

Reportable
IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **FAO(OS) 108/2008 and CM Appl. No.3231/2008**

Date of Hearing: 21.08.2008

Date of Decision: 25.09.2008

PANTALOON RETAIL INDIA LTD.

..... Appellant

Through Dr.A.M. Singhvi and
Mr. Rajiv Nayar, Senior Advocates with
Mr.Rishi Aggarwal, Mr.Akshay Runga and
Mr.Abhishek Kale

versus

DLF LIMITED & ORS

..... Respondent

Through Mr.Soli J. Sorabji,
Senior Advocate with Ms.Diya Kapur,
Mr.Debmalya Banerjee,
Ms.Mandeep Kaur, Mr.Abhishek Roy
& Ms.Mansi Gupta

CORAM :-

***THE HON'BLE MR.JUSTICE A.K.SIKRI**

THE HON'BLE MR. JUSTICE MANMOHAN SINGH

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

A.K. SIKRI, J.

:

1. The plaint of the appellant, who filed suit for mandatory injunction etc. against the respondent herein,has been returned vide orders dated 8.2.2008 by the learned Single Judge on the ground that Delhi court lacks territorial jurisdiction to entertain the suit. Challenging that order, present appeal is

preferred. Only those necessary facts which have bearing on the issue of territorial jurisdiction need a mention. For the sake of clarity, we maintain the nomenclature of the parties as in the suit. That means hereafter the appellant would be referred to as the plaintiff and the respondent No.1 as the defendant.

2. The defendant, DLF Limited, has constructed and developed a massive Mall known as "South Point" (defendant No.2). It is located at DLF City, Phase V, Sector 53, Village Waziarabad, Gurgaon, Haryana. Spaces in the said Mall are given to various traders on lease. The plaintiff also agreed to take on lease an area measuring 1,10,000 sq. ft. in the said Mall for a period of nine years @ Rs.39/- per sq. ft. A Memorandum of Understanding (MOU) in this behalf was signed between the parties on 12.5.2004. This MOU, *inter alia*, gives the details about the understanding reached between the parties. The defendant was also handed over a cheque of Rs.1,01,000/- by the plaintiff as token money. This cheque was duly encashed. We may note that at the time when this MOU was entered into, the construction of the Mall was still underway. It was completed sometime in the year 2006. After the completion of the Mall, e-mail dated 5.10.2006 was addressed by the defendant No.1 to the plaintiff offering a draft formal lease deed to be executed between the parties. The plaintiff objected to the said draft alleging that some terms of the MOU were not incorporated therein.

Request was sent vide e-mail dated 10.10.2006 for incorporation of those terms. It is not necessary to go into the exact nature of dispute and exchange of further e-mails between the parties. Suffice it is to mention that dispute remained about the exact text of the intending agreement because of which lease agreement could not fructify. According to the plaintiff, the defendants were backing out because of boom in the real estate sector and increase in property prices. This led the plaintiff approach this Court by filing the suit, as aforementioned.

3. Along with suit, the plaintiff also filed the application under Order 39 Rules 1 and 2 of the Code of Civil Procedure (hereinafter referred to as the 'Code') seeking interim protection. Order dated 7.12.2007 was passed restraining the defendants from transferring the possession of the area measuring about 1,10,000 sq. fts. in favour of any third party or create any rights therein in favour of anyone contrary to MOU dated 12.5.2004 on the condition of deposit of Rs.80,00,000/-. The plaintiff deposited that amount in this Court.
4. On receipt of summons in the suit the defendants No.2 and 3 filed their written statements questioning the territorial jurisdiction of this Court. Defendant No.1 also took the similar plea, albeit in the form of IA No.14649/2007 filed under Order 7 Rule 10 of the Code praying that the plaint be returned for want of jurisdiction.

5. The learned Single Judge has accepted the plea of the defendants, *inter alia*, on the ground that the property in question is an immovable property and is situated outside the territorial jurisdiction of this Court. It held that the suit filed by the plaintiff seeks relief of “possession” as well and thus this Court will not have the territorial jurisdiction to entertain that suit. The learned Single Judge referred to some case law (which we shall discuss at the appropriate stage) and on that basis, culled out the following principle which would govern the issue of jurisdiction in such cases:-

“A perusal of different judgments on the question of jurisdiction shows that in case of a suit for specific performance of an agreement to sell, if the Plaintiff does not claim the relief of possession and only claims the relief of execution of sale deed, this Court can entertain the suit on the ground that Defendant resides within the jurisdiction of this Court. Thus, it is to be seen as to what is the nature of the suit of the Plaintiff.”

6. We may point out at this stage that the counsel for the parties also proceeded on the basis of aforesaid statement of law. However, it would still necessary to discuss the provisions of the Code to thrash out legal position. Section 16 of the Code makes the following reading:-

“16. Suits to be instituted where subject-matter situated, subject to the pecuniary or other limitations prescribed: suits,

(a) for the recovery of immovable property with or without rent or profits,

- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) for the determination of any other right to or interest in immovable property,
- (e) for compensation of wrong to immovable property,
- (f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situated:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant, may where the relief sought can be entirely obtained through his personal obedience be instituted either in the Court within the local limits or whose jurisdiction the property is situated, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.”

7. It is clear from a plain reading of Section 16 that in any suit where the relief claimed is of the nature described in clauses (a) to (f), such a suit in respect of immovable property is to be instituted in the Court within the local limits of whose jurisdiction the property is situate. In the present case, immovable property is located in Gurgaon, Haryana, which is outside the local limits of Delhi. Clause (a) deals with recovery of immovable property and clause (d) is about those suits where determination of any other right to or interest the property is called for. We are not concerned with other clauses in the present case. On the other hand, proviso to Section 16 lays down certain circumstances in which suit can be instituted even within the local limits of

whose jurisdiction the defendant actually and voluntarily resides or carries on business or personally works for gain. Thus, normally a suit in respect of immovable property is to be filed where the subject-matter, i.e., the immovable property is situate. However, in the proviso an exception is laid down by providing that relief respecting or compensation for wrong to, immovable property can be obtained through the personal obedience of the defendant, the suit can also be instituted where the defendant resides etc. If the proviso is applicable, the principles stipulated in Section 20 of the Code would determine the territorial jurisdiction. In any case, in so far as the Court within local limits of whose jurisdiction the property is situate shall always have the jurisdiction even when case is covered by the proviso.

8. The question, therefore, is as to whether present case is covered by clause (a) or (d) of Section 16 of the Code on the one hand or proviso thereof is applicable and therefore, provisions of Section 20 of the Code can also be invoked.
9. To find answer to this question, we refer to certain precedents of the Apex Court as well as this Court. First case which needs mention is the judgment of the Supreme Court in Adcon Electronics Pvt. Ltd. v. Daulat and another, **(2001) 7 SCC 698**. In that case, vide agreement dated 12.7.1986 immovable property situate in Indore, MP, was agreed to be sold by the defendant to the plaintiffs. Suit for specific performance was filed in the High Court of

Judicature at Bombay (now Mumbai) praying, *inter alia*, for a declaration that agreement dated 12.7.1986 and Memorandum of Understanding dated 1.8.1987 was still subsisting and binding on the defendant and a decree for specific performance of the said agreement and the memorandum was sought. The defendant took objection to the maintainability of that suit in Mumbai on the ground that immovable property was situate in Indore, MP. This plea was not accepted by either the Single Judge or the Division Bench of the Bombay High Court. It is in these circumstances the appeal came to be filed against the judgment of the Bombay High Court, before the Supreme Court, by the defendant. The Supreme Court held that a suit for specific performance simplicitor, in the absence of an explicit prayer for delivery of possession of the suit property, would not be treated as a “suit for land.” After taking note of certain judgments of the High Courts as well as that of Federal Court, the Supreme Court summed up the legal position, with approval, in the following words:-

“14. In *Debendra Nath Chowdhury v. Southern Bank Ltd.*, AIR 1960 Cal 626, a Division Bench of the Calcutta High Court took the view that the suit for specific performance of the contract to execute and register a lease with alternative claims for damages is not a “suit for land” within the meaning of clause 12 of the Letters Patent.

15. From the above discussion it follows that a “suit for land” is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property. Whether a suit is a “suit for land” or not has

to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a “suit for land”. We are in respectful agreement with the view expressed by Mahajan, J. in *Moolji Jaitha case* (supra).”

10. The Court further observed that though in a suit for specific performance of contract for sale of immovable property containing a stipulation that on execution of the sale deed the possession of the immovable property will be handed over to the purchaser and because of that it is implied that delivery of possession of immovable property is a part of the decree of specific performance of the contract but having regard to the provisions of Section 22 of the Specific Relief Act, unless relief for possession is specifically asked for, no court can grant that relief. Discussion on this aspect is contained in para 17 of the judgment, which is reproduced below:-

“17. It may be seen that sub-section (1) is an enabling provision. A plaintiff in a suit for specific performance may ask for further reliefs mentioned in clauses (a) and (b) thereof. Clause (a) contains reliefs of possession and partition and separate possession of the property, in addition to specific performance. The mandate of sub-section (2) of Section 22 is that no relief under clause (a) and (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed. Thus it follows that no court can grant the relief or possession of land or other immovable property, subject-matter of the agreement for sale in regard to which specific performance is claimed, unless the possession of the immovable property is specifically prayed for.”

11. On this basis, the Court held that as in the case before it relief for possession was not specifically claimed, suit for specific performance was not to be treated as “suit for land” and therefore, Bombay High Court had the jurisdiction to entertain the suit on the basis of “cause of action”. Thus, the Court, in essence, held that where the suit filed is one for specific performance only without claim relief for possession, provision like Section 16 will have no application and the principle contained in Section 20 of the Code would be attracted for the purpose of determination of the territorial jurisdiction of a court.

12. We may point out at this stage itself that earlier judgment of the Supreme Court in the case of Babu Lal v. Hazari Lal Kishori Lal and others, **1982 (3) SCR 94** was not taken note of by the Supreme Court. In that case, the decree for specific performance simplicitor was passed by the Court. In the execution of the said decree, the decree holder wanted possession as well. In view of Section 22 of the Specific Relief Act, 1963 question arose before the Court as to whether decree for possession had to be specifically sought for. Referring to the provisions of Section 22 of the Specific Relief Act the contention of the judgment debtor was that as the plaintiffs had not claimed any relief for possession in the suit, they were precluded from claiming that relief at a subsequent stage. This contention of the judgment debtor was not accepted holding that Section 22 was an enabling provision. The

legislative history behind enacting Section 22, Specific Relief Act, 1963, was noted and the Court opined that even if such a relief was not claimed at the initial stage of the suit, the Court could permit the plaintiff to include this relief at the subsequent stage. We may extract the following discussion in this behalf from the said judgment:-

“Section 22 enacts a rule of pleading. The Legislature thought it will be useful to introduce a rule that in order to avoid multiplicity of proceedings the plaintiff may claim a decree for possession in a suit for specific performance, even though strictly speaking, right to possession accrues only when suit for specific performance is decreed. The Legislature has now made a statutory provision enabling the plaintiff to ask for possession in the suit for specific performance and empowering the court to provide the decree itself that upon payment by the plaintiff of the consideration money within the given time, the defendant should execute the deed and put the plaintiff in possession.

The section enacts that a person in a suit for specific performance of a contract for the transfer of immovable property, may ask for appropriate reliefs, namely, he may ask for possession, or for partition, or for separate possession including the relief for specific performance. These reliefs he can claim, notwithstanding anything contained in the Code of Civil Procedure 1908, to the contrary. Sub-section (2) of this section, however, specifically provides that these reliefs cannot be granted by the Court, unless they have been expressly claimed by the plaintiff in the suit. Sub-section (2) of the section recognized in clear terms the well-established rule of procedure that the court should not entertain a claim of the plaintiff unless it has been specifically pleaded by the plaintiff and proved by him to be legally entitled to. The proviso to this sub-section (2), however, says that where the plaintiff has not specifically claimed these reliefs in his plaint, in the

initial stage of the suit, the court shall permit the plaintiff at any stage of the proceedings, to include one or more of the reliefs, mentioned above by means of an amendment of the plaint on such terms as it may deem proper. The only purpose of this newly enacted provision is to avoid multiplicity of suits and that the plaintiff may get appropriate relief without being hampered by procedural complications.”

13. In first blush, one gets an impression that the judgment of the Supreme Court in Adcon Electronics (supra) is in conflict with Babu Lal (supra) in so far as the interpretation of Section 22 of the Specific Relief Act is concerned. Dr. Singhvi, learned senior advocate appearing for the appellant (plaintiff), however, made an endeavour to demonstrate that there was no such contradiction and the two cases could be reconciled. His submission was that though it was necessary to make a prayer for decree of possession to claim that relief as held in Adcon Electronics (supra), at the same time it was only an “enabling” provision and therefore, even if this relief is not claimed at the initial stage, amendment at subsequent stage to include this relief was permissible. Though this argument is contentious, we refrain from expressing a final view since this aspect does not arise for consideration. However, we would refer to the judgment in Babu Lal (supra) for other purpose at the appropriate stage.

14. Reverting back to the issue at hand, we move on to discuss another judgment of the Supreme Court in the case of Harshad Chiman Lal Modi v. DLF Universal Ltd. and another, **AIR 2005 SC 4446**. Incidentally, this was the

case relating to the same defendant, namely, DLF Universal Ltd. The property in that case also, which was the subject-matter of agreement to sell, was situated in Gurgaon, Haryana. Suit for specific performance was filed in the Delhi High Court. Defendants had their head office at Delhi and the agreement was also entered into between the parties at Delhi. Payments were to be made at Delhi and some installments were, in fact, paid in Delhi. The factual position in the said case was, thus, somewhat identical to that of the present case. In that case also the defendants moved an application under Order 7 Rule 10 of the Code with the plea that Delhi court will not have territorial jurisdiction to entertain the suit in view of Section 16 of the Code. The plaintiff, on the other hand, referred to and relied upon the provisions of Section 20 of the Code and contended that since the defendants had their office in Delhi and also agreement was entered into in Delhi and thus, cause of action having arisen in Delhi, Delhi court had the requisite jurisdiction to entertain the suit. Identical conflict had, thus, arisen, namely, Section 16 vis-à-vis Section 20 of the Code and the Court was to determine as to which provision was applicable. The Apex Court held that as the property was situated in Gurgaon, Haryana, namely, outside the territorial jurisdiction of Delhi, Delhi courts will not have the jurisdiction to entertain the suit and thus, confirmed the judgment of this Court whereby the plaint of the plaintiff was rejected and returned for want

of territorial jurisdiction. It would be of interest to reproduce the following discussion relevant for our purposes:-

“14. Section 16 thus recognizes a well established principle that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment. Proviso to Section 16, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in rem still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based on well known maxim “equity acts in personam, recognized by Chancery Courts in England, Equity Courts had jurisdiction to entertain suits respecting immovable properties abroad through personal obedience of the defendant. The principle on which the maxim was based was that courts could grant reliefs in suits respecting immovable property situate abroad by enforcing their judgments by process in personam, i.e. by arrest of defendant or by attachment of his property.

15. In *Ewing vs. Ewing*, (1883) 9 AC 34: 53 LJ Ch 435, Lord Selborne observed:

“The Courts of Equity in England are, and always have been, courts of conscience operating in personam and not in rem; and in the exercise of h is personal jurisdiction they have always been accustomed to compel the performance of contracts in trusts as to subjects which were not either locally or *ratione domicilli* within their jurisdiction. They have done so, as to land, in Scotland, in Ireland, in the Colonies, in foreign countries.”

16. The proviso is thus an exception to the main part of the section which in our considered opinion, cannot be interpreted or construed to enlarge the scope of the principal provision. It would apply only if the suit falls within one of the categories specified in the main part of the section and the relief sought could entirely be obtained by personal obedience of the defendant.

17. In the instant case, the proviso has no application. The relief sought by the plaintiff is for specific performance of agreement respecting immovable property by directing the defendant No.1 to execute the sale deed in favour of the plaintiff and to deliver possession to him. The trial court was, therefore, right in holding that the suit was covered by clause (d) of Section 16 of the Code and the proviso had no application.

18. In our opinion, the submission of the learned counsel for the appellant that the parties had agreed that Delhi Court alone had jurisdiction in the matters arising out of the transaction has also no force. Such a provision, in our opinion, would apply to those cases where two or more courts have jurisdiction to entertain a suit and the parties have agreed to submit to the jurisdiction of one court.”

15. Thus, in that case also on the premise that as the relief sought by the plaintiff was for specific performance of agreement respecting immovable property coupled with relief to deliver possession to him, suit was covered by clause (d) of Section 16 of the Code and proviso had no application.

16. Before discussing the applicability of the legal principles to the facts of this case, we deem it proper to discuss two Division Bench judgments of this Court. First judgment was delivered in FAO (OS) No.213/1990 and FAO (OS) No.4/1998 on 20.7.2007 in the case entitled K.G. Ringhshia v. Smt. Prakash

Kaur. Significantly, judgment in the case of Babu Lal (supra) was not noted by the Division Bench. The two appeals which were decided by a common judgment dealt with the properties existing in Mumbai in respect of which agreements to sell were entered into. Suit for specific performance was filed in Delhi. Identical issue arose for consideration, namely, whether Section 16(d) or its proviso coupled with Section 20(c) of the Code would apply. Holding that mere agreement to sell does not create any right or interest in an immovable property, the Court answered the question by opining that Section 16(d) of the Code was not applicable and applying the parameters of Section 20(c), it was held that the Delhi Court will have the jurisdiction. Judgment of the Supreme Court in Adcon Electronics (supra) was relied upon for the proposition that since relief of possession was not specifically asked for, which is the mandate of Section 22 of the Specific Relief Act, it was not a suit for possession. Without such a prayer and a suit for specific performance was not a “suit for land” or a suit in which interest or right in a land is primary subject-matter.

- 17.** It would, however, be necessary to highlight that suit as framed in the said case was for declaration that there existed a binding and valid contract between the parties. Thus, it was a suit for declaration simplicitor and the Court was not required to go into the question of right or interest in any immovable property.

18. Second Division Bench judgment is in the case of Vipul Infrastructure Developers Ltd. & Anr. V. Rohit Kochhar and Anr. [FAO (OS) 196-197/2005] decided on 11.3.2008. In that case agreement to sell dated 16/20th January 2004 was entered into between the parties in respect of property at Gurgaon, Haryana. Suit for specific performance was filed in Delhi. The Court was required to deal with the same question of jurisdiction with reference to the same provisions, namely, Section 16(d) of the Code, its proviso, Section 20 of the Code and Section 22 of the Specific Relief Act. The learned Single Judge had held the suit to be maintainable in Delhi on the ground that only a declaration of right and title in the suit property was sought and not the delivery of possession. The Division Bench overruled this judgment holding that Delhi Court has no jurisdiction and in the process placed reliance upon the decision of the Supreme Court in Babu Lal (supra). Though the judgment in Adcon Electronics (supra) was also noticed, the Division Bench was of the opinion that even when no prayer for declaration of delivery of possession of the suit property was made, when the plaint is to be read in entirety along with different clauses of the agreement to sell, delivery of possession was a consequence of the execution of sale deed and as this could not be done by mere presence of the defendant and therefore, Section 16(d) applied and not the proviso to Section 16 of the Code. The Court also held that as per the ratio of Babu Lal (supra), in satisfaction of a

decree for specific performance of a contract for sale, the handing over of the possession of the property is incidental and therefore, the judgment debtor has not only to execute the sale deed but also to deliver the property to the decree holder. The relevant portion of the said judgment is reproduced below:-

“18.In the present case, it is an admitted position that the appellant had entered into the aforesaid alleged contract at its Corporate office at Delhi. It is the specific stand of the appellant that they were initially residents of Delhi and that they had moved to Gurgaon and their corporate office is now also located at Gurgaon. It is the contention of the counsel appearing for the respondents that the proviso to Section 16 of Code of Civil Procedure is applicable which is sought to be invoked, for, the relief which is sought for could be entirely enforced through the personal obedience of the defendants in Delhi. There is however not only a prayer in the plaint for declaration of the right and title, but also to transfer the right, title and interest in the suit premises situate at Gurgaon. As, in our opinion, the suit can be decreed in favour of the plaintiff only when the Court can get the sale deed executed and registered in favour of the plaintiff which would confer the title of the suit premises on the plaintiff, and the execution and the registration of the sale document would have to take place at Gurgaon and, for this the Court will also have to pass a decree directing the defendant to get the sale deed executed and registered at Gurgaon, implication of the same will be that a direction will have to be given to the defendant that he shall have to move out of Delhi and go to Gurgaon and get the same registered. No sale deed is sought to be registered at Delhi and, therefore, in our considered opinion such a relief cannot be entirely obtained through the personal obedience of the defendant, who in this case has to go to the jurisdiction of another court to get the decree executed and the sale deed registered.

19. Accordingly, we are of the considered opinion that the submissions of the learned counsel for the respondent and the findings recorded by the learned Single Judge that the present case is covered by the proviso of Section 16 of the Code of Civil Procedure are misplaced. In the facts and circumstances of the case as delineated, the relief in the present suit cannot be entirely obtained through the personal obedience of the defendants. The proviso to Section 16 of the Code of Civil Procedure would be applicable to a case where the relief sought for by the plaintiff was entirely obtainable through the personal obedience of the defendant, i.e., the defendant has not at all to go out of the jurisdiction of the Court for the aforesaid purpose. The present case is not a case of the aforesaid nature. In the present case for execution of the sale deed the defendants will have to go out of the jurisdiction of this Court and get the same executed and registered in Gurgaon.

20. In the present case also it is an admitted position that possession of the said property was with the seller and, therefore, in terms of the provisions of Section 55(1) of the Transfer of Property Act, 1882, the relief of possession is inherent in the relief of specific performance of the contract. In our considered opinion the ratio of the decision of the Supreme Court in Babu Lal (supra) and the principles laid down in the case of Harshad Chiman Lal Modi (supra) are applicable to the facts of the present case. In Harshad Chiman Lal Modi (supra) it was found that in addition to passing decree, the court was also required to deliver possession of the property. It was held that such a relief can be granted only by sending the concerned person responsible for delivery of possession to Gurgaon and the court at Delhi does not have the jurisdiction to get the aforesaid decree enforced for the property situate outside territorial jurisdiction of Delhi High Court. The Court while referring to the provisions of Section 16 of the CPC held that the location of institution of a suit would be guided by the location of the property in respect of which and for determination of any right or interest whereof the suit is instituted. The proviso to Section 16 CPC is also not applicable to the case, as the relief sought for cannot be

entirely granted or obtained through the personal obedience of the respondent.”

19. One can possibly argue that there is some conflict of opinion in the aforesaid two Division Bench judgments. But for our purposes it is not necessary to go further. In K.G. Ringshia (supra), admittedly suit filed was for declaration simplicitor and that too, to the effect that there was a subsisting contract. In Vipul Infrastructure (supra), the Court proceeded on the basis that relief for possession was inherently claimed. We have already noted in the beginning that the legal principle which was accepted by both the parties, is that, if the suit is for specific performance simplicitor, relief can be obtained through the personal obedience of the defendant directing him to execute the sale deed (or lease deed as the case may be) as per the proviso to Section 16, such a suit can be filed in a particular court if it is shown that the defendant actually and voluntarily resides and carries on business or works for gain within the local limits of that Court even if the property is situated outside the local limits of that Court. On the other hand, if, along with the suit for specific performance, possession is also claimed, the suit has to be filed in a court where the immovable property is located inasmuch as, in that case relief cannot be obtained ordinarily through the personal obedience of the defendant. Reason is simple. For claiming relief of possession, even while executing the decree, one may have to approach

the Court where the immovable property is situate by seeking transfer of that decree and thus, proviso would not apply in such a situation.

20. Again, as mentioned above, Dr. Singhvi and Mr. Rajiv Nayar, Senior Advocates, who appeared for the appellant/plaintiff agreed with this proposition of law. The submission, however, was that in the instant case the plaintiff had not sought any relief for recovery of possession of the premises, subject-matter of the MOU. Mr. Soli J. Sorabji, learned senior counsel appearing for the defendant, on the other hand, argued to the contrary. Therefore, the real controversy is as to whether the plaintiff has claimed the decree of possession as well, in the suit. This controversy has arisen because of the reason that prayer clause does not specifically contain a request for “decree of possession”. At the same time the plaintiff has claimed “all consequential reliefs” in the following manner in the prayer clause:-

“a) Pass a decree of mandatory injunction against the defendants jointly and severally to execute the lease deed as per the draft sent by the defendant no.2 on 8.5.2007 and to take all consequential steps for allowing the plaintiff to perform the plaintiff’s rights and obligations under the said Lease Deed read with the Agreement dated 12.5.2004;”

21. First relief is for mandatory injunction seeking directions against the defendant to “execute the lease deed.” This is in the nature of specific performance. We are concerned with the second part of the relief whereby

mandatory injunction is also sought to direct the defendants “to take all **consequential steps** for allowing the plaintiff to perform the plaintiff’s rights and obligations under the said Lease Deed

22. Submission of Dr. Singhvi was that consequential relief in the prayer clause would only mean that after the execution of the lease deed mandate was required against the defendant to take steps for registration thereof as well and it would not mean that possession was asked for. He referred to the provisions of draft lease deed and particularly clause (2) thereof as per which, lessee, i.e., the plaintiff was to “take possession of the demised premises on its own or through its authorized representative on the lease commencement date” and submitted that by virtue of that clause the moment lease deed is executed and registered, it becomes the right of the plaintiff to take possession of its own and therefore, it was not even necessary to make specific prayer for seeking recovery of possession. He also referred to the reply of the plaintiff to the defendants’ application under Order 7 Rules 10 and 11 of the Code, on which he heavily relied. In para 3 of the said reply, specific averment is made that “the present suit is not a suit for possession but for directing the defendants to sign and execute the draft lease deed which had been sent by themselves to the plaintiff.”

23. His submission, thus, was that on the very first available opportunity, the plaintiff had clarified that it was not seeking any relief of possession of the

immovable property. In view of this explanation/clarification given by the plaintiff himself he had precluded himself from seeking this relief even at the later stage in the suit or in the execution and therefore, there was no threat of a situation like the one occurred in Babu Lal's case (supra) happening here. His submission was that at this stage while considering the application under Order 7 Rules 10 and 11 of the Code, the averments in the plaint alone were to be seen and the plaintiff was the best person to explain its case.

24. This submission appears to be attractive in the first blush. As pointed out above, there is no specific prayer for recovery of possession of the suit property. At the same time, the plaintiff seeks mandatory decree commanding the defendants to take "consequential steps". Therefore, in order to appreciate the submission, we may have to first determine as to what is the meaning which is ascribed to the consequential prayer made by the plaintiff *de hors* his explanation given in reply to application under Order 7 Rules 10 and 11 of Code. Mr.Sorabji submitted that the prayer as it stands is not susceptible to any vagueness and the solitary meaning which has to be given is that the plaintiff intended to recover the possession of the suit premises as well. For this purpose he referred to the discussion contained in Babu Lal (supra) wherein some of the judgments of the High Courts were

taken note of with approval, touching this aspect. This discussion runs as under:-

“In *Balmukand v. Veer Chand*¹ the decree for specific performance of a contract of sale was silent as to the relief of delivery of possession even though such relief was claimed in the suit. It was held by the Allahabad High Court that the executing court was still competent to deliver possession. It was further held that it was not necessary in a suit for specific performance either to separately claim possession nor was it necessary for the court to pass a decree for possession. A decree for specific performance of a contract includes everything incidental to be done by one party or another to complete the sale transaction, the rights and obligations of the parties in such a matter being governed by section 55 of the Transfer of Property Act. In *Janardan Kishore v. Girdhari Lal*⁽²⁾ the Patna High Court took the view that the relief of possession is inherent in a relief for specific performance of contract for lease, and the court executing a decree for specific performance of such a contract can grant possession of the property to the decree-holder even though the decree did not provide for delivery of possession. In *Subodh Kumar v. Hiramoni Dasi* ⁽¹⁾ the Calcutta High Court took a similar view that the right to recover possession springs out of the contract which was being specifically enforced and not as a result of the execution and completion of the conveyance, and as such the judgment-debtor was bound to deliver possession to the decree-holder.

In *Mohammed Ali Abdul Chanimomin v. Bishemi Kom Abdulla Saheb Momin Anr.* ⁽²⁾ the Mysore High Court observed that the liability to deliver possession for specific performance was necessarily implied in a decree for specific performance directing the defendant to execute a sale deed on the principle of clause (f) of sub-section (1) of section 55 of the Transfer of Property Act, according to which the liability to deliver possession arises immediately upon execution of the sale deed unless by agreement the date of delivery of possession is postponed.

In this state of the law Legislature intervened and on the basis of the report of the Law Commission enacted section 22 in 1963 as it stands.”

25. In the present case the plaintiff has not prayed for decree of mandatory injunction limiting to the execution of the lease deed. Had it been so, one would have queried as to whether, in the absence of any relief for possession, principle of K.G. Ringshia (supra) should be applied or that of Vipul Infrastructure (supra). Here, the plaintiff specifically asked for mandatory injunction against the defendants “to take all **consequential** steps for allowing the plaintiff to perform the plaintiff’s rights and obligation under the lease deed read with agreement dated 12.4.2004.” The natural meaning, which is to be given to the expression “all consequential steps” would be to include each and every step that is required for enforcing the purported right of the plaintiff under the lease deed and agreement and it would naturally encompass the relief of possession as well. Consequential step would not be limited to registration of the lease deed, which is now sought to be contended. The explanation furnished by the plaintiff in reply to application under Order 7 Rules 10 and 11 of the Code that the plaintiff did not ask for recovery of possession, is clearly an afterthought plea.

26. We may test this by visualizing a scenario where there is no such application under Order 7 Rules 10 and 11 of the Code filed by the defendant. Had the suit proceeded on merits and decreed in terms of prayer made by the

plaintiff for passing the decree of mandatory injunction against the defendants not only to execute the sale deed but also “to take all consequential steps” and such a decree was to be executed, any court with little prudence would have opined that the plaintiff is granted the relief of possession as well. This would have been more so in view of the law laid down in Babu Lal’s case (supra). By clever drafting and giving such an explanation in reply to application under Order 7 Rules 10 and 11 of the Code, the plaintiff cannot now turn around and say that it had not asked for relief of possession.

27. We are, therefore, of the opinion that in prayer clause, as it stands, a decree for possession was also prayed in the form of “consequential” relief. In such a situation, Section 16(d) of the Code would have clear application to the facts of this case and the learned Single Judge rightly held that the court in Delhi had no jurisdiction to entertain the suit. We, therefore, have no option but to affirm the order of the learned Single Judge.

28. As a consequence, this appeal stands dismissed with costs.

(A.K. SIKRI)
JUDGE

September 25, 2008
hp.

(MANMOHAN SINGH)
JUDGE