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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CS(OS)1772/2008 and IA 10241-242/2008

SUNIL KAPOOR AND ANR. ..... Plaintiff
Through Mr. Arjun Kumar, Mr. Deepak Kumar, Advocates

versus

M/S. RAMPAT ESTATE PVT. LTD. F+ ..... Defendant
Through

% 09.09.2008

CORAM:

Mr. Justice S. Ravindra Bhat

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 the Digest? Yes

Mr. Justice S. Ravindra Bhat (Open Court)

1. This order will dispose of two suits, CS (OS) 1771/08 and CS (OS) 1772/08, on the question of limitation. The plaintiff seeks a decree for specific performance, declaration and permanent injunction, in respect of ground floor of a common property.

2. According to the suit averments, the defendant is a corporate entity carrying business of buying and selling property, with its office in Green Park, New Delhi. It is averred that the defendant is the absolute owner of the commercial property

bearing No. E-22, Hauz Khas, New Delhi, measuring 250 sq yards and the multi storeyed property constructed on it. The defendant purchased the said property from one Mr. Shiv Kumar through sale deed dated 3rd September 1987, and thereafter constructed a four storeyed building on it. The ground floor and the basement were let out, whereas the other floors were sold to different buyers.

3. It is averred that on 8th July 1995 and 8th September 1995 respectively, the plaintiff in CS (OS) 1771/08 and the first plaintiff in CS (OS) 1772/08, along with two others, Mr. BD Khullar and Mr. Ravi Raj Khanna, entered into an agreement with the defendant to purchase the entire ground floor of the said property (hereafter 'the suit property') admeasuring 1850 sq. ft, consisting of one hall, one toilet, together with undivided, indivisible and impartible proportionate ownership in the suit property. At that time the suit property had already been given to rent to M/s Ericsson Ltd. at Rs. 22,20,000/- per annum, which interest the plaintiffs and the other co-owners took on. The plaintiffs and the other co-owners had paid the full consideration towards their respective shares and were handed possession of the suit property on the date of the execution of the agreement to sell. The total consideration amount was Rs. 64, 75, 000/-, out of which the plaintiff in CS (OS) 1771/08 paid Rs. 24, 50, 000 and the plaintiffs in CS (OS) 1772/08, who bought the shares of the other co-owners too, paid Rs. 40, 25, 000/- towards their respective shares in the suit property. Thus, the plaintiffs in CS (OS) 1771/08 and CS (OS) 1772/08 took possession of 700 sq. ft and 1150 sq. ft in the suit property.

5. It is averred that the suit property at present is under the tenancy of Big Apple and rent is also being apportioned according to the respective shares. The plaintiffs claim that they have been approaching the defendant to execute the sale deed in their favour as per clause 10 of the Agreement to Sell. The defendant had agreed to execute the sale deeds as and when the plaintiff required. The defendant also undertook to sign and hand over all documents in future, required for effective transfer of ownership in favour of the plaintiffs. The plaintiffs in both suits also claim that it was agreed that they would proportionately bear the expenses towards stamp duty, transfer duty and registration fee. They also aver having got their names mutated in the record of the Municipal Corporation of Delhi through assessment order dated 01.04.1998, filed applications for bifurcation and assessment before the Deputy Assessor and Collector SAU, RK Puram, New Delhi on 30.03.1998 and that after mutation they have been paying house tax proportionately. They also claim having been paying the water and electricity charges.

6. It is averred that the defendant with *malafide* and dishonest intention is deliberately not executing the sale deed in favour of the plaintiffs. The plaintiffs on 07.02.2006 jointly sent notice in relation to the execution of the sale deed and a reminder was sent on the 02.05.2006. A legal notice was served on 14.02.2007. Despite all these reminders, it is averred that the defendant refused to execute the agreement to sell, and sent a baseless reply. Further, the plaintiffs claim that defendant has threatened them that he would alienate the entire suit property and also has been showing the same to property agents with a view to sell it.

7. The plaintiffs aver that the cause of action arose on 8th July 1995 and 8th September 1995 respectively, when the agreements to sell were executed. It is averred that that it further arose on 30.03.1998, when the plaintiff filed applications for bifurcation and assessment of house tax. It further arose on 3rd October 2004 when the defendant illegally threatened the plaintiff to transfer the suit property, on 7th February 2008 when the plaintiffs sent notice for execution of sale deed and on 14th February 2007 when they sent the legal notice.

8. Learned counsel submitted that the suits are within the time prescribed, since the agreement to sell did not stipulate a time for performance; in such case, time (for filing the suit) starts from the date when the defendant, after being called upon to perform the contract, refuses or neglects to do so. Reliance was placed on the decisions reported as *R.K. Parvatharaj Gupta –vs- K.C. Jayadeva Reddy* 2006 (2) SCC 428; *Shakuntala –vs- Narayan Gundoji Chavan* AIR 2000 SC 3621; *Nisha Raj & Anr –vs- Mr. Pratap K. Kaula & Ors* 2008 III AD (Del) 452; *Shri Narendra –vs- Riviera Apartments (P) Ltd* 1993 (25) DRJ 72.

9. The plaintiffs contend that the suits are not time barred, because the occasion for approaching the court arose only after the notice of demand was made in 2006, and not complied with. It was urged, with reference to *Shri Narendra (supra)* that a party cannot by unilateral notice, fix time limit for performance and the concept of reasonable time is unknown to law.

10. The relevant provision in the Limitation Act, 1963 for filing a suit for specific performance, is Article 54 to the schedule. It reads as follows:

"54. For specific performance of a contract	*Three years*	*The date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused."*

11. *Ramzan v. Hussaini,* (1990) 1 SCC 104, a suit was filed for specific performance of a contract of sale in respect of a house. The property was mortgaged and according to the plaintiff, the defendant had agreed to execute a deed of sale on the redemption of the mortgage by the plaintiff herself, which she did in 1970. In spite of her repeated demands, the defendant failed to perform his part, which resulted in a suit being filed. The question that arose before this Court was whether the agreement was one in which the date was "fixed" for the performance of the agreement or was one in which no such date was fixed. The Supreme Court answered the question in the affirmative by holding that, although a particular calendar date was not mentioned in the document and although the date was not ascertainable originally, as soon as the plaintiff redeemed the mortgage, it became an ascertained date. The Court affirmed the view expressed by the Madras High Court in *R. Muniswami Goundar (died) and Anr.* v. *B.M. Shamanna Gouda and Ors.,* AIR 1950 Mad 820, holding that the doctrine *id certum est quod certum reddi potest* ('That is certain which can be reduced to a certainty.') clearly applies in such cases.

12. In *Chet Ram Vashisht –vs- Ram Chander Goel* 82 (1999) DLT 557, this court held that:

> *"From the aforesaid decisions of the Supreme Court it would follow that in each and every suit for specific performance of the agreement which does not provide specifically that time is essence of the contract, the Court is also to find out whether the suit was filed within a*

reasonable time or not. In Chand Rani's case (supra) the Supreme Court held that in the case of sale of immovable property there is no presumption as to time being the essence of the contract but even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are (evident): (1) from the express terms of the contract; (2) from the nature of the property; and (3) from the surrounding circumstances for example, the object of making the contract". Thus, the Court is given power to look into all the relevant circumstances including the time-limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised. It is thus, by now well-settled that the Court in decreeing the suit for specific performance of the contract must look into the fact that the suit must be filed within a reasonable time and if such suit is filed beyond a reasonable time, it could be dismissed on that ground alone.."

On the facts, the court held the suit to be time-barred.

13. In a recent judgment, i.e *Subhash Chandra Kathuria –vs Umed Singh 127* (2006) DLT 292 this court held, while rejecting a suit for specific performance as time-barred, in the following terms:

"3. As pointed out above, the Agreement is dated 27th July, 1988 and the suit is filed in the year 1999. As per Article 54 of the Limitation Act (for short 'the Act') period for filing a suit is three years from the date of cause of action. From which date three years' period needs to be counted is the boneof contention. I may first reproduce this Article:

> *"54. For specific performance of a contract Three years The date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused."*

4. As per the averments made in the plaint, on entering into the aforesaid Agreement, the plaintiff also gave earnest money of Rs. 2 lacs on the same datefor which receipt was executed by the defendants in the presence of attesting witnesses. The balance consideration was to be paid by the plaintiff at the time of registration of the sale deed. However, before this registration the defendants were to obtain no objection certificate and income tax clearance from the concerned authorities. After obtaining the permission, the defendants wereto inform the plaintiff, in writing, by means of registered post and to execute the sale deed within three months in favour of the plaintiff. It is also alleged that the plaintiff approached the defendants several times but requisite permissions were not taken by the defendants. On 13th September, 1996, the defendants requested the plaintiff to pay an additional amount of Rs. 20,000/- for getting the no objection certificate and income tax clearance from the concerned authorities which amount was paid and a separate receipt was also executed.

5. According to the plaintiff, therefore, the three years' period is to be counted from 13th September, 1996 and the present suit would be within limitation.

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"…Applying Article 54 of the Act on this fact situation, the irresistible conclusion would be that limitation period of three years starts from the expiry of three months i.e. 27th October, 1988.27th October, 1988. In the second part of para 4, it is alleged that the defendants had approached the plaintiff on 13th September, 1996 when the plaintiff gave Rs. 20,000/- for getting the necessary clearances.Whether on this ground the plaintiff can seek extension of limitation period orto put it differently, whether the date of 13th September, 1996 would become the starting point of the limitation is the question I would revert at later stage.

12. When the matter is examined on the basis of averments/admissions contained in first part of para 4, the limitation period expired on 26th October, 1991. There is no averment in the plaint as to what happened during these three years. There is no averments as to what happened even after that period i.e. from 1991 till 13th September, 1996. It is also not alleged that three months' period stipulated in the Agreement was ever extended by the parties. The suit filed in the year 1999 would, therefore, clearly be time-barred. This is the legal position which is reflected in various judgments."

14. As far as the judgment of the Supreme Court in *Smt. Shakuntala* (supra) is concerned, the finding arrived at by the High Court, and affirmed, was that the agreement was dated 8-3-1977; the suit was filed on 13-7-1981, was time barred, even reckoned from the date of notice (which was not complied), i.e. 17-6-1977. *Nisha Raj* dealt with a stipulation that the agreement would be executed within a specified time after certain clearances were obtained. The agreement was dated 30-12-1986; the Income Tax authorities acquired the property through a statutory order on 26-12-1987. This action was impugned in a writ petition, which was allowed on 18-1-1994. The suit was filed on 23-11-1994. In these circumstances, it was held that the suit was filed within the time prescribed. These facts clearly show that performance was not postponed by any voluntary act of the plaintiff; the exercise of independent statutory

powers resulted in the contract being rendered incapable of performance, till such order was in force. The facts in *Pavithraraj Gupta* also reveal that the court held the suit to be time barred; the Supreme Court affirmed the findings of the courts in that regard. *Narendra* (supra) was a case where the agreement was entered into on 25-7-1972; no specific date had been fixed for performance. The defendant relied on a letter dated 16th August, 1975 to say that the suit, filed in 1979 was time barred. The court held that:

> *" The letter clearly shows the intention of the appellant to get the transaction completed and the matter finalized…."*

The court also held that the circumstances there, by way of other documents and letters, revealed that the defendant had been expressing willingness to execute the contract for sale of the property.

15. In this case, the agreements sought to be enforced were entered into in July and September, 1995; the plaintiffs claim to have got mutation done in 1998. The defendants, according to the plaintiff, on 3rd October 2004 illegally threatened to transfer the suit property. The plaintiffs rely on legal notices issued in February 2007. By the plaintiffs' showing, the defendants through overt acts, threatened their rights, in 2004. The plaint, besides makes no averments whether, and if so when, any attempt was made ever to seek conveyance of the property, after allegedly having secured possession, in 1995. Thus, it is clear that the defendants, clearly disclosed hostility to the plaintiff's rights, including the right to seek specific performance, on 3rd October, 2004. The plaintiffs made no attempt to approach this court within three

years from that date, which was the earliest point in time, when they became aware of the defendants' intentions. Merely because they addressed legal notices at their convenience did not lead to extension of time for filing the suit.

16. As with specific performance, the other reliefs, i.e. declaration and mandatory injunction are adjunctive reliefs, dependant on the enforcement of the agreement entered into in 1995. Here, too, the plaintiffs' rights to claim the reliefs arose on 3rd October, 2004. The suit is time barred, as far as these reliefs too, are concerned.

17. For the above reasons, it is held that both the suits are time barred. Suit Nos. CS (OS) 1771/08 and CS (OS) 1772/08 are therefore, rejected, under Order VII Rule 11 (d). No costs.

S. RAVINDRA BHAT,J

SEPTEMBER 09, 2008