

**Parswanath Saha**  
v.  
**Bandhana Modak (Das) and Anr.**  
(Civil Appeal No. 14804 of 2024)  
20 December 2024  
**[J.B. Pardiwala\* and R. Mahadevan, JJ.]**

**Issue for Consideration**

Whether the High Court committed any error in passing the impugned judgment setting aside the decree of specific performance passed by the Trial Court in favour of the plaintiff-appellant.

**Headnotes<sup>†</sup>**

**Specific Relief Act, 1963 – s.20, prior to the 2018 Amendment – Discretion as to decreeing specific performance – Agreement of Sale was executed by the predecessor of the defendants-respondents (husband of respondent no.1 and father of respondent no.2) in favour of the plaintiff-appellant however, he died before the execution of the Sale deed – Defendants declined to execute the Sale Deed – Decree of specific performance passed by Trial Court in favour of the plaintiff – Decree set aside by High Court holding that the predecessor of the defendants was unable to foresee the hardship that would be caused to him and the family at the time when he executed the Agreement of Sale w.r.t the suit property and the defendants were able to establish that except the suit property they did not have any other property and if they had to part with it that would cause hardship to them – Correctness:**

**Held:** Not correct– High Court erred in taking the view that the plaintiff was not entitled to the decree for specific performance as it would cause hardship to the defendants – It overlooked the fact that the question of hardship in terms of Section 20(2)(b) r/w explanation (2) bears reference to hardship, which the defendant did not foresee at the time of entering into the contract – The issue of hardship would come into play only if it was established by cogent evidence that predecessor of the defendants who executed the Agreement of Sale was unable to foresee the hardship at the time

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of entering into the contract – The explanation elucidates the point of time at which the hardship has to be determined with reference to the circumstances existing at the time of the contract, except where the hardship has been caused from an act of the plaintiff subsequent to the contract – Nothing in the pleadings or evidence shows that there was a hardship of the kind which the predecessor of the defendants did not foresee at the time he executed the Agreement of Sale or that the hardship which the defendants would face is the result of an act of the plaintiff based on his supervening acts – Defendants brought nothing on record to show that the suit property was the only shelter available to them – In fact, the evidence on record shows that the predecessor of the defendants was not getting along well with them and the defendants were residing separately – It was only when he passed away that the defendants tried to take over the suit property – Impugned order set aside, decree of the Trial Court restored with modification as stated. [Paras 33-36, 43]

**Specific Relief Act, 1963 – s.20, prior to the 2018 Amendment – Discretion as to decreeing specific performance – Refusal to decree specific performance on the ground of ‘hardship’:**

**Held:** The jurisdiction to decree specific performance is discretionary – The discretion is not arbitrary but is “sound and reasonable”, to be “guided by judicial principles” – The exercise of discretion is capable of being corrected by a court of appeal in the hierarchy of appellate courts – Sub-section (2) of Section 20 contains a stipulation of those cases where the court may exercise its discretion not to grant specific performance – Section 20 as it stood prior to the 2018 Amendment shows as to under what circumstances ‘hardship’ can be taken into consideration in refusing specific performance – It is not possible to enumerate the different circumstances which constitute a hardship and the question of hardship will have to be adjudged in the facts and circumstances of the case. [Paras 27, 28]

**Words and Phrases – “mere” – Specific Relief Act, 1963 – ss.20(4), 20(2)(a)-(c) – Explanations – Discussed. [ Paras 8, 29]****Case Law Cited**

*K. Narendra v. Riviera Apartments (P) Ltd. [1999] 3 SCR 777 : (1999) 5 SCC 77; Nirmala Anand v. Advent Corp. (P) Ltd. & Ors.*

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**[2002] Supp. 2 SCR 706** : (2002) 8 SCC 146; *K. Prakash v. B.R. Sampath Kumar* [2014] 13 SCR 702 : (2015) 1 SCC 597; *Nanjappan v. Ramasamy & Anr* [2015] 2 SCR 606 : (2015) 14 SCC 341; *Ferrodous Estates (Pvt.) Ltd. v. P. Gopirathnam (Dead) & Ors.*, **2020 INSC 586** : [2020] 13 SCR 673; *Sanghi Bros (Indore) Pvt. Ltd. v. Kamalendra Singh*, **2023 SCC OnLine Del 5528**; *Jayakantham & Ors. v. Abhaykumar* [2017] 2 SCR 355 : (2017) 5 SCC 178; *Kamal Kumar v. Prem Lata Joshi and Ors.* [2019] 1 SCR 54 : (2019) 3 SCC 704; *Shenbagam and Ors. v. K. K. Rathinavel* (1969) 2 SCC 539; *Ouseph Varghese v. Joseph Aley* [1970] 1 SCR 921 : (1969) 2 SCC 539; *G.W. Davis v. Maung Shwe Go*, **1911 SCC OnLine PC 25**; *Prakash Chandra v. Narayan* [2012] 5 SCR 444 : (2012) 5 SCC 403 – referred to.

### Books and Periodicals Cited

Chitty on Contracts (27th Edn., 1994, Vol. 1., at p. 1296).

### List of Acts

Specific Relief Act, 1963.

### List of Keywords

Section 20 of the Specific Relief Act, 1963; Prior to the 2018 Amendment; Decree of specific performance; Hardship; Refusing specific performance/Refusal of specific performance of the contract; Act of the plaintiff subsequent to the contract; Agreement of Sale; Sale Deed; Predecessor of the defendants; Residing separately; Hierarchy of appellate courts; Discretion not to grant specific performance; Court of appeal.

### Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14804 of 2024

From the Judgment and Order dated 29.07.2022 of the High Court of Tripura at Agartala in RFA No. 28 of 2019

### Appearances for Parties

Pijush Kanti Roy, Sr. Adv., Mrs. Kakali Roy, Rajan K. Chourasia, Advs. for the Appellant.

Ajit Pravin Wagh, Advs. for the Respondents.

**Parswanath Saha v. Bandhana Modak (Das) and Anr.****Judgment/Order of the Supreme Court****Judgment****J.B. Pardiwala, J.**

1. Leave granted.
2. This appeal arises from the judgment and order passed by the High Court of Tripura in Regular First Appeal No. 28 of 2019 dated 29.07.2022 by which the High Court allowed the appeal filed by the respondents herein (Original Defendants) and thereby quashed and set aside the judgment and decree passed by the Civil Judge West Tripura, Agartala granting Specific Performance of Agreement of Sale in Title Suit No.135 of 2016 instituted by the appellant herein (Original Plaintiff).
3. Facts giving rise to this appeal may be summarised as under:
  - (a) The appellant herein (Original Plaintiff) instituted Case No. T.S. 135 of 2016 in the Court of Civil Judge Senior Div. (Court No. 1) West Tripura, Agartala and prayed for the following reliefs:
    - (i) *A decree for declaration of the entitlement of the Plaintiff to get the execution, registration and possession of the suit land from the Defendants as part performance of the contract following the registered deed of Agreement for Sale dated 27.05.2016.*
    - (ii) *A decree for mandatory injunction directing the Defendants to execute and register the sale deed in respect of the suit land in favour of the plaintiff and to handover the possession of the suit land to the plaintiff as part performance of the contract in pursuance of the deed of Agreement for Sale within a specified period failing which to execute and register the sale deed in respect of the suit land in favour of plaintiff and to hand over possession of the suit land to the plaintiff through the Ld. Court by enforcing the decree as may be passed.*

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- (iii) *A decree for permanent injunction restraining the defendants and their agents from making any kind of transfer of the suit land to others or to give any mortgage, lease, etc of the suit land till disposal of the present suit.*
- (b) It appears from the materials on record that the husband of the respondent no. 1 herein and father of the respondent no. 2 herein namely Late Prabha Ranjan Das was the lawful owner of the suit property.
- (c) The appellant herein entered into a registered Agreement of Sale dated 27.05.2016 with respect to the suit property. The total sale consideration fixed was of Rs. 17,50,000.00 (Rupees Seventeen Lakh Fifty Thousand only). An amount of Rs. 4,00,000.00 (Rupees Four Lakh only) was paid to Late Prabha Ranjan Das by the appellant herein towards earnest money.
- (d) Prabha Ranjan Das passed away on 05.07.2016 leaving behind the respondents (Original Defendants) as his lawful heirs.
- (e) The appellant herein called upon the respondents herein to execute the Sale Deed in accordance with the terms of the Agreement of Sale dated 27.05.2016 duly executed by Prabha Ranjan Das.
- (f) The respondents herein declined to execute the Sale Deed. In such circumstances, the appellant herein was left with no other option but to institute the suit, seeking specific performance of the contract.
- (g) In the suit, the Trial Court framed the following issues:
- (i) *Is the suit maintainable in its present form and nature?*
- (ii) *Has the plaintiff any cause of action to institute the instant suit?*
- (iii) *Has the plaintiff entered into a registered agreement for sale dated 27.05.2016 with Prabha Ranjan Das (predecessor of the defendants) to purchase the suit land?*
- (iv) *Are the averments available in the plaint in respect of readiness and willingness to perform the part of the*

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*contract in its true construction sufficient to enforce specific performance as prayed for?*

- (v) *Is the plaintiff entitled to get a registered sale deed in terms of agreement for sale?*
- (vi) *Is the plaintiff entitled to get a decree as prayed for?*
- (vii) *What other relief / reliefs the plaintiff is entitled to?*
- (h) The suit ultimately came to be allowed in favour of the appellant herein *vide* judgment and decree dated 20.11.2018. The operative part of the order passed by the Trial Court reads thus:

*"In the result, the suit is decreed with cost in favour of the plaintiff with following directions:*

*(a) the defendant No. 1 Smt. Bandana Modak (Das) shall execute a Registered Deed of Sale on behalf of herself and also being the guardian on behalf of her minor son i.e. defendant No. 2 Master Diptanu Das in favour of the plaintiff Shri Parswanath Saha for the suit land measuring 1 ganda 1 kara of land alongwith building thereon measuring 529 sq.ft appertaining to Khatian No.347 having R.S. Plot No.151 within a period of forty five days from the date of drawing up of decree failing which the plaintiff will be entitled to get the Sale Deed be executed through this Court as per law subject to payment of rest consideration amount of Rs. 13,50,000/- (thirteen lac fifty thousand) only by the plaintiff to the defendants;*

*(b) the defendants shall hand over the possession of the suit land to the plaintiff immediately after execution of the above mentioned Sale Deed along with all the documents of title relating to the suit property which are in the defendants' possession or power.*

*Prepare decree accordingly.*

*Sheristadar of my Court is hereby directed to prepare the decree in the light of my above judgment and to place it before me for my signatures within 15 (fifteen) days from the date of passing of this judgment.*

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*Make necessary entry in the Trial Register.*

*Thus this case is disposed of without contest."*

- (i) The respondents herein (Original Defendants) went in appeal before the High Court. The High Court allowed the appeal essentially on the ground that Late Prabha Ranjan Das was unable to foresee the hardship that would be caused to him and the family at the time when he executed the Agreement of Sale with respect to the suit property. The High Court accepted that Late Prabha Ranjan Das executed the registered Agreement of Sale with respect to the suit property and had also accepted Rs. 4,00,000.00 (Rupees Four Lakh only) by way of earnest money. However, as stated above, the High Court took the view that the defendants have been able to establish that except the suit land they do not have any other property and if they had to part with the suit property that would cause lot of hardship to them.
- (j) The High Court while allowing the First Appeal filed by the defendants observed as under:

*"17. Apart from the aforesaid facts, we find that the submission of learned senior counsel appearing on behalf of the plaintiff that the defendants have not pleaded the fact of hardship in their written statement is not correct. The defendants have specifically stated in their written statement that except the suit land they have no other piece of land and they require the suit land for their own residential purpose and they cannot expect to dispose of their only piece of land and building standing thereon which would render them homeless, shelterless and roofless. This pleading is also supported by their evidence. Even from the evidence of the witnesses of the plaintiff, it is established that the defendant no. 1 used to reside in the house of her father at Beltali. The plaintiff deposing as PW-1 specifically stated that he along with his staff met with the defendant No.1 personally in the house of her father at Beltali, Agartala on 21.08.2016 and told her as to whether she could obtain the said Survivor Certificate and the Guardianship Certificate.*

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*18. From such evidence of the plaintiff, there cannot be any doubt that the defendants had no shelter other than the father of the defendant no. 1 and according to us, this admitted fact is enough to prove the hardship of the defendants that the defendant no. 1, who along with her minor son would be rendered homeless and shelterless, if the suit for specific performance of the agreement of sale (Exbt.1) is decreed in favour of the plaintiff."*

*19. Applying the well settled principle that it is not always necessary to grant specific performance simply for the reason that it is legal to do so, we are of the opinion, that the case in hand is a fit case to exercise our discretion rejecting the plaintiffs claim to ask the defendants to execute the deed of sale in terms of Exbt.1 as decreed by learned court below.*

*20. As a sequel, we hold that the plaintiff is not entitled to get a decree for specific performance of the agreement of sale (Exbt.-1) and the defendants are not under any obligation to execute the sale deed in favour of the plaintiff in the light of the agreement of sale (Exbt.-1). However, the plaintiff is definitely entitled to get refund of the earnest money, which he paid to late Prabha Ranjan Das, the predecessor of the defendants along with interest at the rate of 8% per annum. The defendants shall refund the said earnest money of Rs.4,00,000 (Rupees four lakhs) along with simple interest at the rate of 8% per annum to the plaintiff from the date of the institution of the suit within a period of 3(three) months from today."*

4. The appellant herein being dissatisfied with the impugned judgment and order passed by the High Court is here before this Court with the present appeal.

**RELEVANT PROVISIONS OF LAW**

5. Section 20 of the Specific Relief Act, 1963 as it then stood i.e., prior to the 2018 amendment reads as under:

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*"20. Discretion as to decreeing specific performance.-(1) 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; but 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.*

*(2) The following are cases in which the Court may properly exercise discretion not to decree specific performance.-*

- (a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or*
- (b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or*
- (c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.*

*Explanation 1. — Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of Clause (a) or hardship within the meaning of clause (b).*

*Explanation 2.— The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.*

*(3) The Court may properly exercise discretion to decree specific performance in any case where the plaintiff has*

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*done substantial acts or suffered losses in consequence of a contract capable of specific performance.*

*(4) The Court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party."*

6. The relief of specific performance having its roots in equity, the Specific Relief Act, 1963, prior to its amendment has preserved the discretion of the Court not to grant the relief even though the agreement is specifically performable in law. The only fetters imposed by the statute on the exercise of the discretion are that the discretion must not be exercised arbitrarily but soundly and reasonably and guided by judicial principles. The phrase "capable of correction by a Court of appeals" has been inserted possibly to indicate the necessity for the Trial Court to state the reasons for exercising its discretion in a particular way. The circumstances when specific performance mentioned in the Clauses (a), (b) and (c) of Sub-section (2) of Section 20 cannot be granted are not expressly exhaustive. They indicate the situations in which the Court may properly exercise discretion not to decree specific performance. However, certain considerations have been excluded as relevant factors. These are contained in Explanations 1 and 2 to the Section as well as in Section 20(4). It is to be noticed that each of these exclusions are preceded by the word "mere". The word "mere" in the context means "sole". In other words, any one of those factors by itself would not justify the exercise of discretion against granting specific performance. The factors cumulatively or with other factors may form the basis of a decision not to grant specific performance.
7. Hardship of the defendant may be one of the grounds which may be taken into consideration for exercising its discretion by the Court in refusing to grant a decree for specific performance of contract.

**POSITION OF LAW**

8. In ***K. Narendra v. Riviera Apartments (P) Ltd.***, reported in (1999) 5 SCC 77 this Court held as under:

*"29. Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is*

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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. The principle underlying Section 20 has been summed up by this Court in Lourdu Mari David and others v. Louis Chinnaya Arogiawamy and others (1996) 5 SCC 589 by stating that the decree for specific performance is in the discretion of the Court but the discretion should not be used arbitrarily; the discretion should be exercised on sound principles of law capable of correction by an appellate court.

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35. ... Possession over a meagre part of the property was delivered by the appellant to the respondents, not simultaneously with the agreement but subsequently at some point of time. To that extent, the recital in the agreement and the averments made in the plaint filed by the respondents are false. On a major part of the property, the appellant has continued to remain in possession. As opposed to this, the respondents have neither pleaded nor brought material on record to hold that they have acted in such a way as to render inequitable the denial of specific performance and to hold that theirs would be a case of greater hardship over the hardship of the appellant. Upon an evaluation of the totality of the circumstances, we are of the opinion that the performance of the contract would involve

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such hardship on the appellant as he did not foresee while the non-performance would not involve such hardship on the respondents. The contract though valid at the time when it was entered, is engrossed into such circumstances that the performance thereof cannot be secured with precision. The present one is a case where the discretionary jurisdiction to decree the specific performance ought not to be exercised in favour of the respondents. ...”

(Emphasis supplied)

9. In ***Nirmala Anand v. Advent Corp. (P) Ltd. & Ors.***, reported in (2002) 8 SCC 146 this Court held as under:

“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. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing specific performance. There

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**may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen.”**

(Emphasis supplied)

10. In ***K. Prakash v. B.R. Sampath Kumar***, reported in (2015) 1 SCC 597 this Court held as under:

**“18. Subsequent rise in price will not be treated as a hardship entailing refusal of the decree for specific performance. Rise in price is a normal change of circumstances and, therefore, on that ground a decree for specific performance cannot be reversed.**

**19. However, the court may take notice of the fact that there has been an increase in the price of the property and considering the other facts and circumstances of the case, this Court while granting decree for specific performance can impose such condition which may to some extent compensate the defendant-owner of the property ...”**

(Emphasis supplied)

11. In ***Nanjappan v. Ramasamy & Anr.***, reported in (2015) 14 SCC 341, this Court held as under:

**“11. Under Section 20 of the Specific Relief Act, grant of specific performance of contract is discretionary. Though the decree for specific performance is discretionary, yet the court is not bound to grant such a relief merely because it is lawful to do so. But the discretion of the court is not arbitrary, but sound and reasonable, guided by judicial principles of law and capable of correction by a court of appeal and should be properly exercised keeping in view the settled principles of law as envisaged in Section 20 of the Act. The jurisdiction of decreeing specific performance is a discretion of the court and it depends upon facts and circumstances of each case. The court would take into consideration circumstances of each case, conduct of the parties, recitals in the sale agreement and the**

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**circumstances outside the contract have to be seen.**

12. In *Sardar Singh v. Krishna Devi* [(1994) 4 SCC 18], this Court observed that as the **court has to see the totality of the circumstances, conduct of the parties and respective interests under the contract while granting/refusing such relief.**

13. First sale agreement was executed on 30.9.1987 about twenty seven years ago. The property is situated in Coimbatore City and over these years, value of property in Coimbatore City would have considerably increased. In *Saradamani Kandaplan vs. Rajalakshmi & Ors., (2011) 12 SCC 18*, this Court has held that the value of the property escalate in the urban areas very fast and it would not be equitable to grant specific performance after a lapse of long period of time. In the instant case, first agreement was executed on 30.9.1987 i.e. twenty seven years ago. In view of passage of time and escalation of value of the property, grant of specific relief of performance would give an unfair advantage to the respondents-plaintiffs whereas the performance of the contract would involve great hardship to the appellant-defendant and his family members."

(Emphasis supplied)

12. In *Ferrodous Estates (Pvt.) Ltd. v. P. Gopirathnam (Dead) & Ors.*, reported in 2020 INSC 586, this Court held as under:

"28. ... Section 20, as it then stood, makes it clear that the jurisdiction to decree specific performance is discretionary; but that this discretion is not arbitrary but has to be exercised soundly and reasonably, guided by judicial principles, and capable of correction by a court of appeal - see section 20(1). Section 20(2) speaks of cases in which the court may properly exercise discretion not to decree specific performance. Significantly, under clause (a) of sub-section (2), what is to be seen is the terms of the contract or the conduct of the parties at the time of entering into the contract. Even "other circumstances under which the contract was entered into" refers only to

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*circumstances that prevailed at the time of entering into the contract. It is only then that this exception kicks in - and this is when the plaintiff gets an unfair advantage over the defendant. Equally, under clause (b) of subsection (2), the hardship involved is again at the time of entering into the contract which is clear from the expression "which he did not foresee". This is made clear beyond doubt by Explanation II of section 20 which states that the only exception to the hardship principle contained in clause (b) of sub-section (2) is where hardship results from an act of the plaintiff subsequent to the contract. In this case also, the act cannot be an act of a third party or of the court - the act must only be the act of the plaintiff. Clause (c) of sub-section (2) again refers to the defendant entering into the contract under circumstances which makes it inequitable to enforce specific performance. Here again, the point of time at which this is to be judged is the time of entering into the contract."*

(Emphasis supplied)

13. In **Sanghi Bros (Indore) Pvt. Ltd. v. Kamlendra Singh**, reported in 2023 SCC OnLine Del 5528, Delhi High Court held as under:

*"101. In view of the above-mentioned judgments, it is apparent that the view taken by the Court is applicable to the instant Suit. The MOU in the instant Suit was executed in the year 1998. Since then, almost 25 years have elapsed. The performance of the contract would involve considerable hardship on the parties. The same is being said considering that a third-party interest has been created to such an extent that the revocation of that contract would lead to an increase in hardships warranting unjustified litigations.*

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*112. In view of the material which has been placed on record, it is indicated that a third-party interest has been created in the property against which the plaintiff is seeking specific performance. Such a circumstance*

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*makes it inequitable to grant and enforce the specific performance decree. The said observation is made to balance the interests of justice and equity for the parties involved. Hence, the decree for specific performance is not to be granted.*

**113. This Court is further of the view, that there will be undue hardship caused to the defendant as well as to the third party who purchased the property in dispute, in case the plaintiff is granted specific performance.**

*Taking into consideration the facts of the case, this Court is of the view that the plaintiff may have been entitled to the relief as claimed for specific performance in the year 2004. However, presently, the plaintiff cannot be granted the relief of specific performance by this Court due to the defendant's conduct of not adhering to the terms of the MOU entered into between him and the plaintiffs, creation of third-party interests and the other factors involved, as discussed hereinabove."*

(Emphasis supplied)

**SUBMISSIONS ON BEHALF OF THE APPELLANT (ORIGINAL PLAINTIFF)**

14. PW-4 Smt. Pratima Debnath who used to look after Prabha Ranjan Das, has in no uncertain terms deposed that the Defendants did not stay with Mr. Prabha Ranjan Das. The Defendants used to stay at Beltali, A.D Nagar, which was her parental house. According to PW-4, the Defendants used to come and visit Mr. Prabha Ranjan Das and stayed in the suit property for a day or two. PW-4 has also deposed that even when Prabha Ranjan Das was ill, the Defendant No. 1 i.e. his wife did not bother to come and see her husband and the PW-4 would help him for his medical treatment. The PW-4 has further deposed that she was aware of the agreement of sale and receiving of earnest amount from the Plaintiff and was aware of the fact that the balance amount would be paid within 3 months and the sale deed would be executed and registered.
15. The Trial Court *vide* Judgment and Order dt. 20.11.2018 has held that the Plaintiff is entitled to get a decree for specific performance

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of contract and accordingly decreed the suit in favour of the Plaintiff on 23.11.2018. The Trial Court held that:

- i. *The Defendants failed to establish that the suit property was mortgaged to the Agartala Co-operative Urban Bank Ltd. and they were not necessary parties to the suit;*
- ii. *The suit in question was filed within limitation;*
- iii. *The Registered Agreement of Sale dated 27.05.2016 was signed by Mr. Prabha Ranjan Das himself and the same was identified by PW-2 and PW-3 respectively (Attesting witnesses)*
- iv. *Prabha Ranjan Das was mentally fit at the time of signing and registration of the Agreement of Sale. The Defendants lead no evidence or produced any document to their claim that Prabha Ranjan Das was mentally unfit to give effect to the transaction.*
- v. *Plaintiff was always ready & willing to perform his part of the contract.*
- vi. *Defendants failed to prove that the performance of a contract would involve hardship on them which Prabha Ranjan Das had not foreseen at the time of execution of the Agreement of Sale. subsequent to the contract from any act of the plaintiff.*
16. The Trial Court after dealing with all the issues so framed, came to the conclusion that since the Defendants were not residing with deceased Prabha Ranjan Das during his lifetime, therefore, no hardship would be caused to the Defendants if they are asked to execute the sale deed in favour of the Plaintiff.
17. The Trial Court was right in holding that no hardship had resulted from any of the acts of the Plaintiff post execution of the contract. In the instant case the Defendants have failed to show any circumstance existing at the time of the contract that if the suit land was sold, it would cause hardship to them and they would become homeless. The Trial Court rightly decreed the suit & directed the Defendants to execute the registered sale deed in favor of the Plaintiff upon receipt of balance consideration amount of Rs. 13.50 lakhs and also to hand over the vacant & peaceful possession of the suit land after execution of the sale deed.
18. The High Court while setting aside the judgment and decree passed by the Trial Court, failed to consider Sec. 20(2)(b) of the Specific

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Relief Act, 1963 and wrongly concluded that it will cause hardship to the Defendants because such performance of contract would render the Defendants homeless being conscious of the fact that the defendants were residing in the parental house of Defendant No.1 at Beltali, A.D. Nagar, which she has mentioned and admitted in her examination in chief filed by way of Affidavit.

19. In such circumstances referred to above, the learned counsel appearing for the appellant prayed that there being merit in his appeal the same may be allowed and the impugned judgment of the High Court may be set aside.

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**SUBMISSIONS ON BEHALF OF THE RESPONDENTS (ORIGINAL DEFENDANTS)**

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20. It is not in dispute that Prabha Ranjan Das, the husband of Defendant no. 1 and the father of Defendant no. 2, signed the Bainapatra on 27-05-2016 which was registered on 28-05-2016 for the sale of suit property (residential house), while he was ailing and he died on 05-07-2016 and he had no other property to offer to the defendants to reside.
21. The defendants are the legal heirs of Late Prabha Ranjan Das (Wife and minor Son). An amount of Rs 4,00,000/- was received by cheque by Late Prabha Ranjan Das as advance towards the total sale consideration of Rs 17,50,000/-,
22. In the written statement filed by the defendants, it was specifically pleaded that if the suit premises were to be handed over to the plaintiff pursuant to the subject agreement for sale, the defendants would be rendered shelter-less and therefore, it was prayed that it was a fit case to deny the relief of specific performance.
23. The Trial Court failed to frame the issue regarding the readiness and willingness on the part of plaintiff to perform his part of the contract.
24. In support of the aforesaid submissions, the learned counsel placed reliance on the following decisions:
  - (i) ***Jayajanthanam & Ors. v. Abaykumar*** reported in (2017) 5 SCC 178;
  - (ii) ***Kamal Kumar v. Prem Lata Joshi and Ors.*** reported in (2019) 3 SCC 704;

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- (iii) ***Shenbagam and Ors. v. K. K. Rathinavel*** reported in (1969) 2 SCC 539;
- (iv) ***Ouseph Varghese v. Josph Aley*** reported in (1969) 2 SCC 539.
25. In such circumstances referred to above, the learned counsel prayed that there being no merit in this appeal the same may dismissed.

### **ANALYSIS**

26. Having heard the learned counsel appearing for the parties and having gone through the materials on record the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment.
27. While evaluating whether specific performance ought to have been decreed in the present case, it would be necessary to bear in mind the fundamental principles of law. The court is not bound to grant the relief of specific performance merely because it is lawful to do so. Section 20(1) of the Specific Relief Act, 1963 indicates that the jurisdiction to decree specific performance is discretionary. Yet, the discretion of the court is not arbitrary but is “sound and reasonable”, to be “guided by judicial principles”. The exercise of discretion is capable of being corrected by a court of appeal in the hierarchy of appellate courts. Sub-section (2) of Section 20 contains a stipulation of those cases where the court may exercise its discretion not to grant specific performance. (See: ***Jayakantham & Ors. v. Abaykumar*** reported in (2017) 5 SCC 178.)
28. A perusal of Section 20 of the Specific Relief Act, 1963 as it then stood would go to show as to under what circumstances ‘hardship’ can be taken into consideration in refusing specific performance. It is not possible to enumerate the different circumstances which constitute a hardship. It will suffice if it is noted that the question of hardship will have to be adjudged in the facts and circumstances of the case. In this connection, the observations of the Privy Council in the decision in ***G.W. Davis v. Maung Shwe Go*** reported in 1911 SCC OnLine PC 25 throw light on an important aspect of the matter. Among other things, it is observed in the said case as under:

*In the absence of any evidence of fraud or misrepresentation on the part of the plaintiff which induced the defendant to enter into the contract, their Lordships see no reason*

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*to accede to the argument. The bargain is onerous, but there is nothing to show that it is unconscionable. The defendant knew all along that a lakh was the plaintiff's limit; it is in evidence that he had frequently urged the defendant's daughter to advise him to sell the land if he was getting a higher offer. It is difficult to say under the circumstances that he took an improper advantage of his position or the difficulties of the defendant."*

(Emphasis supplied)

29. Then again, it is necessary to remember that mere rise in price subsequent to the date of the contract or inadequacy of price is not to be treated as a hardship entailing refusal of specific performance of the contract. Further, the hardship involved should be one not foreseen by the party and should be collateral to the contract. In sum, it is not just one factor or two, that is relevant for consideration. But it is the some total on various factors which is required to enter into the judicial verdict.
30. The High Court seems to have been carried away by the fact that in the written statement the defendants did plead that hardship would be caused if they would be asked to execute the Sale Deed of the suit property.
31. The Trial Court had not framed any issue as regards hardship that may be caused to the defendants. It is also pertinent to note that the High Court concurred with the Trial Court on all other issues but thought fit to reverse the decree only on the ground that if the defendants are asked to execute the Sale Deed of the suit property, i.e., the residential house they would be rendered shelterless.
32. In the aforesaid context, we may refer to a decision of this Court in ***Prakash Chandra v. Narayan*** reported in (2012) 5 SCC 403 wherein para 17 of the report, it has been held:

*"17. The question as to whether the grant of relief for specific performance will cause hardship to the defendant within the meaning of clause (b) of sub-section (2) of Section 20 of the Specific Relief Act, 1963, being a question of fact, the first appellate court without framing such an issue ought not to have reversed the finding of the*

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*trial court while concurring with it on all other issues with regard to the appellant's entitlement to relief for specific performance of contract."*

33. Thus, in view of the aforesaid the High Court committed an error in taking the view that the plaintiff is not entitled to the decree for specific performance as the same would cause hardship to the defendants.
34. The High Court seems to have overlooked the fact that the question of hardship in terms of Section 20(2)(b) of the Act, 1963 read with explanation (2) bears reference to hardship, which the defendant did not foresee at the time of entering into the contract. In other words, the issue of hardship would come into play only if it is established by cogent evidence that Late Prabha Ranjan Das who executed the Agreement of Sale was unable to foresee the hardship at the time of entering into the contract.
35. The explanation elucidates the point of time at which the hardship has to be determined with reference to the circumstances existing at the time of the contract, except where the hardship has been caused from an act of the plaintiff subsequent to the contract.
36. There is nothing to indicate in the pleadings or evidence that there was a hardship of the kind which Late Prabha Ranjan Das did not foresee at the time he executed the Agreement of Sale or that the hardship which the defendants herein would face is the result of an act of the plaintiff based on his supervening acts.
37. This Court in K. Narendra (supra) in paras 29 and 30 held as under:

*"29. 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*

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*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. The principle underlying Section 20 has been summed up by this Court in Lourdu Mari David v. Louis Chinnaya Arogiwaswamy [(1996) 5 SCC 589 : AIR 1996 SC 2814] by stating that the decree for specific performance is in the discretion of the Court but the discretion should not be used arbitrarily; the discretion should be exercised on sound principles of law capable of correction by an appellate court.*

30. *Chitty on Contracts* (27th Edn., 1994, Vol. 1., at p. 1296) states:

*“Severe hardship may be a ground for refusing specific performance even though it results from circumstances which arise after the conclusion of the contract, which affect the person of the defendant rather than the subject-matter of the contract, and for which the plaintiff is in no way responsible.”*

38. It may not be out of place to state at this stage that in K. Narendra (supra) there is a reference with approval to Chitty on Contracts (27<sup>th</sup> Edn., 1994, Vol.1 at p.1296), where the passage quoted clearly indicates that one of the grounds for refusing specific performance, though they arise from circumstances post-contract, are factors which affect the person of the defendant rather than the subject-matter of the contract, and to which the plaintiff is in no way a contributory. It is these personal circumstances of the defendant, which this Court has alluded to in the earlier part of this judgment while dwelling upon the issue of hardship under Section 20(2)(b) of the Specific Relief Act, 1963. The discretion there being wide, it is certainly not limited to what is illustratively mentioned in the statute. At the cost of some repetition, it, therefore, deserves emphasis that circumstances of the plaintiff also are very relevant in the exercise of discretion to grant specific performance, based on the parameters of hardship to the defendant.
39. Even if we go by what Chitty as said in his Book Chitty on Contracts, 27<sup>th</sup> Ed. 1994 referred to above, there is nothing which the defendants

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have been able to bring on record that the suit property is the only shelter available to them.

40. It appears from the evidence on record that Late Prabha Ranjan Das was not getting along well with his wife and son. His wife and son, i.e., the defendants were residing separately. It appears that they were residing at the parental home of the defendant No. 1. It is only when Prabha Ranjan Das passed away that the defendants tried to take over the suit property.
41. The learned counsel appearing for the respondents (Original defendants) vehemently submitted that the Trial Court failed to frame any issue whether the plaintiff was always ready and willing to perform his part of the contract. It seems that the learned counsel is under some misconception of fact that the Trial Court did not frame the issue as regards whether the plaintiff was ready and willing to perform his part of the contract. The Trial Court did frame the issue as regards readiness & willingness & answered in the affirmative, i.e., in favour of the plaintiff. The High Court does not seem to have touched this issue at all. The High Court has not disturbed the findings recorded by the Trial Court on the issue of readiness & willingness. The plaintiff was always ready and willing to perform his part of the contract.
42. In the overall view of the matter, we are convinced that the High Court committed an error in setting aside the decree passed by the Trial Court of specific performance.
43. In the result, this appeal succeeds and is hereby allowed.
44. The impugned order passed by the High Court is hereby set aside. However, we would like to restore the original decree passed by the Trial Court with a little modification.
45. The Trial Court directed that the appellant herein (Original plaintiff) shall pay the balance consideration of Rs. 13,50,000/- to the defendants and upon receipt of the said amount, the defendants shall execute the Sale Deed in favour of the appellant herein (Original plaintiff).
46. In the facts and circumstances of this case, more particularly, keeping in mind that the defendant No. 1 is a widow and defendant No. 2 is her minor son, we deem fit to enhance the amount to be paid towards the balance consideration to Rs. 20,00,000/-.

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47. The decree of the Trial Court stands modified to the aforesaid extent. In short, the appellant herein (Original plaintiff) shall pay an amount of Rs. 20,00,000/- to the defendants and upon receipt of the same the defendants shall execute the Sale Deed in favour of the appellant (Original plaintiff).
48. The appeal stands disposed of in the aforesaid terms.

*Result of the Case:* Appeal disposed of.

<sup>†</sup>Headnotes prepared by: Divya Pandey