

His Holiness Acharya Swami Ganesh Dassji

Vs

Sita Ram Thapar

Slp (C) No. 9679 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

30.04.1996

ORDER

1. This is an illustrious case of dilatory tactics by the petitioner who entered into the contract to purchase the land of 500 sq. yds. in the heart of the city of Delhi by agreement dated 27-2-1975. The hard fact is that the defendant was in dire need of money to celebrate his daughter's marriage on 16-5-1975. The agreement was that the draft sale deed should be finalised within seven days and sale deed registered. Time is, therefore, the essence of the contract in this case. The defendant insisted upon payment of consideration in cash. The respondent sent the approved draft sale deed immediately but the petitioner did not give the final draft as contemplated by the agreement since he had to obtain the income tax clearance certificate which he did not obtain. Exts. 5 and 9, the letters written by the respondent do clearly indicate that the respondent was always willing to have the sale deed executed but the petitioner delayed the execution of the sale deed on one pretext or the other. The petitioner did not give any reply to any of the two letters. The learned Single Judge as also the Division Bench of the High Court have in extenso gone into the evidence and found that the petitioner was not ready and willing to perform his part of the contract. He did not have necessary cash for payment of the amount. The petitioner has produced before the Division Bench, by way of additional evidence, his account to show that he has got one lakh and odd. Even that fell short of the required amount. What is material in this case is that the respondent was in dire need of cash to celebrate the marriage of his daughter. The petitioner did not offer cash to the respondent. Under those circumstances, the High Court was clearly right in saying that the petitioner was not ready and willing to perform his part of the contract under clause (c) of Section 16 of the Specific Relief Act, 1963.

2. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform his part of the contract, the conduct has to be properly scrutinised. There is no documentary proof that the plaintiff had ever funds to pay the balance of consideration. Assuming that he had the funds, he has to prove his willingness to perform his part of the contract. According to the terms of the agreement, the plaintiff was to supply the draft sale deed to the defendant within 7 days of the execution of the agreement, i.e., by 27-2-1975. The draft sale deed was not returned after being duly approved by the petitioner. The factum of readiness and willingness to perform plaintiff's part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract. The facts of this case would amply demonstrate that the petitioner/plaintiff was not ready nor had the capacity to perform his part of the contract as he had no financial capacity to pay the consideration in cash as contracted and

intended to bid for the time which disentitles him as time is of the essence of the contract.

3. It is sought to be contended by Mr. B.K. Mehta, the learned Senior Counsel for the petitioner, that the petitioner has performed the essential terms of the contract. Essential terms of the contract is that he has to return the approved draft sale deed which he has already returned to him. But amendment sought in the sale deed is not of material particulars and is not an essential term and, therefore, the High Court was in error in considering this aspect of the matter. We find no force in the contention. The essential term of the contract is executing the sale deed within the stipulated period. He did not perform his part of the contract within the stipulated time. The High Court was right in refusing to enforce the contract. It being discretionary remedy, the High Court has exercised sound judicial discretion to negate the relief of specific performance of the contract.

4. The special leave petition is accordingly dismissed.