K. Kalpana Saraswathi

Vs

P. S. S. Somasundaram Chettiar

Civil Appeals Nos. 1993-94 of 1977

(V.R. Krishna Iyer, R.S. Pathak JJ)

29.11.1979

JUDGMENT

KRISHNA IYER, J. –

1. Writes A. G. Gardiner, if we may start off with a strange flourish, that "the supreme art is to achieve the maximum result with the minimum .... effort. It is the art of the great etcher who with a line reveals infinity. It is the art of the great dramatist who with a significant word shakes the soul. Schiller, said Coleridge, burns a city to create his effect of terror; Shakespeare drops a handkerchief and freezes our blood". (A. G. Gardiner : The PILLARS OF SOCIETY, P.106) For this exquisite reason, brevity is the soul of art and justicing, including judgment-writing, must practise the art of brevity, especially where no great issue of legal moment compels long exposition. Therefore, we mean to be brief to the bare bones, with a few facts here and a brief expression of law there, by adopting the technique which "is simply the perfect economy of means to an end". For another reason also the need for parsimony exists. The court is in crisis, docket-logged and fatigued. A judgment can be brief but not a blank and there is no reason to repeat the details of a case where there is an exhaustive statement in the judgment under appeal, as in this case. We adopt those long pages of judicial manuscript and abbreviate our conclusion in a few pages.

2. The appellant-plaintiff, a woman, was on terms of intimacy with the respondent-defendant, a wealthy man who had enjoyed a long and intimate relationship with her. The respondent owned a lovely mansion on the Marina in Madras which he agreed to sell to the appellant for a consideration of around Rs. 4 lakhs way back in April, 1967. This was subject to an equitable mortgage over the property in favour of the South Indian Bank, Coimbatore. When the two separated litigation erupted. A suit for specific performance of the agreement to sell was brought where both sides took up unrighteous positions, and the trial Court (the original side of the High Court of Madras) decreed the suit directing the plaintiff to deposit the mortgage amount plus Rs. 5000 with interest at 11 per cent till the date of payment. The whole consideration, except the mortgage amount and a sum of Rs. 5000 had already been paid at the time of the agreement and possession had been made over to the plaintiff by the defendant. The decree also provided that the amount should be deposited into court by the time specified therein, failure to do which would result in the suit itself being dismissed. The amount was not deposited within the time limited but some months later the plaintiff paid the mortgage money to the mortgage bank and took an assignment of its rights and got herself impleaded as second plaintiff in the suit which, by then, had been instituted by the bank against the present defendant (O.S. No. 154 of 1968). Eventually, the mortgage suit resulted in a decree in favour of the present plaintiff (second plaintiff therein); and the amount now due has by now, swollen to around Rs. 11 lakhs or so.

3. An appeal had been carried by the plaintiff-appellant to a Division Bench of the High Court which rejected most of her contentions except one. The Court, while affirming that the direction to make a deposit into court within three months was valid, vacated the default clause, namely, the dismissal of the suit on non-payment within the time. Read in the light of Section 28 of the Specific Relief Act and the rulings on the point which were cited before us, the proper course in this situation was to pass a decree for specific performance, which would, for all practical purposes, be a preliminary decree. The suit would continue and be under the control of the court until appropriate motion was made by either party for passing a final decree. The plaintiff appellant moved the court by interlocutory applications for giving credit to the amount paid by her to the mortgagee bank and to pass a final decree in her favour. That was not granted. Various skirmishes, essentially of an interlocutory nature, took place. Ultimately, on two applications, one by the plaintiff-appellant and the other by the defendant-respondent the court made a judgment which is the subject-matter of this appeal. The plaintiff's application was dismissed and extension of time by way of adjustment of the mortgage amount paid was refused and a decree for rescission of the contract for sale was passed and for delivery of possession with mesne profits.

4. It is perfectly open to the court in control of a suit for specific performance to extend the time for deposit, and this Court may do so even now to enable the plaintiff to get the advantage of the agreement to sell in her favour. The disentitling circumstances relied upon by the defendant-respondent are offset by the false pleas raised in the course of the suit by him and rightly negatived. Nor are we convinced that the application for consideration and extension of time cannot be read, as in substance it is, a petition for more time to deposit. Even so, specific performance is an equitable relief and he who seeks equity can be put on terms to ensure that equity is done to the opposite party even while granting the relief. The final end of law is justice, and so the means to it too should be informed by equity. That is why he who seeks equity shall do equity. Here, the assignment of the mortgage is not a guileless discharge of the vendor's debt as implied in the agreement to sell but a disingenious disguise to arm herself with a mortgage decree to swallow up the property in case the specific performance litigation misfires. To sterilise this decree is necessary equity to which the appellant must submit herself before she can enjoy the fruits of specific performance.

5. In the present case, with all that has been said by both sides - and we have heard at great length arguments by Shri Abdul Karim for the appellant and Shri S. K. Sen and Smt. Shyamala Pappu for respondents - it is clear that an opportunity for the appellant to deposit into court the amount directed by the trial Court, together with interest down to date at 11 per cent, should be accorded. We are not discussing the principles of law as they are well settled and do not require reiteration. The equitable terms we have adverted to earlier must be remembered in this context. The appellant who was bound to discharge the mortgage acted contrary to the agreement because, instead of paying the mortgage money and extinguishing the mortgage (which was, perhaps, a pardonable exercise, in lieu of deposit into court) she, under some ill-advice took an assignment of the equitable mortgage with a view to using it against the respondent. Surely, this was not consistent with the understanding assumed under the contract. This justifies the view of the High Court that as a price for the indulgence of being allowed to deposit long after the due date was over the unrighteous advantage gained by taking an assignment of the mortgage should be nullified. In brief, while the appellant may be allowed to deposit the amount due under the agreement, viz., Rs. 3,45,000 together with interest at 11 per cent from April, 1967 up to date, the mortgage decree in her favour must be extinguished, save to the extent of the cash then paid. The High Court expressed a slightly drastic though similar view, somewhat loosely, thus :

> After we have expressed our opinion and dictated this order, the learned Counsel for

> the plaintiff orally requests us to permit the plaintiff to deposit the entire amount as directed by the learned trial Judge in the Court. Having regard to the fact that no such stand was taken at any earlier stage and this request has been orally made only after we have dictated this order, we do not see any justification whatever for complying with this request. We may also point out that there is no actual undertaking given by the plaintiff herself that even if we give such an opportunity to the plaintiff to deposit the sum of Rs. 3,45,000 into this Court now, she will give up her right under the mortgage decree, which she has obtained against the defendant in the present suit in O.S. No. 154 of 1968.

6. We agree with the substance of this direction, but without going that far pass a conditional decree. We should have taken long pages and elaborate argument in substantiation of the course we adopt, but for reasons adduced at the very beginning, we decline to do so. We gather that in many jurisdictions the highest court, which hears the arguments at enormous length and has the advantage of a complete statement of facts and discussion of law in the judgment under appeal, limits itself to a severe economy of words in the statement of its reasoning. We regard this as a wholesome step. Natural justice necessitates full hearing, not a flood of words of forbidding length.

7. We direct that a decree be passed that the plaintiff-appellant do deposit within six months from today the entire sum of Rs. 3,45,000 together with interest due up to date at the rate of 11 per cent, together with an undertaking that she would give up all her rights under the mortgage decree passed in her favour in O.S. No. 154 of 1968, except to the extent of the amount actually paid to the South Indian Bank for taking the assignment. If these two conditions are fulfilled, the appeal will stand allowed and a final decree for specific performance passed. In the event of non-compliance with either of these conditions the appeal will stand dismissed with costs.

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