

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

+ **RFA No.540/2000**

% **1st March, 2011**

SHRI DHARAM PAL Appellant
Through: Ms. Ritu Singh Mann, Advocate with Mr.
Dheeraj Kumar Garg, Advocate.

VERSUS

SHRI SHASHI KANT SAINI Respondent
Through: Mr. P.R. Bahl, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree dated 18.7.2000 whereby the suit of the respondent/plaintiff for specific performance has been decreed.

2. The case of the respondent/plaintiff was that an Agreement to Sell dated 16.3.1988 was entered into between him as the proposed buyer and the appellant/defendant as the proposed seller with respect to 9 Bighas and 4 Biswas of the land comprised in Khasra No.62/27 (3 Biswas), Khasra

No.7/9 (4 Bighas 5 Biswas), Khasra No.7/10 measuring 4 Bighas and 16 Biswas situated in village Alipur, Delhi. The respondent/plaintiff stated that the total sale consideration was Rs.3,35,000/- of which he had already paid Rs.3,32,500/- by making payment of Rs.50,000/- on the date of the Agreement to Sell, Rs.1,50,000/- on 7.5.1988, Rs.50,000/- on 9.5.1988, Rs.35,000/- on 20.8.1988, Rs.5,000/- on 20.8.1988, Rs.20,000/- on 5.10.1988, Rs.10,000/- on 18.3.1989, Rs.5,000/- on 5.5.1989, Rs.5,000/- on 5.10.1990 and Rs.2,500/- on 6.12.1993. It was further pleaded that the appellant/defendant failed to perform his contract and did not obtain the No Objection Certificate (NOC) from the revenue authorities and which was a pre condition to execution of the sale deed.

3. The appellant/defendant contested the suit and claimed that he had not received one payment of Rs.1,50,000/- which is said to have been paid on 7.5.1988. It was further pleaded that the appellant/defendant had signed the NOC in favour of the plaintiff but it is the plaintiff who failed to obtain the necessary permission from the revenue authorities for sale of the agreement. It was also pleaded that the suit was barred by limitation.

4. The trial Court after the pleadings were completed, framed the following issues:-

- "1. Whether defendant did not receive Rs.1,50,000/- and also did not execute the receipt for that amount as claimed by defendant-OPD
2. Whether possession of the suit land had been handed over to plaintiff as claimed in para 6 of the plaint- OPP

3. Whether defendant has not acted in accordance with the agreement Ext.P10 and Plaintiff is entitled for a decree of specific performance as has been claimed in this case-OPP
4. Whether defendant was willing to sell the suit land to the plaintiff but the plaintiff refused to purchase the same as mentioned in the written statement-OPD
5. Whether amount of Rs.50,000/- has been rightly forfeited by defendant-OPD
6. Relief.”

5. The trial Court has in the impugned judgment and decree noted that the Agreement to Sell between the parties is admitted, and which agreement is Ex.PW1/1. Trial Court has also referred to the receipts by which payments were made by the respondent/plaintiff to the appellant/defendant and which receipts were exhibited as Ex.PW1/2 to Ex.PW1/11. So far as the disputed receipt of Rs.1,50,000/- being Ex.PW1/3 is concerned, the trial Court has upheld the validity of the same and has rejected the case of the appellant/defendant by holding that the amount of Rs.1,50,000/- was received by the appellant/defendant vide the said receipt Ex.PW1/3. The Trial Court believed the case of the respondent/plaintiff of payment of Rs.1,50,000/- vide Ex.PW1/3 because in the subsequent receipt which was executed being Ex.PW1/9 dated 5.5.1989, it was clearly mentioned that the appellant/defendant had received a sum of Rs.3,25,000/- till the date of execution of receipt Ex.PW1/9 and which total amount would not have been so if the appellant/defendant had not received the amount of Rs.1,50,000/- on 7.5.1988 vide Ex.PW1/3. The trial Court has also held that as per the admitted terms of the agreement to sell Ex.PW1/1, it was the appellant/defendant who had to obtain the necessary permission from the

revenue authorities. The trial Court also held the suit to be within limitation in terms of Article 54 of the Limitation Act, 1963 on the ground that there was no specific date fixed for performance inasmuch as it was the appellant/defendant who had to take permission from the revenue authorities and that there was no communication of refusal of performance of the Agreement to Sell by the appellant/defendant to the respondent/plaintiff.

6. I completely agree with the findings and conclusions of the trial Court as stated above. Surely, if the amount of Rs.1,50,000/- was not paid vide receipt Ex.PW1/3, there would have been no question of writing in the subsequent receipt, Ex.PW1/9 dated 5.5.1989 that the amount of Rs.3,25,000/- had already been received and which amount included the amount of Rs.1,50,000/-. Further, I also agree with the trial Court that the appellant/defendant could not be allowed to take up a case which is in conflict with the agreement to sell and as per which the appellant/defendant had to obtain necessary permission from the revenue authorities. I also agree with the findings of the trial Court on the issue of limitation.

7. Learned counsel for the appellant very strongly pressed the following points in support of the appeal:

(i) The respondent/plaintiff had committed breach of contract because a sum of Rs.1,50,000/- was not paid vide receipt Ex.PW1/3.

(ii) There was no reason why in spite of the appellant allegedly not getting the NOC, the respondent/plaintiff continued to pay further amounts, if really the appellant had committed a breach of the contract.

(iii) It is the practice that NOC is obtained by the buyer of a property and not the seller/appellant/defendant.

(iv) The suit was barred by limitation and for which reliance was placed upon **Ahmmadsahab Abdul Mulla (dead) by proposed Lrs. Vs. Bibijan and Ors. 2009 (5) Scale 437, Janardhanam Prasad Vs. Ramdas JT 2007 (3) SC 187** and **Manjunath Anandappa URF Shivappa Hanasi Vs. Tammanasa and Others (2003) 10 SCC 390.**

The decision in the case of **Ahmmadsahab (supra)** was relied upon to canvass the proposition that a date fixed necessarily implies a definite date which must be a crystallized date with reference to evidence and materials brought on record. The decision in the case of **Janardhanam Prasad (supra)** was relied upon in support of the proposition that when there is a refusal of performance, the trial Court has to crystallize a date of refusal of specific performance for commencement of period of limitation. The decision in the case of **Manjunath (supra)** was relied upon to canvass that there should not be an uncertain long date even if no period is fixed for performance of contract for commencement of limitation.

8. I am afraid, I do not agree with the contentions as raised by the learned counsel for the appellant. I have already observed that an amount of Rs.1,50,000/- has been rightly proved to be received by the
RFA No.540/2000

appellant/defendant because if this amount was not so received, there was no reason for writing that an amount of Rs.3,25,000/- was received in the receipt Ex.PW1/9 dated 5.5.1989. Further it is not so unusual that a buyer, especially who has claimed to receive possession under the agreement, would not pay further consideration to keep good order, especially when a request is so made by a seller. The liberal action of the respondent/plaintiff cannot be held to be against the respondent/plaintiff and in favour of the appellant/defendant who actually should have received the amount later, but received the amount earlier. So far as the argument that it is "practice" that NOC should be obtained by the buyer of the property, once again this argument is misconceived because firstly in law it is always the seller who has to make himself capable of transferring the property and which capability is achieved when the seller gets the necessary NOC from the revenue authorities. Also, there was no doubt in the present case as to who had to obtain the NOC because the agreement itself provided that the NOC will be obtained by the appellant/defendant. I, thus, do not find there is any valid basis to canvass that it was the respondent/plaintiff who should have obtained the NOC on the ground of an alleged "practice". In fact the plea as advanced is barred by Section 92 of the Evidence Act, 1872 as no argument can be raised to contradict a term of a written agreement. So far as the issue of limitation is concerned, I once again find that the argument lacks any substance in view of the categorical language of Article 54 of the Limitation Act, 1963. In terms of the language of Article 54, limitation arises only in two

eventualities. The first eventuality is that a specific date is fixed for performance and the second eventuality is that where there is no specific date, limitation commences when the other party refuses performance of the contract. In the present case, admittedly, no date was fixed for specific performance, and rightly so because the appellant/defendant had to obtain the NOC from the revenue authorities for executing the sale deed. This aspect of there being a fixed date therefore itself was uncertain as it was dependent on the uncertain date of obtaining of the NOC and therefore, there was no specific date fixed for performance as per the first part of Article 54 which requires the suit for specific performance to be filed within three years from a date fixed for performance. The decision in the case of **Ahmmadsahab (supra)** therefore relied upon has no application to the facts of the present case as there is no fixed date as per the agreement. So far as the second part of Article 54 is concerned, that the limitation commences from the date of refusal, it is an admitted fact that at no point of time appellant/defendant ever gave any notice to the respondent/plaintiff claiming forfeiture of the amount or the cancellation of the Agreement to Sell or in any other manner indicating his refusal to perform the obligations under the Agreement to Sell. Accordingly, there is no question of commencement of limitation also on this ground of alleged refusal of performance of agreement. The decision therefore in the case of **Janardhanam Prasad (supra)** relied upon by the appellant would have no applicability. The argument of the learned counsel for the appellant that there cannot be a

long uncertain period in terms of the decision in the case of **Manjunath (supra)** sounds impressive at the first blush, however, in the facts of the present case, the said argument and the decision in the case of **Manjunath (supra)** will not apply because the respondent/plaintiff i.e. proposed buyer in the present case had almost paid the entire consideration and had claimed to have received possession of the subject property and was therefore only waiting for permission being obtained from the revenue authorities by the appellant/defendant in terms of the obligations under the Agreement to Sell. It is therefore not unusual that in the facts of the present case, there was certainly some period of indolence between the parties. However, each case has to be seen in its own peculiar facts and circumstances, and more so because if really the appellant/defendant wanted commencement of limitation in favour of the appellant/defendant, the appellant/defendant could have given a notice to the respondent/plaintiff of the refusal of the performance of the contract either by giving a notice of forfeiture or in any other manner whatsoever, and which was not done.

9. There is a final argument which is raised by the counsel for the appellant that the lands in question have been acquired during the pendency of the appeal and therefore the suit for specific performance should not be granted. Obviously, in view of this the suit for specific performance will not be decreed by directing the appellant/defendant to execute a sale deed, however, the amount of compensation which would be payable by the government with respect to the subject land, will now be received by the

respondent/plaintiff as the value of the land as he was otherwise entitled to ownership of the land, having paid almost the entire sale consideration of Rs.3,35,000/- inasmuch as only Rs. 2,500/- remained to be paid under the Agreement to Sell. At this stage, I must note that this case was argued on behalf of the appellant on 10.2.2011 and during the course of arguments, it was put to the counsel for the appellant as to whether the appellant would be interested in receiving a sum of Rs.5 lakhs as of today instead of a sum of Rs.2,500/- which was payable, and the counsel for the appellant today on instructions states that the appellant is not interested in receiving the amount of Rs.5 lakhs. Accordingly, the appellant/defendant therefore will only be entitled to a sum of Rs.2,500/- from the respondent/plaintiff alongwith interest @ 18% per annum from the date of the Agreement to Sell viz. 16.3.1988.

10. This Court is entitled to interfere with the impugned judgment and decree only if the findings and conclusions of the trial Court are illegal and perverse. I do not find any illegality or perversity in the impugned judgment and decree which calls for interference in appeal. In fact, once the respondent/plaintiff paid almost the entire price, equity tilts in his favour, and the trial Court was therefore fully justified in decreeing the suit. Merely because two views are possible, this Court will not interfere with one plausible view as taken by the trial Court as no injustice would be caused to the appellant and in fact injustice would be caused to the respondent/plaintiff who has paid almost all the sale consideration.

11. In view of the above, the appeal being devoid of merit is dismissed. The judgment and decree of the trial Court is modified by ordering that it is the respondent/plaintiff who will be entitled to receive the compensation with respect to the acquired land from the acquiring authority. The respondent/plaintiff shall pay to the appellant/defendant a sum of Rs.2,500/- alongwith interest @ 18% per annum simple from 16.3.1988 till the date of payment. Appeal is accordingly disposed of. Interim orders stand vacated. Decree sheet be prepared. Trial Court record be sent back.

MARCH 01, 2011
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VALMIKI J. MEHTA, J.