

SUPREME COURT OF INDIA

Urvashi Aggarwal

Vs.

Kushagr Ansal

C.A.No.2525 of 2019

(L.Nageswara Rao and Mohan M.Shantanagoudar,JJ.,)

06.03.2019

JUDGMENT

L.Nageswara Rao,J.,

SLP(Civil) No. 32480 of 2018

1. Leave granted.
2. The correctness of the judgment of the High Court, affirming the judgment of the Trial Court, by which the suit for specific performance filed by the Appellant and his mother Smt. Urvashi Aggarwal (since deceased) was dismissed, is the issue in the above appeal. The parties are being referred to as they are arrayed in the suit.
3. The plaint averments are that Justice Chander Bhan Aggarwal, father-in-law of the First Plaintiff (Smt. Urvashi Aggarwal) took the first and second floors of the property at 82, Jor Bagh, New Delhi on rent from Smt. Suraj Kumari (since deceased). After the death of Justice Chander Bhan Aggarwal in 1973, the tenancy of first and second floors of the property was transferred to M/s Vinod Industries Limited (of which the First Plaintiff was a Director). On 05.10.1974, the First Plaintiff and her son Rajiv Chander Aggarwal (since deceased) entered into an agreement with Smt. Suraj Kumari (original Defendant No.1) for the sale of the above property ('Agreement'). The consideration for the sale of the property was fixed at Rs.1,85,000/-. The relevant conditions pertaining to the payment of the amount of consideration and the other rights that were conferred on the parties were mentioned in the plaint. According to the Plaintiffs, the sale deed had to be executed by the Defendant No.1-Smt. Suraj Kumari after obtaining permission from the Land and Development Office (L&DO) and from the Income Tax Department. It was stated that the Plaintiffs paid an amount of Rs.20,000/- on 05.10.1974, Rs.40,000/- on 31.01.1975 and Rs.10,000/- on 26.12.1975. According to them, they were put in proprietary possession of the premises on payment of Rs.70,000/- as stipulated in the Agreement.
4. M/s Vinod Industries stopped paying the rent to Smt. Suraj Kumari as it had become a tenant of the Plaintiffs as per the Agreement. The tenant of the ground floor- Shri A.C. Deb

had to pay the rent to the Plaintiffs as per the Agreement. The Plaintiffs permitted the First Defendant to collect the rent from Shri Deb, the tenant of the ground floor which would be adjusted later against the balance amount payable by them towards the sale consideration. Shri Deb died in 1985 and his wife continued to live on the ground floor. Mrs. Deb vacated the ground floor premises at the end of September, 1987. After Mrs. Deb vacated the ground floor, the Defendants started making repairs. On an enquiry made by the Plaintiffs, the Defendants informed them that the Defendant No.4 intended to occupy the ground floor for which reason the repairs were being made. The Plaintiffs demanded specific performance of the Agreement on 13.10.1987 but the Second Defendant refused to convey the property which gave rise to a cause of action to file the suit. The Plaintiffs stated that from 1975 onwards the First Plaintiff's husband was continuously enquiring with the Second Defendant about the status of the permission by the L&DO. He was being informed that the permission was not granted. The Plaintiffs pleaded that they were always ready and willing to perform their part of the Agreement and alleged that the Defendants were guilty of breach of the Agreement. On the basis of the said averments, the Plaintiffs sought a decree for specific performance and a direction to the Defendants to execute the sale deed for the suit property, a prohibitory injunction restraining the Defendants from occupying or permitting others to occupy the ground floor of the said property, and a mandatory injunction to the Defendants to remove the wall constructed on the side gate of the property.

5. The Defendants filed a written statement in which they contended that the suit was barred due to laches and that it was liable to be dismissed as the Plaintiffs were not ready and willing to perform the essential terms of the Agreement. There was no denial about the execution of the Agreement dated 05.10.1974 but the averment pertaining to the Plaintiffs complying with the conditions of the Agreement was seriously disputed by the Defendants. According to the Defendants, time for payment was of the essence of the contract and the Plaintiffs failed to make the payment as stipulated in the Agreement. The allegation made by the Plaintiffs that inquiries were being made about the status of the application before the L&DO was denied. The Defendants categorically stated in the written statement that the Agreement was never changed, varied, or modified. The Defendants asserted that the Plaintiffs were never put in proprietary possession of any part of the property, the tenant on the ground floor continued to pay the rent to the First Defendant, the house-tax, ground rent etc. were being paid by the First Defendant, and M/s Vinod Industries stopped paying rent to the First Defendant. Apart from the other averments, the Defendants also stated in the written statement that a petition for eviction against the tenant on the ground floor was filed by the Defendants and they ultimately settled the matter with Mrs. Deb who vacated in 1987. Finally, the Defendants pleaded that the Plaintiffs were never ready and willing to perform their part of the contract and hence, the suit was liable to be dismissed.

6. The Trial Court framed the following issues:

"1. Whether the suit is within limitation?

2. Whether the suit is not bad for misjoinder of parties in cause of action?

3. Whether the Agreement to sell dated 5/10/74 was amended and varied by the parties with regard to payment of Rs. 50,000/- upto 31/10/74 and the balance sale consideration in installments of Rs.7,000/- commencing from January 1975 till full payment of the sale consideration as alleged? If so, to what effect?
4. Whether the amount of Rs. 10,000 paid by the plaintiffs was towards installment of Rs. 50,000 as alleged by the plaintiff?
5. Whether the plaintiff was put into proprietary possession of the entire suit property by defendant no. 1 as alleged in para 15 of the plaint?
6. Whether there is a subsisting Agreement to sell capable of specific performance as alleged?
7. Whether the defendant committed breach of the contract?
8. Whether the plaintiff has been ready and willing to perform the Agreement to sell?
9. Whether time for payment was not the essence of the contract, as alleged by the plaintiff?
10. Whether the Agreement to sell was breached, repudiated, abandoned, and given up, as alleged by the defendant?
11. Whether the plaintiffs are entitled to specific performance of the Agreement to sell dated 5/10/74 and to what other relief or reliefs are the plaintiffs entitled to and against whom?
12. Relief."

7. The Trial Court dismissed the suit by concluding that time was of the essence of the Agreement. The Plaintiffs were held to be neither ready nor willing to perform their part of the Agreement and that the suit was filed beyond the prescribed period of limitation. The High Court dismissed the Plaintiffs' appeal and affirmed the judgment of the Trial Court agreeing with the submissions of the Defendants that the suit was barred by limitation and that the Plaintiffs failed to prove their readiness and willingness to perform the essential terms of the Agreement.

8. Before embarking upon the adjudication of the dispute, it would be relevant to refer to the relevant terms of the Agreement entered into between the Plaintiffs and the Defendants. The suit property was agreed to be sold at a price of Rs.1,85,000/-. The first instalment of Rs.20,000/- was to be paid at the time of signing the Agreement and the second installment of Rs.50,000/- was due by 31.10.1974. Balance amount was payable in instalments of Rs.7,000/- per month beginning from the 1st week of January, 1975 until the total amount was paid. No interest was payable on the deferred payment schedule till December, 1975.

A simple interest at the rate of 12% p.a. was payable on the balance amount from January, 1976 every month along with the installments of Rs.7,000/- per month. The rate of interest was increased from 12% to 24% if all the payments were not made as per the schedule. On payment of the first two installments of Rs.20,000/- and Rs.50,000/-, the Plaintiffs were entitled to receive the rents from Shri A.C. Deb who was residing on the ground floor as a tenant and M/s Vinod Industries. The liability for payment of the house tax, ground rent and all other outgoings had to be borne by the Plaintiffs after the Plaintiffs started receiving the rents from Shri A.C. Deb and M/s Vinod Industries. The Plaintiffs were made responsible for taking steps to evict the tenants. The Defendants had to get the necessary permission to sell the property from the L&DO before the date of execution of the sale deed as well as the necessary permission from the Income Tax Authorities. Clause 10 of the Agreement provided that the sale deed shall be executed before 31.03.1975. In case of failure on the part of the Defendants to execute the sale deed, the Plaintiffs were given the right to get the suit property conveyed by specific performance through the Court.

9. We have heard Mr. Jayant Bhushan, learned Senior Counsel for the Appellants/Plaintiffs and Mr. Sachin Datta, learned Senior Counsel for the Respondents/Defendants. Mr. Jayant Bhushan submitted that the suit was filed within the prescribed period of limitation and the findings of the Courts below that the suit was barred by limitation are unsustainable. According to him, no cause of action accrued for filing a suit on 31.03.1975, which was the date fixed for execution of the sale deed, as there was no permission granted by the L&DO for transfer of the property as on that date. He submitted that a sale deed could not have been executed without the permission from the L&DO. He relied upon Section 63 of the Indian Contract Act, 1872 to urge that the date fixed for execution of the sale deed could be extended. There is no dispute about the pendency of the application filed by Smt. Suraj Kumari before the L&DO even on 31.03.1975. He argued that the conduct of both the Plaintiffs and the Defendants after 31.03.1975 would show that the date fixed for execution of the sale deed on 31.03.1975 stood extended. He stated that once the date fixed in the Agreement was extended and no new date was fixed, the second part of Article 54 of the Schedule to the Limitation Act, 1963 (Limitation Act) would apply and the limitation for filing the suit would start from the date of refusal to perform the Agreement. There was no refusal to perform the Agreement by the Defendants until 1987 and thereafter, the suit was filed within the period of limitation. Mr. Bhushan contended that Section 16(c) of the Specific Relief Act, 1963 stood complied with as the Plaintiffs pleaded and proved their readiness and willingness to perform the essential terms of the Agreement. He submitted that there was no doubt about the financial capacity of the Plaintiffs in paying the balance sale consideration due to their affluent background. In view of the friendly relations between Vinod Chander Aggarwal, the husband of the First Plaintiff and Sushil Ansal, Defendant No.2 (not a party to the Agreement), it is submitted by Mr. Bhushan that the Plaintiffs believed that the application for permission before the L&DO was still pending and in any event, the Defendants did not inform the Plaintiffs about the permission granted by the L&DO in the year 1977. Assuming that time is the essence of the Agreement, according to Mr. Bhushan, Section 55 of the Indian Contract Act provides for the contract becoming voidable at the instance of the Plaintiffs which option was not exercised by them. In case, time is not the essence, the Plaintiffs are entitled for damages. He further stated that the Defendants did not terminate the Agreement and did not refund the amount

paid by the Plaintiffs toward part of the sale consideration.

10. Mr. Sachin Datta, learned Senior Counsel appearing for the Defendants submitted that the limitation for filing the suit started on 31.03.1975, which was the date fixed for performance of the Agreement. As the suit was not filed within three years from that date, it was barred by limitation. He referred to the findings recorded by the Courts below that the agreement was neither varied nor modified. He further submitted that the non-fulfilment of the condition pertaining to obtaining permission cannot be an excuse for the Plaintiffs to not file a suit for specific performance within the prescribed period of limitation. According to him, the second part of Article 54 of the Schedule to the Limitation Act is not applicable to this case. He asserted that there was an inordinate delay in filing the suit which by itself is a ground for dismissal of the suit. The torpid silence of the Plaintiffs in not resorting to a legal remedy within a reasonable period tantamounts to their abandoning the Agreement. Finally, Mr. Datta submitted that the findings of fact on the point of readiness and willingness cannot be interfered with by this Court in exercise of its jurisdiction under Article 136 of the Constitution of India.

11. There are essentially two points that arise for our consideration in this case. The first relates to limitation. A specific date i.e. 31.03.1975 was fixed for performance of the Agreement, i.e. execution of the sale deed. As per Article 54 of the Schedule to the Limitation Act, when a date is fixed for performance of the contract, the period of limitation is three years from such date. The cause of action has arisen on 31.03.1975 and the suit ought to have been filed within three years from that date. Admittedly, the suit was filed only in the year 1987. However, the submission of the Plaintiffs is that the date fixed for performance of the Agreement stood extended by the conduct of the parties. It was submitted that even after 31.03.1975, the Defendants were pursuing the application filed for permission before the L&DO with the cooperation of the Plaintiffs. The further submission of the Plaintiffs is that without the permission of the L&DO, the sale deed could not have been executed on 31.03.1975. Therefore, the Plaintiffs submit that the date fixed by the agreement for the execution of the sale deed stood extended. It is settled law that the vendee cannot claim that the cause of action for filing the suit has not arisen on the date fixed in the contract on the ground that certain conditions in the contract have not been complied with. (See: *Fateh Nagpal & Co. v. L.M. Nagpal*¹, *Vishwa Nath Sharma v. Shyam Shanker Goela*² and *K. Raheja Constructions Ltd. v. Alliance Ministries*³).

12. On a detailed consideration of the evidence on record, the Courts below have come to the conclusion that the clauses in the Agreement have neither been amended nor varied. Merely because the Defendants were pursuing the application filed for permission before the L&DO, it cannot be said that the date fixed for performance of the Agreement stood extended. We agree with the findings of the Courts below that the suit ought to have been filed within three years from 31.03.1975 which was the date that was fixed by the Agreement. The submission made on behalf of the Plaintiffs that part II of Article 54 of the Schedule to the Limitation Act applies to this case and that the suit was filed within limitation as the refusal by the Defendants was only in the year 1987 is not acceptable. Moreover, the Plaintiffs have not performed their part of the Agreement within a reasonable period. As per the Agreement, the Plaintiffs were given the right to get the sale

deed executed through the Court in case of failure on the part of the Defendants to execute the sale deed by 31.03.1975. The Plaintiffs filed the suit 12 years after the date fixed for performance. It is relevant to refer to the judgment of this Court in *K.S.Vidyanadam v. Vairavan*⁴ wherein it was held as follows:

"Even where time is not of the essence of the contract, the plaintiffs must perform his part of the contract within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property."

12. The silence maintained by the Plaintiffs for about 12 years amounted to abandonment of the Agreement and we approve the finding in this regard made by the Trial Court.

13. The Courts below have found that the Plaintiffs failed to prove their readiness and willingness to perform their part of the Agreement. The failure on the part of the Plaintiffs in not paying the monthly instalments of Rs.7,000/-, not collecting the rent from the tenant on the ground floor, not paying the house tax etc., and not taking any action for eviction of the tenant on the ground floor are some of the points held against the Plaintiffs by the Courts below which show that they were not ready and willing to perform their part of the Agreement. There is no compelling reason to re-examine the said findings of fact by the Courts below in exercise of our jurisdiction under Article 136 of the Constitution of India. We are in agreement with the view of the Courts below that the Plaintiffs have not proved their readiness and willingness to perform their part of the Agreement and, therefore, are not entitled to a decree of specific performance.

14. The High Court directed a refund of Rs.70,000/- which was paid by the Plaintiffs to the Defendants in 1975 with interest at the rate of 24% p.a.. In view of the peculiar facts of this case in which the Plaintiffs have paid Rs.70,000/- way back in 1975 and the steep increase in the price of the property over time, we are of the considered opinion that the Plaintiffs are entitled to a higher amount than what was granted by the High Court. Instead of the refund of Rs.70,000/- with interest at the rate of 24% p.a., we direct the Defendants to pay Rs. 2,00,00,000/- (Rupees Two Crores) to the Plaintiffs within a period of eight weeks from today.

15. Subject to the above modification, the appeal is dismissed.

Judgment Referred.

¹(2015) 8 SCC 0390

²(2007) 10 SCC 0595

³(1995) Supp. 3 SCC 0017

⁴(1997) 3 SCC 0001