

SUPREME COURT OF INDIA

Coromandel Indag Products(P) Ltd.

Vs.

Garuda Chit & Trading Co. P. Ltd.

C.A.No.7021 of 2003

(P.Sathasivam and H.L.Gokhale,JJ.,)

16.08.2011

JUDGMENT

P.Sathasivam,J.,

1. This appeal is directed against the final judgment and decree dated 17.02.2003 passed by the Division Bench of the High Court of Judicature at Madras in O.S.A. No. 163 of 1994 whereby the appeal filed by the respondents herein was allowed.

2. Brief facts:

“(a) The appellant is a Private Limited Company (hereinafter referred to as "the appellant-Company) registered under the Companies Act, 1956 and is carrying on the business of manufacturing, selling, exporting, trading in and distribution of Pesticides, Chemicals and Agro Chemicals. Respondent No. 1 is also a Private Limited Company (hereinafter referred to as "the respondent-Company") registered under the Companies Act, 1956 in which Mr. T.P. Narayanan - respondent No.2 is the Chairman and Director and appeal against him stood dismissed vide this Court's order dated 19.07.2004. Mr. T.K. Gopinath (since died) was the Managing Director - respondent No.3 and his legal representatives are on record. In the year 1981, the appellant-Company required a property around Mount Road Area near Mylapore, Madras for establishing a Research and Development Centre. Respondent-Company, on coming to know about the said requirement, offered its property measuring 12 grounds 33 sq. ft. with buildings at Door No. 46, Cathedral Road, Madras. The officials of the appellant-Company inspected the property and after getting it evaluated by an Authorized Valuer offered a price of Rs.82 lakhs for the entire property and the Respondent Nos. 2 & 3 herein accepted the same. Thereafter, an Agreement for Sale was executed between the parties on 28.08.1981 and a sum of Rs. 2 lakhs was paid by way of cheque as advance.

(b) Pending investigation of title of the respondent-Company to the suit property, the appellant-Company entered into the said agreement since the respondents desired a firm commitment to be made. Clauses 3 and 4 of the said Agreement put the vendor under an obligation to produce all documents of title in its possession or control relating to the suit property for the investigation and approval of the appellant-Company. Besides, getting other necessary clearances, the respondents were also required to get the Income Tax Clearance Certificate as specified under Section 230-A of the Income Tax Act, 1961.

(c) In accordance with the above, the appellant-Company called upon the respondents to furnish the documents of title, the details of the encumbrances on the property, if any, and also Income Tax Clearance Certificate and other necessary clearances to complete the sale. On 09.09.1981, the respondents furnished the Income Tax Clearance Certificate dated 07.09.1981 and promised to furnish the other required documents very soon. They also demanded a further payment of Rs. 10 lakhs as advance pending finalization of the sale to which the appellant-Company did not agree.

(d) As the respondents did not furnish the required documents, the appellant-Company issued a letter dated 14.09.1981 calling upon them to furnish the required documents. Instead of furnishing all the required documents, as sought for, the respondents, vide letter dated 15.09.1981, called upon the appellant-Company to expedite the sale. Thereafter, on 19.09.1981, the appellant-Company again requested the respondents to furnish the solvency certificate. In response to the above-said letters, the respondents orally apologized for the delay and promised to furnish the required details at the earliest and respondent No.2 also requested for a further payment of Rs.10 lakhs as advance to enable them to discharge the mortgage subsisting in favour of Bank of India. The appellant-Company paid Rs. 5 lakhs to respondent No.2 on 21.09.1981 on the undertaking that the documents called for would be sent by 30.09.1981. Again on the request of respondent No.2, the appellant-Company paid a further sum of Rs. 5 lakhs to meet the Urban Land Ceiling Clearance. A total sum of Rs. 12 lakhs was paid to the respondents. On 19.10.1981, respondent No.2 again requested a sum of Rs. 2 lakhs to meet certain statutory compliance which was a charge on the property. Taking full details of such liabilities, the appellant-Company paid a sum of Rs.1,10,000/-. As the respondents did not furnish the required documents till the end of 1981, the appellant-Company sent a notice dated 19.01.1982 calling upon them to perform their obligation under the agreement dated 28.08.1981 as also to fulfil their personal undertakings. Notice was served only on respondent No.2 but the notice on respondent Nos. 1 and 3 were returned back with the remarks "unserved". In reply to the said notice, respondent No.2 said that he is not personally liable for the payment made by the appellant-Company.

(e) In the said circumstances, the appellant-Company was compelled to file a suit for specific performance on 10.05.1982 in the High Court of Judicature at Madras and the

same was numbered as C.S. No. 287 of 1982. The learned single Judge of the High court by judgment dated 01.06.1993 decreed the suit and directed the respondents herein to execute the sale deed in favour of the appellant-Company and granted three months' time to the appellant-Company to pay the balance of the sale consideration.

(f) Challenging the judgment of the learned single Judge, the respondents preferred O.S.A. No. 163 of 1994 before the High Court. By impugned judgment dated 17.02.2003, the Division Bench of the High Court allowed the appeal. Aggrieved by the said judgment of the Division Bench, the appellant-Company preferred this appeal by way of special leave petition before this Court.

3. Heard Mr. K.V. Viswanathan, learned senior counsel for the appellant-Company and Mr. K.K. Venugopal, learned senior counsel for respondent No.1 and Mr. V. Giri, learned senior counsel for LR's of respondent No.3.

Points for consideration:

4. The only question for consideration is whether the decree granted by the learned single Judge of the High Court for specific performance based on the Agreement for Sale dated 28.08.1981 is sustainable, or the Division Bench is justified in concluding that the appellant-plaintiff has not made out a case for a decree of specific performance in allowing the appeal and setting aside the decree passed by the trial Court by dismissing the suit.

Discussion as to Agreement for Sale

5. In order to consider the rival claims, it is desirable to verify the relevant clauses from the Agreement for Sale dated 28.08.1981. In the beginning, the Vendor-Respondents herein, specifically asserted that they are the sole and absolute owner and in exclusive possession and enjoyment of all the land mentioned in the Schedule together with a multi-storey building, sheds, garages, outhouses, fixtures and fittings thereon situated at Cathedral Road, Teynampet, Madras bearing present Door No. 46, Old No. 31, T.S. No. 1238/1A, R.S. No. 1233/1 and 1233/5 measuring 12 grounds 33 sq. ft. The Agreement clearly stipulates that the Vendor requires substantial cash for meeting its business purposes and, therefore, decided to sell the said property. It makes it clear that by resolution dated 16.07.1981, the Board of Directors of the Vendor have authorized Shri K.S. Hari, General Manager, to negotiate and sell the said property and to execute the sale deed. It also makes it clear that the Vendor has agreed to sell and the purchaser has agreed to purchase the said property at a price consideration of Rs. 82 lakhs free from all encumbrances and claims whatsoever on the terms and conditions set out in the agreement.

6. Among the various clauses, we are concerned with the following clauses in the Agreement for Sale. They are:

"3. The Vendors shall produce or cause to be produced to the purchaser all the documents of title in their possession or control or relating to the said property for the investigation of the Vendor's title thereto.

4. The sale shall be subject to the approval of the title of the vendor to the said property agreed to be sold herein by the advocate for the Purchaser and the Vendor shall at its own costs and expenses get in all outstanding estates and clear all defects in title and encumbrance and claims on or to the said property.

6. The sale shall be completed on or before 05.09.1981 or within one week from date of furnishing a Certificate under section 230-A of the Income Tax Act of 1981 by the Vendor whichever is later, upon the payment of Rs. 48 lakhs out of the said purchase money by the purchaser to the Vendor, the balance being payable as hereinafter provided, the vendor and all other necessary parties if any shall execute a proper conveyance of the said property in one piece or in several portions in favour of the purchaser or such other person or persons the Purchaser shall nominate."

7. The Purchaser shall pay at any time of the Registration of the sale deed a sum of Rs. 48 Lakhs out of the said price and the balance in the following manner:-

1. Rs. 10 lakhs on or before 07.10.1981

2. Rs. 11 lakhs on or before 07.11.1981

3. Rs. 11 lakhs on or before 07.12.1981 The said balance of Rs. 32 lakhs payable in three installments as aforementioned shall not carry any interest. If the purchaser fails to pay the amounts as stipulated above, the balance amount shall carry interest at 18% per annum till date payment.

10. The Vendor shall at its cost obtain the required clearance certificate under Section 230-A of the Income Tax Act and obtain requisite permission or sanctions from any authorities as may be necessary for the purpose of effectual completion of the sale of the property."

The above Agreement to Sell entered into on 28.08.1981 has certain important provisions which provide a clear understanding of motivation of both the parties. Clause 3 extracted above provides that the Vendor/respondents shall produce or cause to be produced all the documents relating to title of the property to the purchaser. Clause 4 provides that the sale shall be subject to the approval of the purchaser's advocate. Clause 6 makes the completion of sale incumbent on the date of furnishing the Income-tax Certificate by the Vendor and payment of Rs. 48 lakhs by the purchaser. Clause 10 makes it clear that it is the responsibility of the Vendor to obtain the required clearance certificate under Section 230-A of the Income-tax Act and also obtain requisite permission or sanction from other authorities, as may be necessary, for the purpose of completion of the sale of the property. Clause 13 provides that if the title of the Vendor is not approved by the Purchaser's advocate, the Purchaser would be entitled to cancel the Agreement. Clause 14 entitles the Purchaser for a suit

for specific performance in the event of breach of any of the terms of the Agreement by the Vendor or the return of the amount taken as advance by the Vendor together with a sum of Rs. 1 lakh as liquidated damages. Clause 15 ensures that the Agreement shall come to an end if there is a breach by the Purchaser. With these clauses and understanding by both the parties, we have to analyze their claim and decide the case one way or the other.

Whether time is essence of the contract:”

7. If we verify the various clauses from the Agreement for Sale, it is clear that the Vendor-Respondent Company herein was in need of money for meeting its business purposes. The appellant-Company has very much relied on Clauses 3 and 4 of the Agreement which we have already extracted. Those clauses mandate the Vendor to produce all the documents of title in their possession and hand over the same to the Purchaser for investigation by the Purchaser. It also makes it clear that all those documents be placed before the advocate of the Purchaser for scrutiny and approval and, thereafter, the Vendor at its own costs and expenses clear all defects in title and encumbrances and claims on or to the said property.

8. In order to strengthen their claim that time is essence of the contract, the respondents have heavily relied on Clauses 6 and 7 which are extracted in the paragraphs supra. It is clear from Clause 6 that the sale shall be completed on or before 05.09.1981 or within a period of one week from the date of furnishing a Certificate under Section 230-A of the Income-tax Act, 1981 by the Vendor. It is clear from Clause 7 that on the date of the Registration of the Sale Deed, the Purchaser has to pay Rs. 48 lakhs out of the amount of Rs. 82 lakhs. According to the vendor, the balance being payable in the following manner:

“1. Rs. 10 lakhs on or before 07.10.1981

2. Rs. 11 lakhs on or before 07.11.1981

3. Rs. 11 lakhs on or before 07.12.1981

It is also clear from Clause 7 that the balance of Rs. 32 lakhs payable in 3 instalments shall not carry any interest. However, if the Purchaser fails to pay the amounts as stipulated above, the balance amount shall carry interest @ 18% p.a. till date of payment. It is clear that when there was a specific understanding between the parties as reflected in the above-mentioned clauses in the Agreement within which period the sale was to be completed, it has to be construed that the intention of the parties was to treat the time as essence of the contract. Though the respondents had agreed to receive the balance of Rs. 32 lakhs in instalments for a period of 3 months after the registration of the sale deed which also makes it clear that both parties have agreed to complete the entire transaction as early as possible which prove that time is essence of the contract. Though the appellant- Company relying on Clauses 3 and 4 of the Agreement contended that the respondents failed to produce all the required

documents including the documents pertaining to title and encumbrances and claims on or to the property, there is no basis for such a claim.”

9. It is also relevant to point out the stand of the parties as reflected in their pleadings and evidence. In terms of Section 16(c) of the Specific Relief Act, 1963, it is incumbent on the party, who wants to enforce the specific performance of a contract, to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract. Explanation appended to this sub-section (c) makes it clear that if a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court. However, the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction. It is seen from the pleadings that necessary averments have been made in terms of sub-section (c) of Section 16. On the side of the plaintiff, James Fadric was examined as PW-1. He explained the urgency and the need to sell the property. He also explained that the company had a cash crunch problem. No doubt, he also referred that the company was facing liquidity proceedings before the High Court of Bombay and necessary application had been filed before the Company Court at Bombay for settlement of the scheme to avoid liquidation which we are not concerned. The fact remains that at the relevant time, Vendor/Respondent-Company was in dire need of money for their commercial transactions and decided to sell the property in question, particularly, to meet the immediate need of their creditors. We have already adverted to the payment of Rs. 2 lakhs as advance on the date of execution of the agreement dated 28.08.1981. On 21.09.1981, a further sum of Rs. 5 lakhs was paid and by mutual consent, the time was extended to 30.09.1981. On 06.10.1981, another sum of Rs. 5 lakhs was advanced by the appellant-Company and the time for completion of the Sale Agreement was extended up to 14.10.1981. Again, for the third time, that is on 19.12.1981, time was extended for the completion of the transaction up to 31.12.1981 on payment of Rs.1,10,000/-. As rightly pointed out by Shri K.K. Venugopal and Shri V. Giri, learned senior counsel appearing for the respondents, the payment of money in short intervals and also the extension of time for completion of the transaction within the prescribed period clearly show that both the parties wanted to complete the transaction as early as possible without further extension. Inasmuch as the Vendor was in dire need of money at every occasion and the need for such short term extension clearly shows that the parties intended to treat the time as essence of the contract. It is also relevant to point out that Clause 7 of the Agreement, which we have already extracted, makes it clear that at any time of registration of the sale deed, the appellant shall pay a sum of Rs. 50 lakhs, after deducting the advance amounts already paid and the balance of Rs. 32 lakhs is to be paid after registration of the sale deed in three installments as mentioned above. This would also reveal the intention of the parties to treat the time as essence of the contract. From the various clauses in the Agreement for Sale which we have referred to, pleadings, evidence and the conduct of the parties, we hold that parties have agreed that the time is essence of the contract and the same has to be adhered to strictly. Readiness and willingness:

10. Learned counsel for the respondents urged that several requests by the appellant-Company for various documents which are not provided in the terms of the Agreement show

their intention that they wanted to delay the proceedings. On the other hand, learned counsel appearing for the appellant- Company submitted that they were justified in asking for those documents in order to satisfy the title of the property. It is true that in the Agreement, it is stated that Vendor has to produce all the documents of title in their possession relating to the property to the Purchaser for investigation relating to title. In Clause 10, there is a specific reference to the production of clearance certificate under Section 230-A of the Income-tax Act and obtain permission or sanction from any authorities that may be necessary for the purpose of sale of the property. It is true that when the appellant-Company being a Purchaser investing a huge sum of Rs. 82 lakhs, they are entitled to clear all their doubts in respect of the title. In terms of Clause 6 of the Agreement, sale has to be completed on or before 05.09.1981 or within one week from the date of furnishing the certificate under Section 230-A of the Income-tax Act whichever is later and upon payment of Rs. 48 lakhs out of the agreed amount of Rs. 82 lakhs to the Vendor. Admittedly, the respondents produced Income-tax Clearance Certificate even on 09.09.1981. It is to be noted that only after production of I.T. Clearance, the appellant-Company, vide letter dated 14.09.1981, addressed to Mr. K. S. Hari, General Manager of the Respondent-Company sought further particulars relating to mortgage on the Bank of India, arrears of urban land tax, property tax, exemption certificate from the urban land ceiling authorities, encumbrance certificate, latest audited balance-sheet, list of creditors, solvency certificate, details of attachment and particulars about winding up proceedings alleging that they have not received the same to be forwarded to their advocates. The said letter is available as Annexure-P2. In pursuance of the said letter, the respondents sent a reply on 15.09.1981 "by hand delivery" to the appellant-Company specifically stating that after being fully satisfied about the title, the appellant-Company prepared the draft sale deed and after a combined discussion at their office on 07.09.1981, the same was approved and thereafter, the respondents obtained necessary certificate dated 09.09.1981 under Section 230-A of the Income-tax Act and the same was also intimated to them. In the same letter, it was pointed out that as per the Agreement of Sale and consensus arrived at between the parties, the appellant-Company has to complete the sale within one week from 09.09.1981. It was also pointed out that in spite of several promises and assurances, the appellant-Company could not fulfill their promise and also that because of this delay, they are suffering heavy loss and the very object of sale is being defeated. It was also pointed out that so far they have spent heavy sums and satisfied all their requirements and finally requested to do the needful immediately for completion of the sale transaction. The said letter is marked as Annexure-P3.

11. It is not in dispute, more particularly, from the evidence of PW-1 that the legal advisor of the appellant-Company scrutinized the title deeds before entering into Agreement. They also visited the site along with their lawyers and finally after satisfying all the materials, their lawyers gave opinion with regard to the clear title of the property. As stated earlier, only after getting their clearance, draft sale deed was prepared to enable the respondents to get certificate under Section 230- A of the Income-tax Act. Curiously, in his evidence, P.W.1 has stated that the matter got delayed only due to the non-production of exemption certificate from urban land ceiling authorities. It is true that as per Clause 3 of the Agreement, respondents have to produce all the documents pertaining to the title of the suit property. We

have already extracted Clause 4 of the Agreement which speaks about the approval of title by the appellant's advocate.

12. It is further seen that after payment of Rs. 2 lakhs as advance on the date of execution of the Agreement, monies to the extent of Rs. 11,10,000/- were paid on various dates in order to satisfy and comply with all statutory requirements. It is relevant to point out in the Agreement that there is no specific reference to the production of an order from the competent authority under the Urban Land Ceiling Act with regard to exemption. From the materials placed, we are satisfied that the appellant-Company was not justified in calling for several documents when admittedly, their lawyers perused all the relevant documents and on their advise, draft sale deed was prepared and that too after proper inspection of the site and building. In other words, production of clearance certificate from the competent authority under the Urban Land Ceiling Act was not specifically intended at any point of time. We are satisfied that as rightly argued by learned senior counsel for the respondents that the information sought for by the appellant-Company was only to delay the transaction and it was not always ready and willing to perform in terms of Section 16(c) of the Specific Relief Act, 1963.

Conduct of the parties:

13. We have already stated that the Agreement for Sale includes land and building. The building stands on more than 500 sq. mts. of land in addition to the plinth area. The building is a five-storeyed one for which building permission had been obtained as per the provisions of Town Planning Authority and as per the orders of the Corporation of Madras. It is also seen that the building was under construction at the time the Urban Land (Ceiling and Regulation) Ordinance, 1976 was passed. Section 3(h) of the Act defines "land appurtenant" which reads thus:

"(h) "land appurtenant", in relation to any building means an extent of five hundred square metres contiguous to the land occupied by such building and includes,-

(i) in the case of any building constructed before or under construction on the commencement of this Act with a dwelling unit therein, or

(ii) in the case of any building proposed to be constructed with a dwelling unit therein and in respect of which the plan for such building has been approved by the appropriate authority before the commencement of this Act, an additional extent not exceeding five hundred square metres of land, if any, contiguous to the said extent of five hundred square metres of land: Provided that in relation to a multi-storeyed building, the extent of land contiguous to the land occupied by such multi-storeyed building permitted according to the plan approved by the appropriate authority shall be deemed to be the land appurtenant;"

It is not in dispute that the plan had been approved by the Competent Authority.

14. As rightly pointed out by learned senior counsel for the respondents, the proviso to the definition states that in the case of multi-storeyed building, the extent of land contiguous to the land occupied by such multi-storeyed building permitted according to the plan approved by the appropriate authority shall be deemed to be the land appurtenant. In view of the same, the entirety of the land in and around the five-storeyed building would come outside the vacant land under Section 3 (p) of the Act which reads as under:

"(p) "Vacant land" means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration but does not include-

(i)

(ii) in an area where there are building regulations—

(a) the land occupied by any building constructed before, or under construction on the commencement of this Act with the approval of the appropriate authority and the land appurtenant to such building."

It is clear that in the case of multi-storeyed building which was under construction at the date of commencement of the Act with building plans duly approved, no part of the land attached to the building would come within the scope of the Act. By refusing to pay the balance consideration to purchase the property by getting the sale deed registered, the appellant- Company has not only committed a breach of the Agreement but also showed that it was not ready and willing to complete the Agreement. In those circumstances, the argument assailing the judgment of the Division Bench of the High Court is liable to be rejected."

About title inspection by the lawyers:

15.It is relevant to narrate the actual question and answers by P.W.1 during cross-examination which reads as under:

"Q: Did you inspect the title deeds through your lawyer?

A: Yes.

Q: Did you examine the title deeds before entering into the agreement?

A: We did get the title deeds examined by the lawyer.

Q: I asked you did you get any legal opinion from your lawyer prior to entering into the agreement.

A: Yes.

Q: Have you got the legal opinion?

A: Not in writing asked him to examine the title deed and let us know whether the title deed is in order.

Q: What did he say?

A: He said, the title deed normally could be in order, but he had asked for certain other information such as encumbrance certificates, Urban Land Ceiling Clearance from the Government of India and Government of Tamil Nadu, etc. Q: Your office prepared any report on title. A: My legal department always traces title, it is good and competent to peruse the title deeds.

Q: Your legal department is your staff?

A: Yes.

Q: Was any report on title obtained from the lawyer?

A: Yes.

Q: When was that obtained?

A: Somewhere between 20th to 28.8.1981

Q: Have you produced the legal opinion before this Court?

A: No, it is internal affair and we felt it is not necessary.

Q: Have you got the opinion?

A: I am not sure, I am able to find out.

Q: Did they produce all documents of title for approval?

A: Yes. They fulfilled clause No.3

Q: Clause No.4 that also the defendant did not?

A: No.

Q: What do you mean by saying no?

A: Because they have not provided encumbrance to the title deeds, which is part of the title deed, they had applied for Urban Land Ceiling exemption, which they have not disclosed.

Q: Is there any mention about Urban Land Ceiling Clearance?

A: It is not mentioned in the agreement, but I would like to and it is obligatory on the part of the defendant to go through the implications of Section 6 of the Urban Land Ceiling Act.

Q: According to you, unless they do not furnish details of obtaining Urban Land Ceiling clearance, you are not prepared to purchase?

A: No. This is the condition of the negotiation. The vendor has always been acknowledging to produce the documents required by us before we put through the sale. This is also seen in all stamped receipts for which monies were paid even after 230-A clearance obtained."

16. It is also brought to our notice that the State Government in 1995 nearly 10 years after the filing of the suit, claimed 872 sq.mts. as being the excess land above the ceiling limit for which the appellant-Company had filed a writ petition being No. 6312 of 2000 before the High Court. Though the filing of the said writ petition and the ultimate order on 04.08.2005 were not brought to our notice by filing appropriate petition inasmuch as the said fact was not in dispute, we referred to the said decision of the High Court rendered in Writ Petition No. 6312 of 2000. That writ petition came to be filed by the respondent Company for issuance of a writ of mandamus to forebear the State and the competent authority under the Urban Land Ceiling from enforcing the provisions of the Act which has been repealed by Tamil Nadu Act No. 20 of 1999 w.e.f. 16.06.1999 insofar as the land of the petitioner therein (respondents herein at Door No. 46, Cathedral Road, Chennai in R.S. No. 1238/9 Mylapore, Village) is concerned.

17. It is true that despite the fact that there was no provision in the Act laying down the process for seeking an exemption from its operation, the respondent-Company wrote to the Deputy Secretary, Revenue Department, Government of Tamil Nadu on 26.12.1979 seeking such exemption. As there was no response, as rightly pointed out, it was understood that as the proviso to Section 3 applies to the land and no further exemption was needed. It is relevant to point out that the appellant-Company made further applications on behalf of the respondents but to no avail. The entire land is in the enjoyment and possession of the respondent-Company and no part of the land has been taken over by the Government.

18. In the light of the above discussion, we are unable to agree with the claim of the appellant-Company, on the other hand we are in entire agreement with the conclusion arrived at by the Division Bench of the High Court. Consequently, the appeal fails and the same is dismissed. However, parties are directed to bear their own costs.

