

SUPREME COURT OF INDIA

Atma Ram

Vs.

Charanjit Singh

SLP(C)No.27598 of 2016

(N.V.Ramana and V.Ramasubramanian,JJ.,)

10.02.2020

JUDGMENT

V.Ramasubramanian,J.,

1. The holder of an agreement for the purchase of an immovable property, whose suit for a mandatory injunction (construed by the Trial Court as a suit for specific performance) was decreed by the Trial Court, but which decree was upset by the First Appellate Court and confirmed on second appeal by the High Court, has come up with the present Special Leave Petition.

2. We have heard Shri R Basant, learned senior counsel appearing for the petitioner and Shri Soumen Talukdar, learned counsel appearing for the respondent.

3. The brief facts essential for the disposal of the special leave petition are as follows;

(i) On 12.10.1994, an agreement was entered into by the petitioner with the respondent. By this agreement, the respondent agreed to sell to the petitioner, the land and factory premises at Plot No.90, Sector-21, Industrial Area, Bhiwani, with the land measuring about 1250 sq. yards. The total sale consideration fixed under the agreement was Rs.4,38,000/-. An earnest money of Rs.1,00,000/- was paid by the petitioner to the respondent at the time of execution of the agreement. The date for performance of the contract was fixed under the agreement as 07.10.1996.

(ii) The petitioner issued a legal notice dated 12.11.1996 claiming that when the date fixed for specific performance arrived, he approached the respondent for the completion of the transaction, and that at that time, the respondent disclosed about the pendency of some civil litigation with a third party, as an impediment for the execution of the sale deed. Therefore, the petitioner claimed in the legal notice that the respondent should furnish the details of all the litigation pending in respect of the said property and that if no litigation was pending, the respondent should come forward to execute the sale deed within

15 days.

(iii)As there was no response to the legal notice, the petitioner filed a civil suit in CS No.240 of 1999 in the Court of the Additional Civil Judge, Senior Division, Bhiwani. The prayer made in the suit was for a mandatory injunction to direct the respondent to execute all documents of transfer of the property in question after receiving the balance sale consideration. It is relevant to note here that since the suit was filed only for the relief of mandatory injunction, the petitioner valued the suit only at Rs.250 and paid a fixed court fee of Rs.25.

(iv)The respondent filed a written statement denying everything including the execution of the agreement. He also questioned the maintainability of the suit in the form in which it was filed. The respondent further claimed that the suit was barred by limitation.

(v)On the basis of the pleadings, the Trial Court framed eight issues for consideration on 12.10.2002. These issues were as follows:

“(1) Whether the plaintiff agreed to purchase the suit property from the defendant for a sum of Rs.4,38,000/- and paid Rs.1,00,000/- as earnest money on 12.10.1994 as alleged? OPP

(2) Whether the plaintiff is entitled to relief of mandatory injunction as prayed for? OPP

(3) Whether the plaintiff has no locus-standi to file the suit? OPD

(4) Whether the plaintiff has no cause of action to file the suit? OPD

(5) Whether the suit is not maintainable in the present form? OPD

(6) Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD

(7) Whether the plaintiff is estopped by his own act and conduct from filing the suit? OPD

(8) Relief.”

(vi) After filing the written statement, the respondent also took out an application for the dismissal of the suit on the ground that a suit for mandatory injunction was not maintainable for enforcing specific performance of an agreement of sale. The said application was disposed of by the Trial Court by a very curious order, dated 09.08.2003, holding that the suit was in fact one for specific performance of an agreement of sale and that the technical objection regarding the maintainability

could be overcome by directing the petitioner/plaintiff to pay the requisite court fee. Accordingly, Trial Court directed the petitioner/plaintiff to make good the deficit court fee on or before 08.09.2003.

(vii) Unfortunately, the respondent did not challenge the aforesaid order of the Trial Court dated 09.08.2003. As a consequence, the petitioner/plaintiff paid the deficit court fee and the trial court chose to treat the suit as one for specific performance.

(viii) After so overcoming a major hurdle, the Trial Court decreed the suit by a judgment dated 03.02.2006, directing the petitioner to pay the balance of sale consideration within one month and directing the respondent to get the suit property transferred in the name of the petitioner, directly from HUDA.

(ix) Aggrieved by the judgment and decree, the respondent filed a regular first appeal in Civil Appeal No. 181 of 2006, on the file of Additional District Court, Bhiwani. By a judgment dated 02.01.2013, the District Court allowed the appeal and set aside the judgment of the Trial Court, thereby dismissing the suit.

(x) Aggrieved by the judgment of the First Appellate Court, the petitioner filed a second appeal in RSA No.1244 of 2013 on the file of the High Court of Punjab & Haryana at Chandigarh. The High Court dismissed the second appeal by a judgment dated 20.05.2016. It is against the said judgment and decree that the plaintiff has come up with the above special leave petition.

4. The main fulcrum of the argument of Shri R. Basant, learned senior counsel appearing for the petitioner is that by the order dated 9.08.2003, the Trial Court chose to treat the suit for mandatory injunction as one for specific performance and directed the petitioner/plaintiff to pay the deficit court fee and that the petitioner also complied with the said order. Therefore, it is contended that by virtue of Section 149 of the Code of Civil Procedure, such payment would have the same force and effect as if such fee had been paid in the first instance itself. But, the High Court held the suit as time barred. This, according to the learned senior counsel for the petitioner, is contrary to law in the teeth of section 149 of the Code. It is his further contention that the effect of Section 16(c) of the Specific Relief Act, 1963 was not considered in the proper perspective by the High Court with particular reference to the facts of the case and that, therefore, the judgment of the High Court stood vitiated.

5. We have carefully considered the above contentions. It is true that Section 149 CPC confers a discretion upon the Court to allow a person, at any stage, to pay the whole or part of the court fee actually payable on the document, but which has not been paid. Once the Court exercises such a discretion and payment of court fee is made in accordance with the said decision, the document, under Section 149, shall have the same force and effect as if such fee had been paid in the first instance.

6. But in this case, the question was not merely one of limitation. As we have stated earlier,

the suit agreement of sale was dated 12.10.1994. According to the petitioner, the last date fixed for the performance of the obligations under the contract, was 7.10.1996. A legal notice was issued by the petitioner on 12.11.1996. But the plaint itself was presented only on 13.10.1999, which was beyond three years of the date 7.10.1996, fixed under the agreement of sale for the performance of the contract. (Though the petitioner has claimed before us that the plaint was presented on 3.10.1999, the copy of the judgment as well as the decree of the Trial Court indicate the date of presentation of the plaint as 13.10.1999). The relief sought in the plaint as it was originally presented, was for a mandatory injunction to direct the respondent to receive the balance sale consideration and to get a document of transfer effected in favour of the petitioner. The petitioner/plaintiff was obviously conscious of the nature of the relief prayed for by him. This is why he valued the relief claimed in the suit at Rs.250/- and paid a fixed court fee of Rs.25/-. The respondent took an objection in his written statement, to the maintainability of the suit, in the form in which it was filed. Therefore, the Trial Court also framed an issue as to whether the suit was not maintainable in the present form, as issue No.5. It was only after issues were framed on 12.10.2002 that the Trial Court took up the application filed by the respondent for the dismissal of the suit. It is in that application that the Trial Court passed the order dated 09.08.2003 permitting the petitioner/plaintiff to pay the deficit court fee by treating the prayer made as one for specific performance. Instead of addressing the issue as to whether the petitioner could indirectly seek specific performance of an agreement of sale, by couching the relief as one for mandatory injunction and paying a fixed court fee as payable in a suit for mandatory injunction, the Trial Court, by a convoluted logic, chose to treat the suit as one for specific performance and permitted the petitioner to pay deficit court fee.

7. As a matter of fact, if the suit was actually one for specific performance, the petitioner ought to have at least valued the suit on the basis of the sale consideration mentioned in the agreement. But he did not. If the suit was only for mandatory injunction (which it actually was), the only recourse open to the petitioner was to seek an amendment under Order VI, Rule 17 CPC. If such an application had been filed, it would have either been dismissed on the ground of limitation (K.Raheja Constructions Ltd, vs. Alliance Ministries) or even if allowed, the prayer for specific performance, inserted by way of amendment, would not have been, as a matter of course, taken as relating back to the date of the plaint (Tarlok Singh vs. Vijay Kumar , Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit vs. Ramesh Chander). Therefore, a short-cut was found by the petitioner/plaintiff to retain the plaint as such, but to seek permission to pay deficit court fee, as though what was filed in the first instance was actually a suit for specific performance. Such a dubious approach should not be allowed especially in a suit for specific performance, as the relief of specific performance is discretionary under Section 20 of the Specific Relief Act, 1963.

8. It may be true that the approach of the High Court in non suiting the petitioner/plaintiff on the ground of limitation, despite the original defect having been cured and the same having attained finality, may be faulty. But we would not allow the petitioner to take advantage of the same by taking shelter under Section 149 CPC, especially when he filed the suit (after more than three years of the date fixed under the agreement of sale) only as

one for mandatory injunction, valued the same as such and paid court fee accordingly, but chose to pay proper court fee after being confronted with an application for the dismissal of the suit. Clever ploys cannot always pay dividends.

9. Coming to the second aspect revolving around Section 16(c), a look at the judgment of the Trial Court would show that no issue was framed on the question of readiness and willingness on the part of the petitioner/plaintiff in terms of Section 16(c) of the Specific Relief Act, 1963. The fact that the petitioner chose to issue a legal notice dated 12.11.1996 and the fact that the petitioner created an alibi in the form of an affidavit executed before the Sub-Registrar on 7.10.1996 (marked, as Exhibit P-2) to show that he was present before the Sub-Registrar for the purpose of completion of the transaction, within the time stipulated for its performance, was not sufficient to conclude that the petitioner continued to be ready and willing even after three years, on 13.10.1999 when the plaint was presented. No explanation was forthcoming from the petitioner for the long delay of three years, in filing the suit (on 13.10.1999) after issuing a legal notice on 12.11.1996. The conduct of a plaintiff is very crucial in a suit for specific performance. A person who issues a legal notice on 12.11.1996 claiming readiness and willingness, but who institutes a suit only on 13.10.1999 and that too only with a prayer for a mandatory injunction carrying a fixed court fee relatable only to the said relief, will not be entitled to the discretionary relief of specific performance.

10. Therefore, we are of the considered view that the first Appellate Court rightly reversed the decree of specific performance granted by the Trial Court and the High Court was right in upholding the judgment of the first Appellate Court.

11. In view of the above, the special leave petition is dismissed. There will be no order as to costs.