

## **DELHI HIGH COURT**

Ajit Prashad Jain

Vs.

N. K. Widhani, (Delhi)

Suit No. 389 of 1977

(Y. K. Sabharwal, J.)

26.5.1989

### **JUDGEMENT**

#### **Y. K. Sabharwal, J.**

1. Plaintiff seeks a decree of specific performance in respect of property No. 59, Babar Road, Bengali Market, New Delhi, owned by defendants 1 to 5, who are the sons of Defendant 6. The case of the, plaintiff is that the defendants entered into an agreement for sale of the suit property with the plaintiff on 19-12-1976. The agreement was signed by defendant 6 as attorney of defendant 2 as well as on his own behalf. It was also signed by defendants 1, 3, to 5. A sum of Rs. 10,000/- in cash was paid as earnest money. The sale price of the suit property was settled at Rs. 2,65,000/-. The defendants had undertaken to give vacant possession of the suit property to plaintiff soon after the payment of Rs. 1,65,000/- to defendant 6 on behalf of the defendants. Another sum of Rs. 35,000/- was payable within 15 days of the date on which the permission of Land and Development Officer, New Delhi, is communicated to the plaintiff by defendant 6. The balance amount of Rs. 55,000/- was payable at the time of registration of the sale deed before the Sub-Registrar, Delhi/New Delhi. It is common case of the parties that a sum of Rs. 10,000/was paid by plaintiff to defendants as recorded in agreement dt. 19-12-1976. The further case of the plaintiff is that he approached defendant No. 6 and requested him to fix time and date for payment of Rs. 1,65,000/- and for delivery of possession by defendants to the plaintiff but in spite of promising to do so defendant 6 has been putting off the plaintiff on one pretext or the other. Plaintiff also says that he approached defendant 6 personally at Jaipur and requested him to fix date and time for receiving payment and delivery of possession but defendant No. 6 failed to do so though, he had promised that he will do it in the near future.

Thereupon, plaintiff served a telegraphic notice through his advocate on defendant No. 6 calling upon him to receive sum of Rs. 1,65,000/- and deliver vacant possession of the property to him within three days next of the said telegram dt. 4th May 1977 but the defendants failed to do so. Plaintiff had also served on defendants notice dt. 6-5-77 calling upon defendants not to negotiate sale with anyone else and to deliver the vacant possession of the premises to the plaintiff against receipt of Rs. 1,65,000/- within three days of the receipt of the said notice but the defendants failed to comply with the said notice. Plaintiff further claims that he contacted defendant No. 6 who promised to come to Delhi on 13-5-1977 for the purpose and asked the plaintiff to get a bank draft prepared for Rs. 1,65,000/- in the meanwhile which bank draft was got prepared by the plaintiff in favor of defendant 6 from Andhra Bank Ltd. but tire said defendant again failed to turn up on 13-5-1977. On being contacted again defendant No. 6 informed the plaintiff that he was not prepared to receive the amount and deliver possession to him. In plaint as originally filed the plaintiff stated that the cause of action for the remaining part of the agreement i.e. for payment of Rs. 35,000/- on intimation of permission to sell by Land and Development Office and registration of the sale deed has not arisen as permission by Land and Development Office had not so far been communicated by defendant 6 to him and stated that he reserves his right to claim specific performance of the remaining part of the agreement as and when such permissions are obtained. On 17-5-1977 this suit was filed, inter alia, praying for decree for vacant possession of the suit property subject to payment or deposit in court of Rs. 1,65,000/- by the plaintiff.

2. A joint written statement dt. 12-8-1977 was filed by defendants. Various pleas were raised to which reference will be made in later part of the judgment. An application dt. 23-7-79 (I.A. 2791/79) was tiled by defendants seeking amendment of the written statement. The defendants sought leave to incorporate, by amendment of the written statement, preliminary objections No. 5 to 7 after existing preliminary objection No. 4. The defendants also sought leave to add certain words in para 8 of the written statement on merits. The application for amendment was decided on October 26, 1979 by D.K. Kapur J. Leave to incorporate Para 5 in the preliminary objections was granted to the defendants and to that extent the proposed amendment was allowed. The court disallowed the amendment proposed in Paras 6 and 7 of the proposed amendment. The said proposed paras 6 and 7 read as under:-

"6. That the receipt of earnest money was executed on 19th Dec. 1976. A few days thereafter the plaintiff sent a typed draft of the agreement to sell wherein the sale price was shown to be Rs. 2,00,000/- instead of Rs. 2,65,000/-. The defendant No. 6 pointed out on telephone the inconsistency to the plaintiff whereupon the plaintiff's answer was that his books of account had only Rs. 2,00,000/- and the balance of Rs. 65,000/- he will pay from the unaccounted money. The defendant 6 protested but the plaintiff insisted on this mode of payment. The defendant 6 reiterated his stand in his letter dt. 21-2-1977. When the broker of the plaintiff expressed his desire to visit Jaipur, even then the defendant No. 6 repeated his insistence in his letter dt. 19-4-77 that nothing less than Rs. 2,65,000/- will be acceptable as consideration for the sale. The aforesaid proposal of the plaintiff disentitles the plaintiff of the relief of specific performance both under the law and equity because he has neither acted nor come with clean hands.

7. That there was no privity of contract between the plaintiff and the defendants. The endorsement on the receipt of earnest money was signed by one Shri P.S.Jain but the receipt produced in the court was subsequently signed by way of interpolation and is clear fabrication of a false document to support a false claim, and disentitles the plaintiff to equitable relief asked for in the present suit. The suit is as such liable to dismissal on this ground as well."

3. The plaintiff by I.A. 3582/79 sought leave, of the court to amend the plaint. The amendment sought for was allowed by orders made on 3rd Dec. 1979. In the order dt. 3-12-79 it is noticed that initially, the suit was for possession with permission to apply for specific performance as and when certain prerequisites were satisfied. Now the plaintiff wanted to sue for all the reliefs at once. The court allowed the amendment and observed that the proposed amendment was connected with the rights already propounded in the plaint. The amended plaint was filed by the plaintiff, The written statement dt. 12-2-80 was filed by defendants to the aforesaid amended plaint. In the written statement now filed the facts incorporated in the aforesaid para 6 of the proposed amendment of the written statement which had been disallowed on Oct. 26, 1979 were incorporated in para 9 of this written statement. Para 7 of the proposed amendment which had been disallowed was added in para 19 of the written

statement dt. 12-2-1980. The plaintiff objected to the additions made in paras 9 and 19 of the written statement dt. 12-2-1980. However, plaintiffs application (I.A. 30/86) directing defendants 1 to 6 to delete these portions from the written statement dt. 12-2-1980 was dismissed by H.C.Goel, J. on Mar. 11, 1986. It was observed in this order that complexion of the suit had changed after the amendment of the plaint which had been allowed on 3-12-79 by D.K. Kapur, J. and under such a situation defendants were entitled to make further averments in the written statement which were relevant to the newly added claim of the plaintiff, that is, one for a decree for specific performance of the contract and accordingly it was held that defendants were entitled to retain Paras 9 and 19 of the written statement as filed by them in reply to the amended plaint.

4. On 13-12-77 on the pleadings of the parties the following issues were framed:

1. Whether the suit in the present form is maintainable? OPP
2. If issue No. 1 is decided in favor of the plaintiff, whether the plaintiff is not entitled to the relief claimed because of the provisions of Section 27 of the Urban Land (Ceiling Regulation) Act, 1976, and also for want of permission from Land and Development Officer, New Delhi? OPDs.
3. Whether the plaintiff has committed breach of the contract as alleged in paras 8 and 9 of the written statement. If so, to what effect? OPDs.
4. Whether the plaintiff has been ready and willing and is still ready and willing to perform his part of the contract" OPP,
5. In case if specific performance is refused to the plaintiff whether he is entitled to damages in the alternative. If so, to what amount? OPP
6. Relief."

5. On 15-7-80 the following additional issues No. 5A was framed :

"5A : Whether the agreement to sell is void and in-operative in view of the reasons stated in preliminary objection No. 4 of the amended written statement dt. 12th Feb., 1980."

6. Besides examining his brother Sh. Padam Singh Jain (PW 3) Sh. Sushil Kumar (PW-1). an employee from Andhra Bank the plaintiff has himself

entered the witness box as PW-2. Defendants have examined Mr. Keshev Chand Tyagi (DW- 1) a Clerk from the office of the Collector of Stamps, Defendant 6, Sh. G.D.Widhani also appeared as a witness on behalf of the defendants. His statement was recorded on commission. I have heard learned counsel for the parties and now proceed to determine the issues

Issue No. 1

7. This issue seems to have been framed in view of the suit as originally filed only claiming possession and reserving right to claim specific performance after the requisite permission from the Land and Development Officer is obtained. As stated above, the plaintiff has amended the plaint and has claimed now the specific performance of the agreement dt. 19-12-76 and as such the objection with regard to the form of the suit is no longer available to the defendants.

8. Learned counsel for the defendants have submitted that the sale was subject to permission of the Land and Development Office at New Delhi as stated in the agreement to sell dt. 19-12-76. It is argued that permission from the Land and Development Officer was a condition precedent and the plaintiff was not willing to perform that part and there is neither any averment in the plaint or any proof that the plaintiff was willing to perform the part with regard to such permission. Reliance was placed on Section 16(c) of the Specific Relief Act for the proposition that it was necessary to aver and prove readiness and willingness to perform the contract. The plaintiff has averred in the plaint that he was always prepared, and he is even now prepared to pay the amount and perform his part of the obligation under the agreement to sell executed by the parties. In view of this averment in the plaint no valid objection can be raised to the maintainability of the suit in the form in which it has been filed. Thus, I answer issue No. 1 in favour of the plaintiff.

Issues Nos. 2 to 5

9. It will be convenient to deal issues Nos. 2 to 5 together. It may be noticed that there is no substantial dispute between the parties with regard to the agreement dt. 19-12-76 Ex. PW 2/ 1. Admittedly, this document is signed by defendants other than defendant 3 Mr. S.K. Widhani. On behalf of Sh. S.K. Widhani Ex PW 2/1 is signed by his father and attorney Sh. G.D.Widhani, defendant 6. There is also no dispute between the parties that a sum of Rs. 10,000/- was paid to defendant 6 for and on behalf of defendants 1 to 5. It is

recorded in Ex. PW 2/1 that "this sale is subject to permission of the Land and Development Officer, New Delhi. There is also no dispute that the sale price was settled at Rs. 2, 65,000/- in Ex. PW 2/1. It is stated that "we undertake to give possession (vacant) of the said house to Sh. Ajit Prasad Jain soon after he pays a sum of Rs. 1,65,000/- (Rupees One lakh sixty five thousand only) to Sh. G.D. Widhani on our behalf, the balance shall be paid in two instalments to Sh. G.D. Widhani-first of Rs. 35,000/- (Rs. Thirty five thousand only) within 15 days of the date on which the permission of Land and Development Officer, New Delhi is communicated to Mr. Ajit Prasad Jain by Sh.G.D. Widhani on our behalf and second installment of the balance of Rs. 55,000/- (Rs. Fifty five thousand only) at the time of registration of the sale deed before the Sub-Registrar, Delhi/New Delhi."

10. The main defense raised by the defendants is as incorporated in para 9 of the written statement dt. 12-2-80. The substance of the averments made in the said paragraph is that out of total sale consideration of Rs. 2,65,000/-, the plaintiff wanted to pay Rs. 65,000/- from his unaccounted money. Reference to certain letters has also been made in the said para 9 of the written statement. As observed above, no such plea was initially taken by the defendants in the written statement. Defendants' application for leave to amend the Written statement to incorporate such a plea was disallowed by D.K. Kapur, J. However, in view of the orders made on 11-3-86 by H.C. Goel, J., I proceed to consider whether defendants have been able to prove their case with regard to plaintiff's insistence on payment of Rs. 65,000/- from the unaccounted money.

11. Before dealing with the aforesaid aspect and the disputed documents of the plaintiff as also of the defendants I may notice some undisputed facts. Admittedly, the telegram dt. 3rd May 1977 sent by plaintiff was received by defendant 6. The said telegram is Ex.D-1. It has been placed on record by the defendants. In this telegram it was stated that defendants had failed to deliver possession and in spite of request and offer, of Rs. 1,65,000/- have failed to transfer the property. It was also stated that the whole consideration is ready and defendant 6 was requested to do the needful within three days. Admittedly, no reply to Ex. D1 was sent, It is further admitted that notice of plaintiff's advocate dt. 6th May 1977 (Ex.P-1) was received by the defendants wherein they were called upon to deliver the vacant possession of the property to plaintiff against receipt of Rs. 1,65,000/- within three days next after receipt of notice. It was

further stated that failing compliance of the notice a suit for specific performance of the contract will be filed by the plaintiff. Notice Ex. P-1 was received by defendants on 7-5-77. Ex.P-2 is the acknowledgement. Both Exs.P-1 and P-2 have been admitted by the defendants. Admittedly, no reply was sent either to, the telegram or to the notice Ex. P-1.

12. Beside the telegram and the notice plaintiff has placed on record copies of the four letters said to have been written by him to the defendants. The said letters are Ex. PW2/2 (4th Jan. 1977), Ex. PW 2/4 (16th Jan. 1977), Ex. PW 2/6 (16th Feb. 1977), and Ex.PW 2/8 (27th Apr. 1977). The defendants have denied receipt of these four letters.

13. In letter Ex. PW 2/2 plaintiff had stated that house was not vacant and defendants had not come to give possession of the house and that the plaintiff was keeping the money without any use. Defendant was requested to give a fixed date and time for the said purpose. More or less to the similar effect is letter Ex. PW 2/4. By letter Ex.PW 2/6 plaintiff wrote that defendant No. 6 had told him that he will come to Delhi on 7th or 8th Feb. 1977 and give possession after taking out his goods from the house but he did not turn up. Defendant was requested to give possession of the house and receive the money, Letter Ex.PW 2/8 records about the visit of the plaintiff to Jaipur and request was made to defendant to write actual date of his coming to Delhi so that plaintiff can get the bank draft ready in his name. Ex. PW 2/3, PW 2/5, PW 2/7 and PW 2/9 are the certificate of posting in respect of letters Ex.PW 2/2, PW 2/4, PW 2/6 and PW 2/8.

14. On the other hand, defendants have placed on record copy of the four letters stated to have been written by defendant No. 6 to the plaintiff. The said letters are Ex.DW 1/2 (dt. 27-12-76), DW 1/4 (dt. 21-2-77), Ex.DW 1/6 (dt. 8-4-77) and Ex. DW 1/7 (dt. 28-4-77). It is claimed by defendants that these four letters were sent under certificate of posting Ex.DW 1/3, DW 1/5, DW 1/8. In Ex.DW 1/2 request has been made to the plaintiff to send draft agreement. By Ex.DW 1/4 defendant has thanked the plaintiff for sending draft agreement to sell and in this letter the story of unaccounted sum of Rs. 65,000/- has been put forth. It is also recorded in this otherwise lengthy letter that no further action can be taken till the agreement to sell on the lines stated in the letter is executed. In Ex.DW 1/6 it is stated that defendant 6 has learnt from the broker that plaintiff is no longer interested in the deal as he is not in a position to pay the stipulated

amount in cash as agreed. Letter Ex. DW 1/7 records about the visit of Sh. Padam Singh Jain, brother of the plaintiff to Jaipur and again refers to the story of unaccounted money. It also states that defendant No.6 will be in Delhi from 1st to 6th. Request has also been made in this letter to plaintiff to send affidavit for submission to Land and Development Officer, New Delhi.

15. On the one hand I have copies of the letters alleged to have been sent by plaintiff to defendant 6 and on the other hand the copies of the letters alleged to have been sent by defendant 6 to the plaintiff. It is obvious that both, set of letters cannot co-exist. While determining whether these letters were sent by defendant No. 6 to plaintiff or not one cannot altogether ignore that in the written statement as originally filed no reference was made to any of the four letters or to the story of the unaccounted money. Be that as it may, from the evidence on record it stands established that the four letters referred to above were not sent by defendant No. 6 to the plaintiff and the plaintiff is right in his submission that these letters have been fabricated in order to put a defense to the suit. There are various reasons for reaching such a conclusion. The first being an admitted letter dt. 19-6-77 (Ex. P-3) sent by defendant No. 6 to the plaintiff. In Ex. P-3 no reference has been made either to the earlier letters or to the story about the unaccounted money. The second reason is that the plaintiff was not confronted with any of the four letters. The third reason is that no reply was sent to the telegram EX. D1 and notice Ex. P-1. Lastly the certificate of postings filed by defendants are from a post office which is at a long distance from the residence of the defendant when it has been established from the statement defendant 6 that there was a general post office near his residence. The explanation given by defendant 6 that this was because of the convenience of his part-time employees is hardly convincing.

16. It appears that defendant No. 6 did not send any reply to the letters sent by plaintiff to him. It does appear that the plaintiff had sent the aforesaid four letters to defendant by which remained unreplied by defendant 6. The letters of the plaintiff fits in with the case of the plaintiff as disclosed in the telegram and the notice referred to above.

17. With regard to the case of the defendant that plaintiff was interested in giving unaccounted money, learned counsel for the defendants have placed strong reliance on a draft agreement marked XY. It is an unsigned document. Plaintiff does not admit that he had sent draft agreement mark XY to defendant

6. It is not the case of defendants that there was any covering letter with document mark XY. In document mark XY the sale consideration stated is Rs. 2 lakhs. It is also stated in this document that Rs. 65,000/- will be paid at the time of registration of the sale deed before the Sub Registrar and to that extent it would be contrary to agreement Ex. PW 2/1. If the plaintiff had to send this agreement mark XY he will certainly not mention the amount payable at the time of registration of the sale deed as Rs. 65,000/- knowing fully well that the defendants are in possession of a signed copy of the agreement dt. 19-12-76 wherein it is stated that Rs. 55,000/- will be paid at the time of registration. Defendants have placed the said copy of the agreement dt. 19-12-76 on record which on reverse bears an endorsement in token of receipt of Ex. PW 2/ 1 and payment of Rs. 10,000/- to defendants under the signatures of Shri Padam Singh Jain, brother of the plaintiff. The said endorsement is Ex.DW 1/1-A. The draft agreement finds mention only in the letters of defendant 6 about which I have already reached the conclusion that the said letters were fabricated by the defendants. Reliance has also been placed by defendants on the statement of the plaintiff that "I have signed the draft agreement mark XY. We sent it to defendant No. 6". Reliance of defendants upon the aforesaid statement of the plaintiff (PW-2) is out of context. Statement read as a whole shows that the plaintiff had denied that he had sent the said draft agreement. He stated that "it is incorrect that we sent the draft agreement to defendant No. 6 that the sale deed should be executed ostensibly for Rs. 2 lakhs and the balance amount would be paid under the table. I have seen the draft agreement mark 'Y'. We sent it to defendant 6". Apart from the aforesaid statement, plaintiff has also stated in his cross- examination that he had never sent the said draft agreement to Mr. G.D. Widhani. In view of the above, the reliance on one line in the statement of the plaintiff by the defendants is totally out of context and is of no consequence.

18. I may also notice that plaintiff has proved on record the pay order dt. 12-5-77 (Ex.PW 1/4) issued by the Andhra Bank Ltd. in favour of Sh. G.D.Widhani in the sum of Rs. 1,65,000/-. This pay order appears to have been got cancelled by the plaintiff after the institution of the suit. Plaintiff has also proved on record statements of account of the Firm M/s. Padam Singh Jain and Co. of which he was a partner. The said statements of account of Andhra Bank are Ex. PW 1/ 1 and PW 1/2. Plaintiff has also proved a certificate (Ex.PW 1/3) from the Andhra Bank Ltd. in respect of fixed Deposit Receipt of Rs. 2 lakhs in his

name. The statements of accounts and certificate PW 1/3 prove the financial capacity of plaintiff though I may note that it was not contended by learned counsel for the defendants that plaintiff had no money to pay to the defendants.

19. It was next contended on behalf of the defendants that plaintiff was not ready and willing to perform his part of the contract inasmuch as he was not willing to sign the application and affidavit required to be submitted to the competent authority under Urban Land (Ceiling and Regulation) Act and to Land and Development Office. Defendants contend that plaintiff was only interested in taking possession of the property. It is further contended that possession could not be given to the plaintiff without permission from the Land and Development Office.

20. The defendants have not placed on record any document to show that for delivery of possession to the plaintiff it was necessary to obtain permission from land and Development Office. It is also not stated in the agreement that possession will be delivered to the plaintiff only after getting permission from Land and Development Officer. The defendants have not even produced the lease deed or copy thereof containing such a restriction. In the agreement Ex. PW 2/1 the defendants undertook to give vacant possession to the plaintiff soon after payment of Rs. 1,65,000/- to defendant 6. From the evidence it stands established that plaintiff has always been ready and willing to pay that amount and made every effort in that direction, and it has not been proved that plaintiff was not willing to sign the application and affidavit and perform his part of the contract. Plaintiff has proved that he has always been ready and willing to perform his part of the contract. All the letters, telegram and notice of the plaintiff remained unanswered. Plaintiff went even to the extent of stating that he is willing to pay the entire amount. Defendants have, however, relied upon statement of PW-3 Mr. Padam Singh, to the effect that the knew since beginning that defendants could not give the property without the permission for sale from Land and Development Office. In the said statement PW-3 did not state that possession could not be given without such permission. It is no doubt true that the plaintiff was interested in getting the possession of the property. It may also be noticed that at no point defendants wrote any letter to the plaintiff that without obtaining permission from the Land and Development Officer possession cannot be delivered to him. The only letter (Ex.P-3) requiring the plaintiff to sign papers in connection with the permission of Land and

Development Officer was written after the institution of the suit on 19-6-1977 after the defendants had been served with the summons of the suit. Knowing that the suit had been filed defendants did not move the court and did not take the stand that if permission from Land and Development Office is granted they will deliver possession of the suit property to the plaintiff. The defendant 6 in his cross-examination has admitted that two or three months after execution of the agreement Ex.PW 2/1 he came to know about the requirement of permission under Urban Land (Ceiling and Regulation) Act. Though in the examination-in-chief he has stated that he had given to Mr. Padam Singh Jain specimen of form and affidavit Ex. DW 1/9 and DW 1/ 10 on 21st Dec. 1976. Ex. DW 1/9 is a pro forma of application required to be submitted under the provisions of Urban Land (Ceiling and Regulation) Act. How could defendant No. 6 give document like Ex. DW 1 9 to S h. Padam Singh Jain on 21-12-76 when he admits that he learnt about the requirement of the said Act two or three months after the execution of the agreement. Thus, it is obvious that defendant 6 did not make a forthright statement in this regard.

21. The permission from Land and Development Office is not a condition precedent for grant of decree for specific performance. In *Mrs. Chandnee Widya Vati Madden v. Dr. C.L. Katial*,<sup>1</sup> the Supreme Court confirmed the decision of the Punjab High Court holding that if the Chief Commissioner ultimately refused to grant the sanction to the sale the plaintiff may not be able to enforce the decree for specific performance of the contract but that was no bar to the court passing a decree for that relief. The same is the position in the present case. If after grant of the decree of specific performance of the contract the Land and Development Office refuses to grant permission for sale the decree-holder may not be in a position to enforce the decree but it cannot be held that such a permission is a condition precedent for passing a decree for specific performance of the contract. I may also notice that Section 27(1) of the Urban Land (Ceiling and Regulation) Act, insofar as it imposes a restriction on transfer of any urban or urbanisable land with a building or a portion of such building, which is within the ceiling area, was declared invalid by Supreme Court in *Maharo Saheb Shri Bhim Singhji v. Union of India*<sup>2</sup> and as such it may not be necessary to obtain permission under the said Act but that is not a matter with which I am concerned at this stage. Assuming such a permission is required that would be a matter for consideration after passing of the decree and at the stage of execution. No fault can be found out with the plaintiff's

anxiousness to take possession in terms of the agreement on payment of the amounts stipulated therein.

22. It was next contended that it is not equitable to grant the relief of specific performance to the plaintiff. Reliance has been placed by learned Counsel for the defendants on Section 20 of the Specific Relief Act, 1963 for the proposition that the Court is not bound to decree relief of specific performance merely because it is lawful to do so. I have no quarrel with the proposition that the relief of specific performance is in the discretion of the Court which is to be exercised not arbitrarily but on sound and well-settled principles of law. It is equally well-settled that in cases of contracts for sale of immovable properties the grant of relief of specific performance is a rule and refusal an exception on valid and cogent grounds shown. Two grounds have been put forth by defendants in support of their contention that it is not equitable to grant relief of specific performance to the plaintiff. The first ground is that the document Ex. PW2/1 is not a final agreement but final agreement had to be executed later on after grant of permission from Land and Development Office. I do not agree. There is no such condition stipulated in Ex. PW2/1. All material terms have been incorporated in Ex. PW2/1. The total sale consideration and the manner of payments have been all agreed in Ex. PW2/1. It is not stated therein that any other agreement was required to be executed. The, other ground put forth by the defendants is that defendants would have been put to undue advantage had they delivered the possession to the plaintiff inasmuch as the plaintiff would have continued in possession but defendants would have been liable for payment of lease money. I cannot ignore that in terms of Ex. PW2/1 the plaintiff would have been out of pocket to the extent of Rs. 1,75,000/before getting possession. It is evident that plaintiff did his best to make the payment and take possession but defendants have been avoiding it. Defendants could have taken permission from the Land and Development Office and on communication of it the plaintiff was required to make a further payment of Rs. 35,000/-. The defendants cannot take advantage of their own wrong and then plead it to be an unfair advantage to the plaintiff. Thus, I find no merit in this ground as well for exercising discretion to refuse the relief of specific performance to the plaintiff.

23. Let me examine the question of plaintiff being ready and willing to perform his part of contract from another angle also. To determine whether plaintiff was ready and willing to perform his part of the contract the sequence in which the

obligations under the contract are to be performed have also to be taken into account. The sequence of obligations under Ex. PW2/ 1 are (1) payment of Rs. 1,65,000/- (2) handing over of possession to the plaintiff; (3) communication of permission of Land and Development Office to plaintiff and payment of Rs. 35,000/- within 15 days thereof to the defendants and (4) payment of balance sale consideration of Rs. 55,000/- at the time of registration of the sale deed. Plaintiff was willing to perform his' part of the obligation in the sequence mentioned in Ex. PW2/ 1 but from the stand of the defendants it is evident that they were not willing to handover possession of the suit property to the plaintiff. Assuming plaintiff was asked by defendants to send affidavit etc, for seeking permission of Land and Development Office and he did not comply, still it will be of no effect as under the terms of the contract the defendants having not delivered the possession could not require the plaintiff to comply with the said obligation without first performing their part of the contract (see: *Nathulal v. Phoolchand*),<sup>3</sup>

24. I may also deal with another halfhearted contention on behalf of the defendants that under the agreement Ex. PW2/1 the payment was to be made by plaintiff to defendant No: 6 but the possession was to be delivered to the plaintiff by defendants 1 to 5 and no such request having been made to them it is proved that plaintiff was not ready and willing to perform his part of the contract. From the evidence, letters on record and agreement Ex. PW2/1 it is evident that the father was acting on behalf of his sons, defendants 1 to 5 and thus in my view there is no substance in this contention as well.

25. In view of the above discussion, I conclude that plaintiff did not commit breach of the contract and - has always been ready and willing to perform his part of the contract. The relief of specific performance cannot be refused to plaintiff because of the provisions of Section 27 of Urban Land (Ceiling and Regulation) Act and for want of permission from Land and Development Officer, New Delhi as the said permissions are no bar to the grant of decree for specific performance. Accordingly, issues Nos. 2, 3 and 4 are answered in favor of the plaintiff and against defendants. Issue No. 5 does not arise in view of my finding that plaintiff is entitled to grant of decree of specific performance.

ISSUE NO. 5A

26. In support of the objection under this issue defendants have relied upon

Section 31 of the Foreign Exchange Regulation Act, 1973. The contention of defendants is that defendant No. 2 is not a citizen of India and as such he could not transfer or dispose of by sale, settlement or otherwise any immoveable property situate in India without prior permission of the Reserve Bank of India and as such the agreement to sell is void. In support of the contention that defendant 2 has acquired citizenship of German Democratic Republic reliance is placed on citizenship certificate dt. 17-7-1970 (Ex. D6/1). It does appear from the said certificate that defendant No. 2 had acquired citizenship of German Democratic Republic but in my view that has no effect on the validity of the agreement in question. Section 31 of the Foreign Exchange Regulation Act on which reliance has been placed by the defendants only places a restriction on a foreign citizen on transfer or sale, mortgage, lease, gift, settlement or otherwise of any immoveable property situate in India except with the previous general or special permission of the Reserve Bank of India. The said provisions do not place any restriction on entering into agreement like Ex. PW2/1 The said provisions also do not place an absolute bar to the transfer or sale of any property at as such it cannot be said that the agreement itself will become void. It is well-settled that a contract for sale by itself does not create any interest in or charge on such property (see Section 54 of the Transfer of Property Act). Thus it cannot be held that the agreement is void, on the objection raised in preliminary objection No. 4 based on Section 31 of the Foreign Exchange Regulation Act. The said provisions do not bar grant of relief of specific performance to the plaintiff and the question of permission of the Reserve Bank of India will arise, if at all, at the stage of execution of the sale deed. Consequently, issue No. 5A is also answered against the defendants.

#### ISSUE NO. 6 (RELIEF)

27. In view of the discussion above, I grant a decree of specific performance with possession in favor of the plaintiff and against defendants in terms of agreement dt. 19-12-1976 Ex. PW2/1. Plaintiff is directed to deposit balance sum of Rs. 2,55,000/- in Court within two months and within two weeks thereafter defendants shall file applications seeking necessary permissions/no objection from all concerned authorities and within two weeks of grant of such permissions/no objection, the defendants shall execute sale deed of suit property in favour of the plaintiff. On failure of defendants to comply with these directions it will be open to the plaintiff to apply for issue of directions to the

Registrar of this Court to execute sale deed on behalf of the defendants. Plaintiff will also be entitled to costs of the suit.

Order accordingly.

Cases Referred.

1. (1964)12 SCR 495
2. AIR 1981 Supreme Court 234
3. AIR 1970 Supreme Court 546