale of one brick-built one-storeyed house at premises No. 38/J/4 Maharaja Road, Dhakuria, now P.S. Jadavpur along with prayers for recovery of khas possession of the property and some other prayers. On 11-4-1973, there was an agreement between the plaintiff-respondent and the defendant-appellant for release of the suit-property by the plaintiff, within two months from the date of the execution of the agreement, from the State of West Bengal, to which the property was mortgaged. The terms of the agreement were that if the defendant-appellant had the property released from the State of West Bengal and had made over true copies of the relevant documents including the deed of release and had allowed inspection of the original documents to the plaintiff-respondent, when demanded, to show the marketable title of the defendant to the property, the deed of sale in respect of the property was to be executed by the defendant in favour of the plaintiff within three months of the release of the property and of making over of the true copies of the documents to the plaintiff. At the time of execution of the agreement, Ext. 1, and amount of Rs. 6001/- was paid as earnest money by the plaintiff to the defendant as the property was mortgaged with the State of West Bengal for that amount of Rs. 6001/-. The terms were that the property would be sold for a sum of Rs. 38,000/-.

2. The case of the plaintiff-respondent was that though he was ready and willing to perform his part of the contract and had also given subsequently to the defendant through his Advocate a further sum of Rs. 1000/- on 13-12-1973, the defendant did not execute the Kobala in respect of the property in favour of the plaintiff, even though time for execution of the sale deed was extended at the request of the appellant by several letters. As such, the suit was filed for specific performance of the contract for sale, recovery of possession of the property and for some other reliefs.

3. The case of the defendant-appellant was that on 18-7-1973, the property was released by the State of West Bengal and a deed of release was executed. In spite of his best attempt, the defendant could not get the deed of release earlier. The defendant was all along ready and willing to complete the

transaction. On 19-7-1973, he made over to the plaintiff a copy of the deed of release and other documents. The plaintiff violated the terms and conditions of the agreement. Long after the time to complete the transaction, the plaintiff suggested a change in the deed of conveyance by a letter dated 29-12-1973. The plaintiff had never offered the balance of the consideration-money to the defendant. It was the plaintiff who deferred the completion of the transaction on flimsy grounds.

4. The plaintiff examined himself as P.W.1. The defendant examined himself as D.W.1. On a consideration of the evidences of these witnesses and the materials on record, the learned Subordinate Judge, 3rd Court Alipore, passed a conditional decree for specific performance of the contract for sale on contest with costs. The defendant was directed to execute and register a deed of sale in respect of the property within 90 days of the decree, on payment of the balance of the consideration-money to the defendant by the plaintiff minus the arrears for taxes due to the corporation and arrears of rent due to the landlord for the property on the date of the decree. It was mentioned in the decree that in case of the failure on the part of the defendant to execute and register the deed of sale within 90 days of the decree, on receipt of the aforesaid balance of consideration by the defendant, the plaintiff was to deposit the amount in court within 120 days of the decree. If the plaintiff paid the balance of the consideration-money to the defendant or deposited the same in court, the defendant would be entitled to accept or withdraw the same. If the plaintiff failed to pay or deposit the amount, the defendant would not be liable to execute the deed of sale. The defendant was directed to deliver khas possession of the property in favour of the plaintiff after execution of the deed of sale and in case of failure on the part of the defendant to deliver khas possession of the property, it was ordered that the plaintiff would be entitled to recover the same through Court as per law. Being aggrieved by this decree for specific performance of the contract for sale of the property, the present appeal has been filed.

5. Mr. Das Gupta, learned Counsel for the defendant-appellant, has challenged the decree on several grounds. His first contention is that, on the basis of the materials on record, it cannot be said that the plaintiff was ready and willing to perform his part of the contract. He has argued that the insistence on the part of the plaintiff to have an indemnity clause in the draft deed of sale, Ext. 2, though there was no such agreement for indemnity clause between the parties, disentitles the plaintiff from having a decree for specific performance of the contract for sale. Mr. Das Gupta has argued that the decree for specific performance of the contract for sale will entail hardship on the defendant. Apart from these grounds, Mr. Das Gupta gave a notice on 8-2-1985 for taking up an additional ground to the effect that the learned Subordinate Judge was in error in allowing the plaintiffs prayer for extension of time to deposit the amount not deposited within the time specified in the decree and made submissions in this regard.

6. To show that the plaintiff was not ready and willing to perform his part of the contract. Mr. Das Gupta had referred us to the cases of *Ardeshir H. Mama v. Flora Sassoon* (1928) 32 Cal WN 953 : (AIR 1928 PC 208) and *Gomathinavagam Pillai v. Palaniswami Nadar* and has argued that it has not been proved, on the basis of the evidences on record, that there was a continuous readiness and willingness on the part of the plaintiff from the date of the contract to the time of hearing to perform the contract. Mr. Mallick, learned Counsel for the respondent, has argued that if the evidences on record be considered, along with a letter dated 26-7- 1975 from the Manager, Reserve Bank of India,

to the plaintiff, in reply to the letter of the plaintiff dated 18-6-1975, there can be no doubt that the plaintiff had sufficient fund in his credit to purchase the property within the stipulated period. The learned Subordinate Judge referred to three documents, Exts. 6, 6(a) and 7, and came to the conclusion that at the relevant time the plaintiff had always in his account an amount of Rs. 33,000/- and odd ready for payment to the defendant. Considering the evidences on record, we find nothing to interfere with this finding of the learned Subordinate Judge. Ext. 6 is the pass Book of the plaintiff in the Reserve Bank Supervisory Staff Co-operative Credit Society. Ext. 6(a) shows that the plaintiff had an account at the Chartered Bank, 4, Netaji, Subhas Road Calcutta. Ext. 7 shows that the plaintiff had also an account at the Grindleys Bank. The learned Subordinate Judge found that the plaintiff had in his account, as shown in Ext. 6, a sum of Rs. 7872.81 paise on 29-11-1973. Actually, the amount at the credit of the plaintiff on 29-11-1973, as per Ext. 6, will be Rs. 8570/-. The plaintiff had a further sum of Rs. 9810.59 paise in the Chartered Bank on 30-11-1973, vide Ext. 6(a). Towards the end of 1973, the plaintiff had in his credit a sum of Rs. 5749.01 paise, vide Ext. 7. Out of the consideration-money of Rs. 38,000/-, the plaintiff paid Rs. 7001/- to the defendant, leaving a balance of Rs. 30,999/-. A scrutiny of the various entries in the Pass Books, Exts. 6, 6(a) and 7, shows that the plaintiff had roughly a sum of Rs. 24,000/- at his credit in the three Bank accounts. This is also the evidence of P.W.1. According to P.W.1, he had Rs. 24,000/- and odd in the Banks, apart from the amount that he had in the Provident Fund. The letter, Ext.3(z)(5) dated 26-7-1975, from the Manager, Reserve Bank of India to the plaintiff shows that the plaintiff was permitted to withdraw Rs. 15,000/- from his Provident Fund balance for purchasing a readymade house in November, 1973. The plaintiff had thus roughly a sum Rs. 39,000/-, including the amount which could have been withdrawn by him from the Provident Fund balance. To show readiness and willingness to perform his part of the contract, the plaintiff had proved that at all material times, he could have raised the amount. The plaintiff need not prove or show that he had ready in his hands the requisite amount which had to be paid by him to the vendor. As the plaintiff has been able to prove that he had both cash and credit at his command to pay the balance of the consideration-money to the defendant, it cannot be said that the plaintiff was not ready and willing to perform his part of the contract or that there was no continuous readiness on the part of the plaintiff to perform his part of the contract. As stated by the Privy Council in the case of *Bank of India v. J. A. H. Chinoy* AIR 1950 PC 90, in order to prove himself ready and willing to perform his obligation under a contract, a purchaser has not necessarily produce the money or to vouch a concluded scheme for financing the transaction. We are, thus, of the opinion that there was a continuous readiness and willingness on the part of the plaintiff to perform his part of the contract, for payment of the balance of the consideration-money to the defendant.

7. As for the second contention of Mr. Das Gupta, it is to be stated that in the case of *Babu Binde Shri Parshad v. Mahant Jairam Gir* (1886-87) 14 Ind. App 173, It was held by the Privy Council that where a purchaser delayed payment of purchase money of immovable estate, insisting upon the insertion in the conveyance of an absolute warranty of title by the vendor to the property sold, the delay of payment should not be excused and there should be no case for decreeing specific performance, if such a right to such warranty was not shown. In *Md. Ziaul Haque v. Calcutta Vyaper Pratisthan*, , it was held by this Court that if there is no agreement regarding warranty of title, insistence on the same indicates lack of readiness to perform his part of the contract. Relying on these two cases, Mr. Das Gupta has argued that the suit for specific performance of the contract for

sale should not be decreed, when the plaintiff demanded incorporation of a warranty clause in the draft deed of sale, Ext. 2, though there was no such warranty clause in the registered deed of agreement dated 11-11-1973, Ext. 1. This contention cannot be accepted. It is nowhere in the evidences on record that the plaintiff insisted on the retention of the warranty clause in the draft deed of sale. The evidences show that the plaintiff sent the draft deed of sale, Ext. 2, to the defendant for approval. If the defendant was not willing to retain the warranty clause in the draft deed, the defendant could easily have written to the plaintiff in the matter. There is nothing in the evidences or in the materials on record to show that the defendant ever objected to the insertion of the warranty clause in the draft deed of sale. There is nothing to show that the plaintiff insisted on the insertion of the warranty clause in the draft deed of sale. In these circumstances, this contention of Mr. Das Gupta is to fail.

8. As for hardship, the evidences of the defendant (D. W. 1) are that he was hard-pressed for money for his daughter's marriage, and as such, he was in great difficulty due to the plaintiffs unwillingness to complete the transaction within the stipulated time. D. W. 1 has further stated that at present the valuation of the property has gone up and that he will suffer heavy loss if he was forced to sell the property. Needless to say, the decree for specific performance cannot be defeated on these grounds. As stated by the learned Subordinate Judge, the increase in valuation of the property should not weigh with the court in deciding whether specific performance of contract should be granted or not. Because the defendant was hard-pressed for money for giving his daughter in marriage at the relevant time, the decree for specific performance should not also be defeated. The contention of Mr. Das Gupta for not decreeing the suit for specific performance on the ground that it will entail hardship on the defendant cannot, thus, be accepted.

9. The last ground taken by Mr. Das Gupta is that the learned Subordinate Judge was in error in allowing the plaintiffs prayer for extension of time for failure to deposit the amount mentioned in the decree within the time specified in the decree. This is, in fact, the main contention of Mr. Das Gupta in this appeal. To show that the learned Subordinate Judge was not entitled to extend the time for deposit of the money mentioned in the decree, Mr. Das Gupta has referred us to several cases. Mr. Mallick, appearing for the plaintiff, has also referred us to several cases. Before entering into a discussion of these cases, it is better to state the post-decree events. The decree for specific performance of the contract for sale was passed on 28-4-1978. As already stated, the plaintiff was asked by the decree to pay or deposit the balance of the consideration-money minus the arrears for taxes due to the corporation and the arrears of rent due to the landlord for the suit-property on the date of the decree. The payment by the plaintiff was to be made within 90 days of the decree. In case of the failure on the part of the defendant to execute the deed of conveyance and to have it registered within 90 days from the date of the decree, the plaintiff could have the deed of sale executed and registered through Court as per law on depositing in Court the balance of the consideration-money, minus the arrears for taxes due to the corporation and the arrears of rent, within 120 days of the decree. It was stated in the decree that if the plaintiff failed, to pay or deposit the amount within 90 days or 120 days of the decree respectively, the-defendant would not be liable to execute the deed of sale. On the basis of this default clause, "the defendant shall not be liable to execute the deed of sale", the contention of Mr. Das Gupta is that the conditional decree passed in the suit was not a preliminary decree and the court was without jurisdiction to extend the time to deposit the balance

of the purchase-money. It appears that after the passing of the decree on 28-4-1978, the plaintiff filed a petition in the court below on 27-6-1978 for deducting the amount of damages and cost of the suit from the balance of the consideration-money and for rectifying the omission in the decree. By an order passed on 3-7-1978, the learned Subordinate Judge directed issue of notice in the matter on the defendant, fixing 3-8-1978 for return and orders. On 3-8-1978, the learned Subordinate Judge noted the presence of the (Subordinate Judge noted the presence of the plaintiff with postal receipt and adjourned the matter till 23-8-1978 for return and orders, as the notice sent to the defendant was not received back after service. On 16-8-1978, the plaintiff filed another petition for deducting the cost of the suit from the balance of the consideration-money and for depositing the decretal sum. The decretal cost was to the tune of Rs. 3473.90 paise. The corporation tax up to 31-5-1978 was to the tune of Rs. 1614.33 paise. The arrears of landlord's rent amounted to Rs. 9.20 paise. On deducting these amounts towards decretal cost, corporation tax and arrears of landlord's rent, the plaintiff wanted to deposit the balance of Rs. 25,901.57 paise by filing the petition on 16-8-1978. This prayer of the plaintiff by the petition dated 16-8-1978 was allowed by the learned Subordinate Judge on hearing the learned Advocate for the plaintiff. It appears that on 24-8-1978, the plaintiff deposited this sum of Rs. 25,901.57 paise by a Bank order. Subsequently, on 12-9-1978, the plaintiff filed another petition for restraining the defendant from withdrawing the amount deposited by him. An ex parte order of injunction was passed in the matter by the learned Subordinate Judge on 4-12-1978. Thereafter, on the prayer of the plaintiff, the learned Subordinate Judge passed an order on 27-10-1979 by which the plaintiff was allowed to deposit the cost of Rs. 3473.90 paise on the grounds that the mistake was genuine and bona fide on the part of the plaintiff and that the Court was empowered under sections 148 and 151 C.P.C. to extend the time for deposit of the amount. By that order dated 27-10-1979, the case was fixed on 27-11-1979 for depositing the balance of the consideration-money. Accordingly, the cost of Rs. 3473.90 paise was, subsequently, deposited by the plaintiff. On the basis of these facts, Mr. Das Gupta has contended that the court had no power to extend the time for depositing the cost of the suit. He has referred to the cases of Bhutnath v. Sahodeb , Mahanth Ram Das v. Ganga Das , B. Ganapati v. S. Rajaram , Sandhyarani v. Sudharani , and M. Sakuntala Debi v. V. Sakuntala to support his contention that a conditional decree, like the one passed in the suit, was not a preliminary decree and that the court was without jurisdiction to extend the time for depositing the cost of the suit, in spite of the provisions in Section 28 of the Specific Relief Act, 1963 {hereinafter referred to as the Act for the sake of convenience}. Mr. Mallick, learned Counsel for the plaintiff has, on the other hand, referred us to the case of Tapan Kumar Chatterjee v. Kalyani Debi wherein some of the cases referred to by Mr. Das Gupta, viz., , and were also considered and has argued that the court was within its power to extend the time for deposit of the cost of the suit on the basis of section 28 of the Act. To lend assurance to his contention, Mr. Mallick has referred us to the case of H.I. Trust v. Haridas Mundhra, discussed also in the case of Tapan Chatterjee (supra) as well as to the cases (Bisun Prasad v. Kamala Kant) (Pankaj Kumar v. Manmatha Nath) and (M. V. Kshirsagar v. B. K. Jadhav). Mr. Mallick has also referred us to several other cases of the Supreme Court, discussed in the, case of Tapan Chatterjee viz. (Chinnamarkathian v. Ayyavoo), (Babulal v. Hazari Lal Kishori Lal) and (K. Kalpana Saraswathi v. P.S.S. Chettiar).

10. The Division Bench decision of this Court in the case of Tapan Chatterjee (supra) is to the effect that though the court can fix a time limit for discharge of mutual obligations by the parties in a suit

for specific performance of contract, the prescriptions can never be peremptory that they cannot be subsequently altered under any circumstances. It has been decided in the case of Tapan Chatterjee (supra) that the decree at the initial stage in a suit for specific performance of contract is in the nature of a preliminary decree, or to be more specific not final in character, leaving ample jurisdiction in court to pass appropriate orders that may be necessary in such a suit and that the court cannot, on the terms of its decree, oust its jurisdiction either to grant an extension of time or to deprive the vendor of a relief to which it is otherwise entitled. Such an act of ouster of its own jurisdiction by passing a conditional decree would really be, according to the Division Bench decision, ultra vires the courts' power because no court can foreclose its jurisdiction conferred by the statute. The case of Bhutnath was not approved by the Division Bench on a consideration of the cases , , and .

11. Mr. Das Gupta has asked us not to agree with the view of the Division Bench in the case of Tapan Chatterjee (supra) on the ground that several decisions were not placed before their Lordships, at the time of hearing of the case of Tapan Chatterjee. Mr. Das Gupta has argued that in the case it was decided that a decree passed in a suit for specific performance of contract for sale of immovable property, calling upon the purchaser to deposit the balance of the consideration-money within the time stipulated in the decree with superadded condition that in the event of default, the suit would stand dismissed, was not a preliminary decree. According to Mr. Das Gupta, the decision in the case of Tapan Chatterjee rested on the grounds that a decree in a suit for specific performance was a preliminary decree in the initial stage, that such a decree was not a conditional decree and that section 28 of the Act clothed the court with power to extend the time for deposit of the balance of consideration-money, even if there was a default clause in the decree for specific performance of contract. Mr. Das Gupta has argued that in view of the decision of the Supreme Court in the case of Sandhya Rani a decree for specific performance of contract with a default clause is not a preliminary decree. He has argued that the case of H.I. Trust, was not a case of any conditional decree. Moreover, it was held in that case that an application to rescind a decree for specific performance of an agreement for sale of movables was not maintainable under section 28 of the Act, which related to immovable property. According to Mr. Das Gupta, the Supreme Court made a distinction in the case of Mahanth Ram between peremptory procedural orders and conditional orders. He has argued that this distinction made by the Supreme Court was not considered in the case of Tapan Chatterjee. According to Mr. Das Gupta, the power to extend time for depositing the balance of consideration-money existed in court even under the Specific Relief Act, 1877 on the basis of decided case-laws, irrespective of section 28 of the present Act. It is contended that section 28 has not conferred any new power on the court to extend the time for depositing the balance of consideration-money as section 28 falls within Chapter IV of the Act dealing with the rescission of contracts. To lend assurance to this contention, Mr. Das Gupta has relied on the case of M. Sakuntala .

12, We have carefully considered the Division bench decision of this Court in the case of Tapan Chatterjee and we are of the opinion that there is scope for rethinking in the matter so far as the conditional decrees are concerned. In the case of Mahanth Ram , a distinction was made by the Supreme Court between peremptory procedural orders and conditional orders. The case of H.I. Trust related to moveable property in respect of which section 28 of the Act had no application. In

the case it was decided by the Supreme Court that a conditional decree for specific performance of contract, containing a condition that in the event of default in depositing the balance of consideration-money within the time stipulated in the decree, the suit would stand dismissed, was not a preliminary decree. Unfortunately, this decision was not placed before their Lordships while dealing with the case of Tapan Chatterjee. It is not, however, necessary for us to discuss further the various cases referred to by both the parties for the purpose of showing as to whether the court has power in the case of a conditional decree for specific performance of contract for sale, containing a default clause, to extend the time for deposit of the balance of the consideration-money in spite of the default clause. Even assuming for the sake of argument that the court has power to extend the time for deposit of the balance of the consideration-money in such a conditional decree, about dismissal of suit containing a default clause, or a default clause as appearing in the decree of the present suit viz., that if the plaintiff failed to pay or deposit the amount of the balance of the consideration money in the manner directed in the decree the defendant would not be liable to execute the deed of sale, the fact remains that if the decree for specific performance of contract is allowed to stand on the basis of the post decree events, the plaintiff would get an unfair advantage. It has already been shown that there was no direction in the decree for deducting the cost of the suit from the balance of the consideration-money.

13. In the plaint, there was a prayer for deduction of the arrears of taxes due to the corporation, the arrears of rent due to the landlord, other dues to make the property free from all encumbrances, damages and costs. In the conditional decree, the deduction was allowed in respect of the arrears of taxes due to the Corporation and arrears of rent from the balance of the purchase-money. Though there was no direction in the conditional decree for deduction of the cost of the suit from the balance of the consideration-money, the plaintiff first tried to have the cost of the suit deducted from the balance of the consideration-money by filing a petition, on 27-6-1978. Though the date regarding the hearing of the petition was adjourned to 23-8-78, awaiting service-return of the notice sent to the defendant, the plaintiff took step unilaterally by filing another petition on 16-8-78 for having the cost of the suit deducted from the balance of the purchase-money and this prayer was allowed on 16-8-78 without hearing the defendant. The deposit of Rs. 25901.57 P. towards the balance of the consideration-money after deducting the cost of the suit amounts to modification of the decree. Courts have inherent powers to amend or vary the decrees so as to bring them in accordance with the judgments. The order of the court on 16-8-78 allowing the plaintiff not to deposit the cost of the suit cannot be justified on the basis of section 151 C.P.C. as the plaintiff asked the court to make practically a different judgment regarding the balance of purchase-money to be deposited in court by him. . Moreover, as the decree was a conditional decree, it should not have been amended without notice to the party affected, viz., the defendant. The plaintiff deposited the sum of Rs. 25901.57 P. without the time mentioned in the conditional decree. There was no question of extension of any time for deposit of the sum of Rs. 25901.57 P. Section 28 of the Act does not authorise the court to amend the decree in the manner it was done by the order passed by the court on 16-8-78. Moreover, though it was stated in the conditional decree that the defendant would be entitled to accept or withdraw the balance of the consideration-money, paid or deposited by the plaintiff, the plaintiff obtained an ex parte order of injunction on 4-12-78 by filing a petition on 12-9-78. This prayer for not withdrawing the amount of Rs. 25901.57 P. amounts also to a modification of the conditional decree, which is not permitted by section 28 of the Act or any other

provision of the Act. By filing this petition for injunction the plaintiff wanted to obtain an unfair advantage over the defendant. Similarly, by not depositing the cost of the suit, the plaintiff wanted to obtain an unfair advantage over the defendant, inasmuch as the plaintiff could have recovered the cost of the suit by filing an execution case under Order 21, Rule 32 C.P.C. The subsequent deposit of the cost of the suit on the basis of the order dated 27-10-79 is also not permissible under Section 28 of the Act as it is nowhere stated in that section that the court can extend the time for deposit of a part of the balance of the consideration-money. Under section 28 of the Act, the court can extend time for deposit of purchase-money or balance of the purchase-money but the said section does not empower the court to direct deposit of purchase-money or balance of purchase-money by instalments, not allowed by conditional decree in a suit for specific performance of contract for sale of immovable property.

14. Considering the above facts and circumstances as well as the materials on record, we are of the opinion that as specific performance is a conscious attempt on the part of the Court to do complete justice to both the parties with respect to all the juridical relations growing out of the contract between them, the plaintiff should not be allowed to have the contract for sale specifically enforced as the plaintiff himself took the initiative of not depositing the cost of the suit and thereafter took the initiative for restraining the defendant from withdrawing the amount deposited in court, though both these prayers were not in accordance with the conditional decree passed by the court.

15. Though the suit for specific performance of contract is thus to fail, the plaintiff should not be deprived of the amounts paid to the defendant. In view of the decision of this court in the case of *Sahida Bibi v. Golam Mohammad*, the suit is to be sent back on remand to the court below for granting an opportunity to the plaintiff to amend the plaint for incorporation of the prayer for refund of the purchase-money paid by him and deposited in court.

16. The appeal is, accordingly, allowed. The judgment and decree of the learned Subordinate Judge are set aside. The case is sent back on remand to the court below for fresh disposal in accordance with law, after giving an opportunity to the plaintiff to amend the plaint, within one month of the service of the notice of arrival of records in the court below on the plaintiff or his Advocate, for refund of the sums of Rs. 6001/- and Rs. 1000/- paid to the defendant with interest @ Rs. 6% per annum from the dates of payment of these sums to the defendant by the plaintiff till recovery and for withdrawal of the sums of Rs. 25901.57 paise and Rs. 3473.90 paise deposited in court on the basis of the orders of the trial court dated 16-8-78 and 27-10-79 respectively. If the plaintiff prays for amendment of the plaint by incorporating a prayer for refund and withdrawal of these amounts, court below will allow the prayer for amendment of the plaint and will pass a decree in favour of the plaintiff for refund of these sums with interest @ Rs. 6% per annum till recovery and for withdrawal of these sums. Before passing the decree for refund of these amounts, the court below will consider the sufficiency of the court-fees paid on the plaint. In case the plaintiff does not pray for amendment of the plaint within the time as mentioned in this order or within such further time, as may be granted by the court, the defendant is to be directed to apply for revision of the contract under Section 27 of the Specific Relief Act, 1963 so that necessary directions can be passed by the court for return of the purchase-money to the plaintiff viz., the amounts paid by the plaintiff to the defendant as well as the amount deposited in court.

17. In the special circumstances of the case, parties to bear their own costs of this appeal.

18. No decree need be drawn in this appeal.

19. Let the records be sent down as early as possible.

G.N. Ray, J.

20. I agree.