

WHEN IN A SUIT FOR SPECIFIC PERFORMANCE, IF THE CLAIM FOR THE MAIN RELIEF OF SPECIFIC PERFORMANCE, IS ABANDONED OR WAIVED OR NOT PRESSED AT THE TRIAL, WHETHER THE QUESTION OF CLAIMING DAMAGE OR RETURN OF PURCHASE MONEY AS AN ALTERNATIVE RELIEF LIES? — A CRITICAL APPRAISAL

By

**—POOLLA SAMBASIVARAO, Advocate
Narsipatnam, A.P.**

This Article raises a thorny issue of general importance which may be epigrammatically expressed regarding the claim of alternative relief either for the return of purchase money or advance or damages, when the relief of Specific Performance, in a Suit for Specific Performance is abandoned or waived or not pressed at the trial, and in order to solve this riddle a foggy legal light of several authorities which are legion and academic opinions are quoted in extensor to reiterate the legal position under the captain of birds eye view to get a hangover the matter,

The relevant provisions of the S.R. Act governing the filed are to be delineated in order to get a hang over the matter ad are perfectly extracted as hereunder

Section 22 Power to grant relief for possession, partition, refund of earnest money *etc.*,

- (i) Notwithstanding anything to the contrary contained in the Code of C.P.C. any person suing for the Specific Performance of a contract for the transfer of immovable property may, in the appropriate case ask for—
 - (a) Possession or partition and separate possession of the property in addition to such performance, or
 - (b) Any other relief to which he may be entitled including for the refund of any earnest money or deposit paid or made by him in case his claim for a Specific Performance is refused—

- (ii) No relief under clause (a) or clauses (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed:

Provided that where the Plaintiff has no claimed any such relief in the plaint, the Court shall at any stage of the proceedings allow him to amend the Plaint on such terms as may be just for including the claim for such relief

- (iii) The power of the Court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under Section 21. Even a cursory reading of the Section makes it clear, the question of consideration of refund of the earnest money or deposit or any other relief the Plaintiff may be entitled in the teeth of the language provided in Section (b) arises only in case of the main relief of Specific Performance is refused. Therefore the entire emphasis is on the word “Refusal”. In other words question of consideration of the alternative relief arises only when the Court refuses to grant the main relief of Specific Performance. It is well settled the Plaintiff in a Suit for Specific Performance must be ready and willing to perform his part of the contract not only from the date of the Suit but at least up to completion of trial, so that the Court would be in a position to consider the case of granting relief by way of damages or return of purchase money in lieu of

Specific Performance even at the time of passing of the decree,

Therefore the premature, abandonment of the claim for the relief of Specific Performance would be an end of the matter so far as the relief of by way of damages in lieu of Specific Performance or for the return of the purchase money. Be this introductory as it may

AIR 1994 AP 164

Even if an alternative relief is sought for in the relief of possession the Court should record a finding that it is impossible to grant a main relief and that as such, the alternative relief is being granted. Merely because alternative relief is sought for, no discretion vests in the court to grant either the main relief or alternative relief the Court should fir proceed, to deal with the grant of main relief and if only the grant of main relief is not possible then, a finding should be recorded to that effect and then proceed to consider, the alternative relief.

In order to answer this moot question, an important question of law, of frequent occurrence and of considerable importance, an honest endeavour is made, to the extent of my ability subject to the scrutiny by the well read readers, in my characteristics, forth right, fearless strain dedicating entirely to the service of Law and to the legal institutions even under the umbrella of Legal Services authority Act, to enlighten all concerned based on some authorities in support of the statement of Law, a subject of day-to-day occurrence, in judicial administration.

The Law on the subject is well settled, if the abandonment, waiver or termination of the contract is either admitted by the plaintiff or otherwise proved in a Suit for Specific Performance, the Plaintiff is not entitled to claim the alternative relief either for refund of purchase money or damages. At times Plaintiff in a Suit for Specific Performance

of an agreement to sell certain properties, may be guilty of inordinate delay and latches

In bringing the suit by which alone it should not be inferred from mere delay in instituting the Suit, the Plaintiff has waived his right under the Agreement. Abandonment or waiver, or termination of the contract must be proved, independently. A contract which has been abandoned has no longer in existence for any purpose and it cannot be foundation for any relief, whether it be for specific performance or damages or return of purchase money. The feecte of waiving a contract is not merely to a bar; any particular remedy under that contract but to extinguish it altogether and the right to any relief there under, including the return of advance or damages. The grant of relief for return of advance and damages is inconsistent with the theory that the contract has been waived or abandoned (Please See 65 Law Weekly 25 (D.B.)

The question arose for consideration (AIR 1928 PCT 208) Could the Plaintiff have waived or abandoned the claim for Specific Performance and claimed damages simplicitor in lieu of Specific Performance

Is it permissible in Law? The Privy Council laid down the Plaintiff society has debarred itself ay relief in the Suit for Specific Performance.

In the back drop of this scenario, it is desirable and profitable to search for the recent law laid down by the Supreme Court. Instead of multiplying the authorities in a narrow campus of an article may be magnificent performance, only some authorities are quoted to reiterate the legal position, which no longer *res integra*.

What tests guidelines and principles that should be applied for determination of this moot point fell for consideration in a catena decisions out of which AIR 1965 SC 1405 is the land mark decision which throws

considerable light on the subject and of far reaching importance. The golden thread of rule passing through this decision is subsequently followed, reaffirmed and reiterates in AIR 1997 SC 1751, AIR 1968 SC 1355, 1996 AIHC 4746 AP (DB) and other decisions which are extracted to focus the matter under the article.

Effect of Waiver, Estopped or abandonment

AIR 1965 SC 1405

If abandonment or waiver is established no question of discretion on the part of the Court would arise to consider the alternative relief.

AIR 1997 SC 1751 @ 1756 (Para 12)

If abandonment or waiver is established no question of discretion on the part of the Court would arise to consider the alternative relief

AIR 1996 AIHC 4746 AP DB Para 7:

It is obvious the question of waiver or abandonment is a question of fact, which has to be inferred from the circumstance of the particular case. As succinctly laid down by Justice *Subbarao* (as he then was), speaking for the bench in *Satyanarayana v. Yellaji Rao*, AIR 1965 SC 1405, delay is one thing and abandonment and waiver is another, the former is relevant for the purpose of

exercising discretion of the Court in granting specific performance, while in the case of later if abandonment or waiver is proved no question of discretion arises and the plaint must fail automatically.

The study of mine would be incomplete if I do not advert to the other decision of the Supreme Court AIR 1968 SC 1355 to the effect alternative relief of Specific Performance of a Contract cannot be granted in a suit for the main relief of rescission.

On a careful consideration of the above decided cases as stated supra, what emerges is that in a suit for Specific Performance, if the claim for the main relief of Specific Performance is abandoned or waived or the contract is rescinded, the Plaintiff is not entitled for the alternative relief of refund of purchase money or damages. There appears to be no considerable divergence of judicial authority on the subject under study. This note may be concluded with an expression of regret that this bed rock of law is not followed at several levels which may amount to judicial impropriety. (Please See 1997 (2) CCC 297). It needs no special emphasis to state so long as life cases, so long shall be the duty and endeavour of the course to give provisions of the constitution and other laws they come across, a true meaning which prevent human suffering and degradation.

Any unsophisticated contra view is worth welcome

RETIRAL BENEFITS: A STUDY IN THE LIGHT OF PEPSU ROAD TRANSPORT CORPORATION CASE¹

By

—Prof. (Dr.) MUKUND SARDA²

1. In Pepsu Road Transport Corporation Case³, the Supreme Court has elaborately

1. AIR 2011 SC P.1974

2. Dean & Principal, Bharati Vidyapeeth Deemed University New Law College, Pune

3. Supra

emphasized the reasons for granting pension to the employees. They may be stated thus:-

- i. Pension is a retirement benefit partaking of the character of regular payment to the employees in consideration of the past services rendered.