

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 02.07.2008

+ **CS (OS) 1690/1995**

AYANG RINPOCHE

... Plaintiff

- Versus -

SMT SURAKSHA GUPTA AND ANOTHER

... Defendants

Advocates who appeared in this case:-

For the Plaintiff : Ms Gurmeet Bindra

For the Defendants : Mr H.S. Phulka, Sr Advocate with Mr Jasmeet Singh

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ? YES
2. To be referred to the Reporter or not ? YES
3. Whether the judgment should be reported in Digest ? YES

BADAR DURREZ AHMED, J

1. The plaintiff seeks a decree for specific performance of the agreement to sell dated 24.01.1995 in respect of the entire second floor of the property bearing No. II/O-59, Lajpat Nagar, New Delhi (hereinafter referred to as 'the suit premises') alongwith proportionate share of the leasehold rights in the land beneath the building. The plaintiff also prayed for a decree of possession in respect of the suit premises as well a decree of perpetual injunction restraining the defendants from alienating, selling, letting out or parting with possession of the suit property in any manner whatsoever.

2. It is alleged in the plaint that sometime in the month of January, 1995, the plaintiff came to know that the defendants were interested in selling the suit premises. The plaintiff contacted the defendants through Mr Pradeep Sharma (PW-4), a property dealer, and after negotiations, the said agreement dated 24.01.1995 (Exhibit PW-1/A) was executed. The sale consideration for the suit premises was fixed at Rs 25,00,000/- out of which the plaintiff made a part payment of Rs 5,00,000/- on 24.01.1995 itself. The said sum of Rs 5 lakhs comprised of Rs 3 lakhs in cash and a sum of Rs 2 lakhs by way of cheque bearing No.313815 dated 24.01.1995 drawn on Bank of America, Hansalaya Building, Barakhamba Road, New Delhi. It is further averred that the balance sale consideration was to be paid by the plaintiff at the time of registration of the sale deed. However, a further sum of Rs 5,00,000/- was paid by the plaintiff to the defendants on 07.03.1995. It is also alleged that the plaintiff spent Rs 87,651.72 on fittings and fixtures and that the defendants had agreed to adjust this amount towards the total sale consideration. It was stated in the plaint that the parties had agreed that possession of the premises would be handed over by the defendants to the plaintiff on or before 05.03.1995. However, on account of non-completion of the construction, the same could not be handed over to the plaintiff. It is also alleged that though the timely delivery of the possession was one of the conditions of the agreement, owing to the delay in construction, the plaintiff agreed to grant further time of two

months for completing the same. It is averred that the construction of the suit premises, the second floor of the said property, was completed in the first week of June, 1995.

3. It is further alleged that on completion of construction, the plaintiff approached the defendants alongwith Mr Pradeep Sharma (PW-4), the property dealer for handing over the possession and the final documentation and payment of the balance amount as agreed. It is alleged that the defendants declined to hand over possession and started demanding a further sum of Rs 5 lakhs over and above the agreed sale consideration of Rs 25 lakhs. It is alleged that the defendants have declined to comply with the agreement and hand over possession of the suit premises unless and until a further payment of Rs 5 lakhs was made to them by the plaintiff, who, left with no other option, sent a legal notice on 10.07.1995 by registered post calling upon the defendants to perform their part of the agreement within three days failing which the plaintiff would have to seek legal remedies. The plaintiff did not receive any reply to the legal notice. It is also averred that the plaintiff has at all times been and is still willing to perform his part of the contract by paying the balance sale consideration as soon as the sale deed is executed and registered in his favour. It is on the basis of these allegations and averments that the present suit for specific performance of the agreement dated 24.01.1995 has been filed.

4. In their written statement, the defendants have taken the plea that time was of the essence of the agreement and as the plaintiff had failed and / or neglected to discharge his obligations within the time specified, he has forfeited his right to specific performance and possession in terms of the agreement dated 24.01.1995. It was alleged that the plaintiff has committed breach of contract and has defaulted in making the payment of balance sale consideration of Rs 20,00,000/- and thus the plaintiff has forfeited his right to possession. It was stated on behalf of the defendants that the plaintiff had paid a sum of Rs 5 lakhs as earnest money at the time of execution of the agreement to sell. The defendants denied that any further sum of Rs 5 lakhs was paid in cash apart from the said earnest money. It was alleged that under the agreement to sell, the plaintiff was required to make the payment of balance amount of Rs 20 lakhs by 05.03.1995. But, the plaintiff did not have the money and requested for some more time. The plaintiff offered to pay an amount of Rs 5 lakhs and requested for more time to arrange the balance money. It is alleged that the property dealer (Mr Pradeep Sharma) brought a receipt to the defendants and stated that the plaintiff has arranged Rs 5 lakhs and is prepared to pay in cash and requested the defendants to sign the receipt so that he can collect the money from the plaintiff. Subsequently, Mr Pradeep Sharma informed the defendants that the plaintiff had taken the receipt from him but had

not made the payment. The defendants further stated that it is totally wrong and denied that the defendants were paid an amount of Rs 5 lakhs on 07.03.1995 and that the plaintiff has spent any amount towards fittings and fixtures. The defendants also denied that the construction was not complete on 05.03.1995. It is also averred by the defendants that the plaintiff was requested a number of times to make the balance payment, but the plaintiff failed to pay the balance sale consideration. The defendants also denied that they had demanded a further sum of Rs 5 lakhs over and above the agreed sale consideration of Rs 25 lakhs. On the basis of these averments, the defendants submitted that the suit was liable to be dismissed with costs.

5. In the replication filed by the plaintiff, the contents of the plaint were reiterated. With regard to the receipt dated 07.03.1995, it was stated that the defendants have concocted the story that the property dealer (Mr Pradeep Sharma) took the signature on a receipt without payment to them. It was reiterated that the defendants failed to hand over vacant physical possession of the suit premises due to non-completion of construction and that the plaintiff was ready to take over the possession after making final payments and no request was made by him for extension of time for making the payments.

6. On the basis of the aforesaid pleadings, the following issues were framed on 03.12.1997:-

- “1. Whether the suit is not maintainable in the present form ? OPD
2. Whether the suit is not maintainable on the ground that agreement violates provisions of 269 of Income Tax Act ? OPD
3. Whether the suit is properly valued ? OPP
4. Whether the suit is barred as no permission from the lessor i.e. President of India to sell a portion of the property has been obtained ? OPD
5. Whether the plaintiff paid an amount of Rs 5 lacs to defendants on 7.3.95 ? OPP
6. Whether the plaintiff compiled (sic) all the terms and conditions of the agreement to sell ? OPP
7. Whether the plaintiff was ready and willing to perform his part of the contract ? OPP
8. Whether the plaintiff is entitled to relief of specific performance to the agreement to sell dated 24.1.95 ? OPP
9. Relief.”

7. The plaintiff has produced the following documents:-

- 1) Exhibit PW-1/A: Agreement to Sell dated 24.01.1995;
- 2) Exhibit PW-1/B: Original Receipt for the sum of Rs 5 lakhs dated 24.01.1995;
- 3) Exhibit PW-1/C: Original Receipt for the sum of Rs 5 lakhs dated 07.03.1995;

- 4) Exhibit PW-1/D: Carbon Copy of the legal notice dated 10.07.1995;
- 5) Exhibit PW-1/E: Original Postal Receipts dated 10.07.1995.

The following persons filed affidavits by way of evidence on behalf of the plaintiff:-

- 1) Mr Ayang Rinpoche [Plaintiff (PW-1)];
- 2) Ms True Lhamo [Plaintiff's wife (PW-2)];
- 3) Mr Dorjee Wangdi Deweatshang [Plaintiff's friend and witness to the agreement (PW-3)];
- 4) Mr Pradeep Sharma [Property dealer and witness to the agreement (PW-4)].

The defendants' witnesses were:-

- 1) Mr Saudagar Shah Gupta [DW-1];
- 2) Mr Vijay Kumar [Official from BSES (DW-2)];
- 3) Mr Anil Gupta [Defendant No.2's son (DW-3)];

8. At the time of commencement of final arguments, the counsel for the parties agreed that Issue No.2 does not survive for consideration. Furthermore, the learned counsel for the defendants did not press issue Nos. 1, 3 and 4. This leaves Issue Nos. 5 to 8. Issue No. 9 being – relief.

Issue No.5

9. As noted above, the plaintiff has prayed that a sum of Rs 5 lakhs was paid to the defendants on 07.03.1995. The original receipt (Exhibit PW-1/C) has been produced and proved by the plaintiff. The said receipt has been signed by both the defendants. The witnesses to the said receipt are Mr Anil Gupta [Defendant No.2's son (DW-3)] and Mr Pradeep Sharma [property dealer (PW-4)].

10. In his cross-examination, Mr Saudagar Shah Gupta (DW-1) has identified his signature at point 'Y' in Exhibit PW-1/C. The said receipt Exhibit PW-1/C clearly states that a sum of Rs 5 lakhs was received from Mr Ayang Rinpoche Lama (plaintiff) in cash as part payment towards the sale of the entire second floor of the property bearing No. II/O-59, Lajpat Nagar, New Delhi as per the terms and conditions of the agreement to sell dated 24.01.1995. The receipt is stated to have been signed at New Delhi on 07.03.1995. The said document as well as the signatures thereon have been admitted. No contrary evidence has been produced by the defendants to indicate that the sum of Rs 5 lakhs was not received by them from the plaintiff as indicated in the receipt. The only conclusion that can be drawn is that the plaintiff paid an amount of Rs 5 lakhs to the defendants on 07.03.1995. This issue is, therefore, decided in favour of the plaintiff and against the defendants.

Issue Nos. 6, 7 and 8

11. These three issues are being dealt together inasmuch as they are interlinked. The plea of the plaintiff is that he was ready and willing to complete the transaction as agreed upon by virtue of the agreement to sell dated 24.01.1995. The transaction could not be completed because the defendants had resiled from their commitment to complete the construction in time and to hand over actual physical possession thereof to the plaintiff. On the other hand, the defendants had taken the plea that time was of the essence of the contract and as per the agreement, the due date of performance was 05.03.1995. The plaintiff did not come up with the money by that date and, therefore, is not entitled to seek specific performance of the agreement dated 24.01.1995. It is also alleged on behalf of the defendants that the plaintiff was not ready and willing to perform his part of the contract and was not ready with the payment on 05.03.1995. It was contended that the plaintiff has not discharged the onus of proving his readiness on 05.03.1995 as no evidence in the form of bank passbook or a bank statement has been produced to indicate that the plaintiff had the funds available with him. The learned counsel for the defendant also referred to the cross-examination of PW-1 where he refused to answer the question with regard to his bank statements as well as with regard to filing of income tax returns and source of cash amounts. The learned counsel appearing

on behalf of the defendants placed reliance on Section 114 of the Evidence Act to submit that if a man refuses to answer a question, then a presumption unfavourable to him can be drawn. Since the plaintiff refused to answer the question with regard to his bank statement, income tax returns and source of funds, the presumption can be drawn that the plaintiff had no money in the account. It was, therefore, contended that the plaintiff has not been able to establish his readiness and willingness.

12. It was also contended that on 09.04.1999, this court had directed the plaintiff to deposit the balance consideration of Rs 15 lakhs within six weeks. The plaintiff had sought extension of time for making the deposit and by an order dated 17.05.1999, the court granted the extension of a further six weeks as a last opportunity. It was contended that though the plaintiff deposited the amount of Rs 15 lakhs within the extended period, the important thing to note is that the plaintiff did not have the necessary funds when the order dated 09.04.1999 was made. Referring to the Supreme Court decision in the case of **Ambika Prasad Thakur and Others etc. v. Ram Ekbal Rai (dead) by his legal representatives and others etc.:** AIR 1966 SC 605, the learned counsel for the defendants submitted that a presumption can be drawn both forwards and backwards with regard to the readiness of the plaintiff. Though, this presumption would weaken through passage of time. It

was, therefore, contended that if the plaintiff did not have money in 1999, it could be presumed that he did not have money in 1995 also. It was further contended that this presumption was rebuttable. But, the plaintiff has not produced any evidence to rebut the same. The learned counsel also referred to the following decisions:-

- 1) **P.G. Sinha (Panchu Gopal Sinha) v. Commodore K.C. Chatterjee and Others:** AIR 1991 Cal. 327;
- 2) **His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar:** 1996 (4) SCC 526;
- 3) **Erikkil Thavatha Basheer v. Poopurambath Kaithal Khadeeja:** AIR 2001 Kerala 346.

These decisions essentially indicate that the plaintiff must plead and prove that he was ready and willing from the date of the contract till the date of hearing and that readiness and willingness must both be established by specific evidence such as availability of the balance amount.

13. With regard to the allegation that the suit property was not ready on the due date, i.e., 05.03.1995, the learned counsel for the defendants submitted that the electricity meter had been applied for in respect of the suit premises on 06.02.1995. The electricity meter for the suit premises was installed / energized on 03.04.1995. He referred to the evidence of DW-2 Vijay Kumar who was the Assistant Manager, Power Supply, BSES which does indicate that the application was

deposited on 06.02.1995 and that an inspector had visited the premises on 27.03.1995. The evidence of DW-2 also indicates that the meter was energized after verifying that construction of the second floor had been completed. The learned counsel also referred to the decision of the Supreme Court in the case of **P.R. Deb and Associates v. Sunanda Roy**: 1996 (4) SCC 423 to submit that the claim of the plaintiff was unreasonable and, therefore, there was no question of specific performance of the agreement.

14. The learned counsel appearing on behalf of the plaintiff submitted that it was specifically averred in the plaint that the construction was not completed and the possession had not been handed over. It is because of this that the balance consideration was not paid. The plaintiff was ready and willing at all times to complete his part of the contract. The learned counsel also submitted that the plaintiff was a *Budhist* monk and spoke only in *Bhutia* and required a translator for the purposes of cross-examination. She submitted that this factor must also be kept in mind while looking at his conduct and evidence. It was contended that the defendants turned dishonest and attempted to resile from the contract. It was submitted that this can be easily demonstrated from the fact that the defendants in their written statement had denied having received the sum of Rs 5 lakhs on 07.03.1995, when, in fact, it has been established that the defendants

did receive the sum of Rs 5 lakhs against a written receipt (Exhibit PW-1/C) on 07.03.1995. She submitted that it is because the defendants denied having received the said sum of Rs 5 lakhs that they were demanding the balance of Rs 20 lakhs, when, in fact, the balance consideration was only Rs 15 lakhs. The plaintiff has pleaded that the defendants were demanding a sum of Rs 5 lakhs over and above the sum of Rs 25 lakhs agreed upon. This was being done because the defendants were denying having received the sum of Rs 5 lakhs on 07.03.1995.

15. With regard to the plaintiff's refusal to answer the questions relating to the sources of cash, income tax returns, etc., the learned counsel for the plaintiff submitted that the refusal was in connection with the sum of Rs 5 lakhs cash which was paid on 07.03.1995. The learned counsel submitted with reference to the evidence of PW-2 that the plaintiff had the money in 1999 also, immediately upon the passing of the order dated 09.04.1999, but the balance of Rs 15 lakhs could not be deposited in the first instance because the plaintiff was travelling. It was also pointed out by the learned counsel for the defendants that the defendants cannot contest this suit after the counsel for the defendants, on instructions from the defendants, had made the categorical statement that *"the defendants are ready and willing to execute the sale deed provided the balance amount due and payable pursuant to the*

agreement to sell is paid and deposited by the plaintiff in this court within four weeks from today alongwith reasonable interest”. It is upon this statement that the court directed the plaintiff to deposit Rs 15 lakhs within six weeks in order to show the *bona fides* of the plaintiff. The order dated 09.04.1999 specifically records that the liability of payment of interest, if any, shall be considered on the next date. By an order dated 17.05.1999, upon the plaintiff requesting further time to deposit the sum of Rs 15 lakhs, as a last opportunity to the plaintiff, this court granted six weeks time to make the said deposit. It is an admitted position that the deposit was made within the extended period of time. The question of liability of the payment of interest has, however, not been decided till date. In the backdrop of these circumstances and orders of the court, the learned counsel for the plaintiff submitted that the defendants cannot now resist this suit for specific performance after having clearly stated before this court that they were ready and willing to execute the sale deed provided the balance amount pursuant to the agreement to sell is paid alongwith reasonable interest. The learned counsel for the plaintiff also referred to the decision of the Supreme Court in the case of **Aniglase Yohannan v. Ramlatha and Others: JT 2005 (8) SC 499** in support of his case for specific performance.

16. It is an admitted position that the plaintiff and the defendants entered into the agreement to sell dated 24.01.1995 (Exhibit PW-1/A).

The said agreement recites that the defendants are the absolute owners of the property bearing No. II/O-59, Lajpat Nagar, New Delhi measuring 200 sq. yds. having purchased the same from Smt. Meena Kapur. It is also recited that the defendants were constructing the said property and the construction was presently under progress. It was further recited that the defendants have agreed to sell the entire second floor of the said property along with proportionate share of the leasehold rights in the land underneath to the plaintiff for a total sale consideration of Rs 25 lakhs and the plaintiff has agreed to purchase the same from the defendants. Clause 1 of the agreement clearly states that a sum of Rs 5 lakhs (Rs 3 lakhs in cash and Rs 2 lakhs vide cheque No.313815 dated 24.01.1995 drawn on the Bank of America, Hansalaya, Barakhamba Road, New Delhi) has been received by the defendants from the plaintiff as advance earnest money / part payment at the time of signing of the agreement. It also stipulates that the remaining balance of Rs 20 lakhs shall be received by the defendants from the plaintiff *“at the time of handing over the vacant physical possession of the entire second floor, complete in all respects, to the second party, on or before 5.3.1995”*. A receipt (Exhibit PW-1/B) was also executed for the said sum of Rs 5 lakhs received on 24.01.1995.

17. Clause 2 of the said agreement stipulates that the defendants undertake to hand over vacant and physical possession of the entire

second floor, complete in all respects to the plaintiff, on or before 05.03.1995 against receipt of the balance payment.

18. These stipulations in the agreement to sell (Exhibit PW-1/A) have been sought to be interpreted by the learned counsel for the defendants as a stipulation of time being the essence of the contract.

19. In this context, the provisions of Section 55 of the Indian Contract Act, 1872 need to be examined. The said provision reads as under:-

“55. Effect of failure to perform at fixed time, in contract in which time is essential.—When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before a specified time, and fails to do any such thing at or before a specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of essence of the contract.

Effect of such failure when time is not essential.—If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon.—If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed,

unless, at the time of acceptance, he gives notice to the promisor of his intention to do so.”

20. In the context of the first part of Section 55, the Supreme Court, in the case of *Gomathinayagam Pillai and Others v. Palaniswami Nadar*: AIR 1967 SC 868 observed as under:-

“... It is not merely because of specification of time at or before which the thing to be done under the contract is promised to be done and default in compliance therewith, that the other party may avoid the contract. Such an option arises only if it is intended by the parties that time is of the essence of the contract. Intention to make time of the essence, if expressed in writing, must be in language which is unmistakable: it may also be inferred from the nature of the property agreed to be sold, conduct of the parties and the surrounding circumstances at or before the contract. Specific performance of a contract will ordinarily be granted, notwithstanding default in carrying out the contract within the specified period, if having regard to the express stipulations of the parties, nature of the property and the surrounding circumstances, it is not inequitable to grant the relief. If the contract relates to sale of immovable property, it would normally be presumed that time was not of the essence of the contract. Mere incorporation in the written agreement of a clause imposing penalty in case of default does not by itself evidence an intention to make time of the essence...”

It is apparent from the above extract that intention of making time of the essence, if expressed in writing, must be in language which is unmistakable though it may also be inferred from the nature of the property agreed to be sold, conduct of the parties and the surrounding circumstances at or before the contract. It must also be noted that if the contract relates to sale of immovable property, as in the present case, it would normally be presumed that time was not of the essence of the

contract. The Supreme Court has gone to the extent of stating that mere incorporation in the written agreement of a clause imposing penalty in case of default, does not by itself evidence an intention to make time of the essence.

21. Armed with these principles, let me consider the provisions of the agreement to sell (Exhibit PW-1/A). Clause 1 stipulates that the balance of Rs 20 lakhs shall be received by the defendants from the plaintiff at the time of handing over the vacant and physical possession of the entire second floor, **complete in all respects** to the plaintiff on or before 05.03.1995. Does this mean that if vacant physical possession is not handed over by the defendants to the plaintiff on or before 05.03.1995, the plaintiff would have lost his right under the agreement to purchase the suit premises ? This is not the intention of the parties which can be discerned from reading the agreement (Exhibit PW-1/A). Reading clause 1 alongwith clause 2 of the agreement, the stipulation of 05.03.1995 is more in respect of the defendants handing over vacant and physical possession of the suit premises, complete in all respects, to the plaintiffs, on or before 05.03.1995 than is it a stipulation indicating time being of the essence of the contract for performance of the plaintiff's obligations under the contract. In view of the provisions of the contract, it appears that the stipulation of 05.03.1995 was to put an urgency on the construction of the suit premises by the defendants.

22. In any event, the question that requires consideration at this stage is whether the suit premises was “*complete in all respects*” on 05.03.1995 or not ? The plaintiff has alleged that the construction of the suit premises was not complete on 05.03.1995 and that the construction was completed only in the first week of June, 1995. On the other hand, the defendants have contended that the construction of the suit premises was complete on 05.03.1995. In support of this, they have produced Mr Vijay Kumar (DW-2) to indicate that the electricity meter was installed and energised on 03.04.1995 and the same could only be done when construction was complete. It was submitted that the application for the electricity meter was made on 06.02.1995 even prior to 05.03.1995.

23. Considering the deposition of Vijay Kumar (DW-2), all that can be concluded is that an inspection was carried out on 27.03.1995 and that the electricity meter in respect of the suit premises was installed and energised on 03.04.1995. Even if it is assumed that when the inspection was carried out on 27.03.1995, the construction had been completed, nothing has been brought on record to establish that the construction of the suit premises had been completed in all respects and that it was ready for handing over of vacant physical possession on or before 05.03.1995.

24. Therefore, the defendants cannot avoid the contract. Firstly, because time was not of the essence of the contract as contemplated by the learned counsel for the defendants. The normal rule as indicated in *Gomathinayagam Pillai (supra)* would be applicable and which is that in contracts relating to sale of immovable property, it has to be normally presumed that time was not of the essence of the contract. The mere incorporation of the date of 05.03.1995 would, also, by itself not amount to evidence of an intention to make time of the essence. The depositions of PW-1 and PW-2 also indicate that 05.03.1995 was a date fixed for due performance of the contract on the part of the defendants. Secondly, in any event, the defendants could only claim avoidance of the agreement to sell (Exhibit PW-1/A) if it was established as a matter of fact that the suit premises was ready for handing over of vacant and physical possession, complete in all respects, to the plaintiff, on or before 05.03.1995. This, unfortunately, has not been established as a fact.

25. As regards the readiness and willingness of the plaintiff, it must be seen that a sum of Rs 5 lakhs stood paid on the date of the agreement itself, i.e., 24.01.1995. The plaintiff has pleaded that he was ready and willing to pay the balance amount immediately upon handing over of the possession of the suit premises. It has come in his evidence

that the defendants requested for extension of time for completing the construction. It has also been established under Issue No.5 that a further sum of Rs 5 lakhs was paid by the plaintiff to the defendants on 07.03.1995, two days after the so-called terminal date. This is also an indicator that the defendants themselves did not treat 05.03.1995 as the terminal date inasmuch as they accepted the payment of Rs 5 lakhs towards sale consideration of the suit premises on 07.03.1995 without any demur. The story put forth by the defendants cannot be given much credence, if at all. This stands established from the fact that while they had pleaded that they did not receive the sum of Rs 5 lakhs on 07.03.1995, they admitted having signed the receipt dated 07.03.1995. It has already been held that the story behind the signing of the receipt as pleaded in the written statement is a mere concoction and fabrication which cannot be believed. No person would sign a receipt of a payment received in cash without actually having received the said amount.

26. It must also be kept in mind that in the order dated 09.04.1999, the learned counsel for the defendants, on instructions from the defendants, had stated that they were ready and willing to complete the sale transaction on receipt of the balance consideration alongwith reasonable interest thereon. It is on the basis of this statement that the plaintiff was directed to deposit the balance amount of Rs 15 lakhs.

The plaintiff did so, though within the extended period of time. The said amount has been lying in a fixed deposit with this court and is earning interest thereon. The plaintiff has, therefore, done whatever it could do to complete his part of the transaction. He has demonstrated that he was ready and willing to comply with his part of the transaction. At the time of signing of the agreement, a sum of Rs 5 lakhs was paid. Though, the plaintiff was not required to pay any amount till the possession was handed over to him, the plaintiff still made the payment of Rs 5 lakhs on 07.03.1995. All the questions with regard to bank account, income tax returns relate to the plaintiff's source of funds. His refusal to answer such questions does not lead to the conclusion that the plaintiff did not have the funds. The fact that the plaintiff made the aforesaid payments indicates that he did have the funds. The plaintiff sent a legal notice on 10.07.1995 indicating his readiness and willingness to pay the balance amount on the defendants handing over vacant and physical possession of the suit premises. Since that was not forthcoming, the plaintiff was constrained to file the present suit. The balance amount of Rs 15 lakhs has already been deposited by the plaintiff in this court as indicated above. There is nothing left for the plaintiff to do. The plaintiff has clearly indicated his readiness and willingness to abide by the terms of the agreement to sell (Exhibit PW-1/A) at all material times. It is for the defendants to comply with their part of the agreement by parting with possession of the suit premises

and by executing the sale deed and having the same registered so as to complete the transaction agreed upon by virtue of the said agreement to sell dated 24.01.1995 (Exhibit PW-1/A).

27. Thus, Issue Nos. 6, 7 and 8 are decided in favour of the plaintiff and against the defendants.

Issue No. 9 (Relief)

28. In view of the discussion in respect of Issue Nos. 5 to 8 above, the plaintiff is entitled to a decree in terms of prayers 'a', 'b' and 'c' as set out in the plaint. Simultaneously upon such decree, the defendants shall be entitled to the sum of Rs 15 lakhs alongwith interest thereon deposited in court pursuant to the order dated 09.04.1999 and 17.05.1999. It is ordered and decreed accordingly.

The suit and all pending applications stand disposed of.

(BADAR DURREZ AHMED)
JUDGE

July 02, 2008

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