

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 01.12.2011

Judgment Pronounced on: 13.12.2011

+ CS(OS) 2243/1999

SURINDER KUMAR **Plaintiff**

Through: Ms Rachna Agrawal, Adv.

versus

BRAHM PRAKASH **Defendants**

Through: Mr Jitendra Chaudhary and
Mr Bijendra Singh, Advs.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

V.K. JAIN, J

1. Vide an Agreement to Sell dated 15th November, 1996, the defendant agreed to sell his 1/4th share in the agricultural land measuring 23 bighas, 6 biswas bearing Mustatil No. 94, Killa Nos. 2/2 (1-16), 14/1 Min. (0-15), 14/2, Min (0-8), 3(4-16), 4 (4-16), 7 (4-16), 8 (4-16), 27 (0-2), Mustatil No. 67, Killa Nos. 23 South (0-15), Khasra No. 311 (0-16), situated in the Revenue Estate of Village

Bijwasan, Tehsil Mehrauli, New Delhi to the plaintiffs for a sale consideration of Rs 32,76,526/-. The plaintiffs paid part sale consideration of Rs 3,20,000/- to the defendant in three instalments. The balance sale consideration was to be paid within three months at the time of registration of the sale deed, after the defendant had obtained NOC, Income Tax Clearance Certificate and permission to sell from the concerned authorities. The case of the plaintiffs is that instead of complying with his contractual obligations, the defendant wanted the plaintiffs to make more payments on the pretext that the same was required to get the suit land partitioned and obtain the requisite permission. The plaintiffs paid a further sum of Rs 75,000/- to the defendant in two instalments. The defendant, however, did not take steps for completion of the transaction and did not execute the sale deed in favour of the plaintiff, despite notice dated 05th May, 1999 from the plaintiff. The plaintiffs have now sought specific performance of the agreement to sell dated 15th November, 1996 by execution of the sale deed and handing over of the possession to them. They have further prayed that in case specific performance cannot be granted, a decree for damages to the tune of Rs 32,76,526/-

along with interest on that amount at the rate of 12% per annum be passed in their favour.

2. The defendant has contested the suit. He has admitted execution of the agreement to sell dated 15th November, 1996 as also the receipt of part consideration from the plaintiffs. It is claimed that the plaintiffs failed to pay the balance sale consideration and, therefore, the defendant was entitled to forfeit the earnest money paid by them. It is also alleged that the defendant, after receiving the signed NOC from the plaintiff, applied for Income Tax Clearance Certificate and NOC. On receipt of Income Tax Clearance Certificate and NOC, he informed the plaintiffs in this regard vide letter dated 05th January, 2001, but the plaintiffs failed to respond to the same.

3. The following issues were framed on the pleadings of the parties:-

(i) Whether the plaintiff was ready and willing to perform his contractual obligations under the Agreement to Sell dated 15.11.1996? OPP

(ii) Whether the plaintiff violated the terms of the Agreement to Sell dated 15.11.1996 as alleged in the Written Statement? OPD

- (iii) Whether the defendant was entitled to forfeiture of earnest money paid under the Agreement to Sell dated 15.11.1996? OPD
- (iv) Whether the defendant fulfilled his contractual obligations under the said Agreement to Sell dated 15.11.1996? If not, its effect? OPD
- (v) Whether the NOC obtained after filing of present suit as alleged by the defendant, is for the same property for which the Agreement to Sell dated 15.11.1996 was executed?
- (vi) Whether the suit property is still available in the same form and the Agreement to Sell dated 15.11.1996 is capable of specific performance? OPD
- (vii) If issue No. 6 is decided in negative, whether the plaintiffs are entitled to the refund of the amount? OPP
- (viii) Whether the plaintiffs are entitled to interest, if so at what rate? OPP
- (ix) To what relief the plaintiffs are entitled to? OPP
- (x) Relief.

Issues No. (i) to (v)

These issues are inter-connected and can be conveniently decided together.

4. Section 16(C) of Specific Relief Act provides that specific performance of a contract cannot be enforced in favour of a person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms, the performance of which has been prevented or waived by the defendant.

Explanation (i) provides that where the contract involves payment of money it is not essential for the plaintiff to actually tender the money to the defendant or to deposit it in the Court unless so directed by the Court.

The philosophy behind the aforesaid statutory provision is that a person who comes to the Court seeking specific performance of a contract to which he is a party must show and satisfy the Court that his conduct having been blemishless he is entitled to grant of specific performance of the contract. There is a distinction between readiness to perform the contract and willingness to perform the same. By readiness is meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. Willingness signifies the desire of the plaintiff to complete the transaction by performing his

part of the contract.

In **Ardeshir Mama v. Flora Sassoon** (1928) LR 55 IA.360, Privy Council held that in a suit for specific performance of a contract, the plaintiff has to allege and if the fact is traversed also to prove a continuous readiness and willingness from the date of the contract to the time of hearing, to perform the contract on his part and failure to make good that averment brings with it and leads to inevitable dismissal of the suit. The view taken by the Privy Council was approved by Supreme Court in **Premraj vs. DLF Housing and Constriction Pvt. Ltd.** AIR 1968 SC 1355.

In **P.D'Souza v. Shondrilo Naidu** (2004) 6 SCC 649 Supreme Court referred to its earlier decision in **R.C.Chandiok & Anr. v. Chuni Lal Sabharwal & Ors.** (197) 3 SCC 140 observed as under:

“It is indisputable that in a suit for specific performance of contract, the plaintiff must establish his readiness and willingness to perform his part of contract. The question as to whether the onus was discharged by the plaintiff or not will depend upon the fact and circumstance of each case. No straitjacket formula can be laid down in this behalf...The readiness and

willingness on the part of the plaintiff to perform his part of contract would also depend upon the question as to whether the defendant did everything which was required of him to be done in terms of the agreement for sale.”

In **R.C.Chandiok & Anr. v. Chuni Lal Sabharwal**

& Ors. (*supra*), Supreme Court observed that “readiness and willingness” cannot be treated as a straight jacket formula. This has to be determined from the entirety of the facts and circumstances relevant to the intention and conduct of the party concerned.

5. A perusal of the agreement Ex.PW-1/1 would show that the defendant, who owned 1/4th share in land in question, other 3/4th share being owned by his brothers, was to get the land partitioned and inform the plaintiffs, who thereafter, were to make payment within 30 days and get the sale deed registered in their favour. He was also required to obtain NOC and Income-Tax Clearance Certificate from the concerned authorities, before the final payment and inform the plaintiffs in this regard by registered post. The plaintiffs were to make balance payment and complete the transaction within 30 days thereafter. There is no evidence to show that the defendant

had obtained either the NOC or Income-Tax Clearance Certificate, at any time prior to filing of this suit. In his deposition in the Court, the defendant claimed that he had obtained the NOC and Income-Tax Clearance Certificate before filing of this suit. This part of his deposition is obviously false, since no NOC or Income-Tax Clearance Certificate issued prior to filing of this suit has been produced and the NOC as well as the Income-Tax Clearance Certificate, copies of which have been filed by the defendant, have been issued much after filing of this suit. Since the defendant did not obtain either Income-Tax Clearance Certificate or NOC required under Delhi Lands (Restrictions on Transfer) Act, 1972, there was no occasion for the plaintiffs to make payment of the balance sale consideration to him, before filing of this suit. The obligation to pay the balance sale consideration did not arise till the time Income-Tax Clearance Certificate and requisite NOC were obtained by the defendant which admittedly has been done only during pendency of this suit.

Vide notice dated 05th May, 1999, sent through counsel, the plaintiffs wrote to the defendant that they had been requesting him to obtain Income-Tax Clearance Certificate

the same has never become final. X X
X. When no agreement to sell was made
complete or final, so no question of
payment of balance consideration or
completing other formalities at all arises.
X X X

X X X I therefore through this reply
request you to advise your clients to
immediately withdraw the notice under
reply and if at all they are ready to
purchase the land genuinely, they should
come within 15 days to my clients from
the date of receipt of this reply and make
the payment of the interest at 24% p.a.
on the value of the land to my client and
got the alleged incomplete agreement to
sell, complete and final.”

The plaintiffs responded to this reply vide
communication dated 13th July, 1999 sent through their
counsel and again expressed their readiness and willingness
to discharge his part of contractual obligations under the
agreement to sell dated 15th November, 1996 by making
payment of the balance sale consideration. The defendant
again responded through counsel, vide reply dated 23rd
August, 1999, which inter alia, read as under:-

“That you have mentioned the agreement
dated 15th November, 1996 with our
client above named whereas it has been
told to us that no such agreement has
been executed between our client and you
both.

That it is further reported to us by our
clients that they being innocent villagers

and not much educated have been got signed in good faith for a proposal of entering into an agreement wherein there was no mention of the amount as well as the intending purchaser thereby they feel defrauded.

That even from your notice it is clear that your said alleged agreement is an agreement in air as there was no specific mention of the land of our client being individually absolute owner. It, itself prove that it was a proposal on which our client in good faith signed on blank papers without admitting any amount or the intending buyer.”

It would thus be seen that while responding to notice from the plaintiff, the defendant, tried to wriggle out of his contractual obligation by disputing the very execution and completion of the agreement to sell dated 15th November, 1996. It would be pertinent to note here that contrary to his stand in the communications sent through counsel, in his written statement the defendant has not claimed that the agreement between him and the plaintiffs was not complete or final or that he had signed the document, without understanding its contents.

The stand taken by the defendant in the communications sent through his counsel clearly indicates that he was not willing to complete the transaction as per

the terms stipulated in the agreement to sell dated 15th November, 1996 and that is why he not only wanted the plaintiffs to pay interest to him at the rate of 24% per annum, despite their being no default on their part, but also went to the extent of trying to wriggle out of the contract by claiming that it was not a complete agreement and his signatures were obtained on unfilled document. It would also be pertinent to note here that no notice was sent by the defendant to the plaintiffs at any time before receipt of notice dated 05th May, 1999 from them, claiming that he had been willing to complete the transaction and it were the plaintiffs, who were in default. In any case, the transaction at that point of time could not have been completed without obtaining Income-Tax Clearance Certificate and no action on the part of the plaintiffs was required to obtain the said clearance.

6. One of the obligations of the defendant under the agreement to sell dated 15th November, 1996 was to get the joint land partitioned and intimate the plaintiffs in this regard. In his deposition the defendant has claimed that partition of the joint land was effected within 03 months of execution of agreement to sell. In his deposition dated 8th

August, 2007, he claimed that the partition did not take place in writing but in his deposition dated 7th November, 2007 he claimed that he had document to show that a partition was effected and a copy of the same was also given to the plaintiffs and also filed in the Court. No document regarding alleged partition has been filed by the defendant and there is no documentary evidence showing the defendant having sent any such document to the plaintiffs at any point of time. In his deposition dated 8th August, 2007, the defendant stated that he had obtained 'Fard jama bandi' indicating the partition amongst the brothers. However, there is no documentary evidence of any such 'Fard jama bandi' having been sent by the defendant to the plaintiffs and no such 'Fard jama bandi' has been filed in the Court. In any case, even if, it is presumed that there was a partition of the joint land within 03 months of the agreement to sell, as is claimed by the defendant, that by itself would show that he was ready to perform his obligations under the agreement to sell dated 15th November, 1996. No sale deed in favour of the plaintiffs could have been registered without the defendant obtaining Income-Tax Clearance Certificate and NOC under Delhi

Land (Restriction on Transfer) Act, 1972 and the agreement to sell obliged the plaintiff to pay the balance sale consideration to the defendant only on his obtaining Income-Tax Clearance and NOC and informed the plaintiff in this regard.

7. Coming to financial capacity of the plaintiffs to pay the balance sale consideration, the law does not require the purchaser to have the balance sale consideration ready in cash with them and it is sufficient if he is able to satisfy the Court that he had the means and capacity to pay the balance sale consideration to the seller. Ex. PX-3 is the photocopy of the income-tax return of plaintiff No. 1 which his Chartered Accountant PW-2 Shri Sushil Jain had filed for the Accounting Year 1996-97 (Assessment Year 1997-98) on his behalf, whereas Ex. PX-2 is the photocopy of his income-tax return for the Accounting Year 1997-98 (Assessment Year 1998-99) which also was filed by Mr Sushil Jain on his behalf. Ex. PX-1 is the copy of assessment order of plaintiff No. 1 in respect of Assessment Year 1998-99. Though the originals of these documents have not been filed by the plaintiffs, the deposition of plaintiff No. 1, as corroborated by his Chartered Accountant

Mr Sushil Jain, shows that the originals have been lost with the passage of time. The photocopy being secondary evidence is, therefore, admissible in view of the provisions contained in Section 65(c) of Evidence Act. These documents show that in the Financial Year 1996-97 plaintiff No. 1 had business profit of Rs 54,59,516/- and his total income was Rs 55,21,280/- During the Accounting Year 1997-98, his income from business profit was Rs 96,74,657/- and his total income was Rs 99,06,550/-. This is also confirmed from the assessment order dated 31st March, 2000, purported to be passed by ITO Co, Ward 25(4). The agreement between the parties having been executed on 15th November, 1996, the obligation of the plaintiffs to make payment of the balance sale consideration, subject, of course, to the defendant fulfilling his obligation under the agreement by obtaining partition of the joint lands as well as Income-Tax Clearance Certificate and NOC, would have arisen in the Financial Year 1996-97. Since plaintiff No. 1 had income of about Rs 55,00,000/- in that year, which got increased to about Rs 99,00,000/- in the next financial year, it is difficult to say that the plaintiffs did not have the capacity to pay the balance sale

consideration of Rs 28,81,526/- to the defendant. Since the plaintiffs have led documentary evidence to prove their income during the relevant years, their failure to produce their bank statement, which the bank officer could not produce on account of record being old and having been weeded out, becomes immaterial.

8. A perusal of the orders passed by this Court from time to time would show that when this suit came up for admission and suit summons were issued to the defendant on 11th October, 1999, the learned counsel for the plaintiffs sought instructions as to whether the plaintiffs were willing to deposit the balance sale consideration in the Court. When the matter came up for hearing on 09th March, 2000, it was noted that the suit summons had not been issued for want of PF and the matter was directed to be listed before the Joint Registrar on 10th August, 2000. When the matter came up before the Joint Registrar on 24th October, 2000, the learned counsel for the defendant stated, in the presence of the defendant, that the defendant was ready to execute the sale deed on payment of the balance amount. Three blank forms 37(i) under Income Tax Act and three forms under Section 8 of Delhi Lands (Restrictions on

Transfer) Act, 1972 duly signed by both the plaintiffs were supplied to the learned counsel for the defendant to obtain permission. The matter was adjourned to 21st March, 2001 so that the defendant could obtain permission for transfer of property in the meanwhile. IA No. 218/2001 was then filed by the defendant in the meanwhile stating therein that he had obtained Income Tax Clearance Certificate and NOC from the competent authority and had informed the plaintiff in this regard and asked him to arrange for the balance sale consideration within seven days. Notice of the application was issued to the plaintiff. When the matter was taken up on 29th March, 2001, copies of Income Tax Clearance Certificate and NOC were supplied to the learned counsel for the plaintiff and it was also stated on behalf of the defendant that he was ready and willing to execute the sale deed, provided the balance sale consideration was paid to him. The learned counsel for the plaintiff, however, stated that the copies which had earlier been supplied to her on 21st March, 2001, did not relate to the property involved in the suit. The Court, thereupon, directed the defendant to file written statement within four weeks and the matter was directed to be listed before Joint Registrar on 30th May,

2001. When the matter came up before the Court on 09th November, 2004, the learned counsel for the defendant stated that the defendant was ready and willing to execute the documents pertaining to land in question. The Court noted the statement made by the learned counsel for the plaintiff on 29th March, 2001 claiming that Income Tax Clearance Certificate and NOC supplied to him did not relate to the property involved in the suit and as to whether NOC and Income Tax Clearance Certificate related to the same land. The Court, on the request of Joint Registrar, permitted her to avail the assistance of Revenue authorities, in order to ascertain whether the NOC and the Income Tax Clearance Certificate supplied by the defendant related to the same land which was involved in the suit. When the matter was taken up by the Joint Registrar on 16th December, 2004, the learned counsel for the plaintiff, on instructions from the plaintiff, stated that they no longer disputed that the Income Tax Clearance Certificate and NOC supplied by the defendant on 21st March, 2001 did relate to the suit property. When the matter came up before the Court on 06th January, 2005, the learned counsels for the parties submitted that the parties were agreeable to

complete the transaction in terms of the sale agreement executed between them. The matter was adjourned to 12th January, 2005 and the parties were left free to finalize the sale transaction. When the matter was came up before the Court on 12th January, 2005, the learned counsel for the defendant stated that since the validity period of the NOC had expired, the defendant was taking steps to get the same renewed from the competent authority for which six weeks were required. When the matter came up before the Court on 12th April, 2005, the learned counsel for the plaintiff stated that application for issue of NOC could not be submitted since requisite form had not been signed by the plaintiff. The learned counsel for the plaintiffs stated that since no form was ever offered for signature, there was no question of plaintiff signing the same. He maintained that in case a form is sent or presented for signature, the plaintiff would sign immediately and hand over the same to the defendant to enable him to make an application for issue of the NOC. The matter was adjourned by the Court. This was followed by some adjournments. When the matter came up on 06th February, 2006, the learned counsels for the parties stated that the matter had already been settled and only

payments were to be made. When the matter was taken up by the Court on 23rd February, 2006, the learned counsel for the parties stated that there was no possibility of a compromise. The Court then proceeded to frame the issues and listed the case for trial.

9. Even if I presume, despite my finding to the contrary, that the plaintiffs were not ready and willing, before filing of this suit, to perform their part of the contract, the default on the part of the plaintiffs were condoned by the defendant when he repeatedly reiterated, during pendency of the suit, that he was ready and willing to complete the transaction in terms of the agreement to sell, executed by him in favour of the plaintiffs. The willingness to complete the transaction was expressly conveyed by the defendant to the Court on 24th October, 2000, when the matter came up before the Joint Registrar. On that day, three blank forms 37 (i), required for obtaining Income-Tax Clearance Certificate as well as three forms under Section 8 of Delhi Lands (Restrictions on Transfer) Act, 1972, duly signed by the plaintiffs, were supplied to the learned counsel for the defendant. The willingness to complete the transaction was reiterated by the defendant

when the matter came for hearing on 29th March, 2001, 09th November, 2004, 06th January, 2005 and 12th January, 2005. In fact, on 06th February, 2006, the counsel for the parties also stated that the matter had been settled and only payments were to be made. In view of his express willingness to complete the transaction on the terms set out in the agreement to sell, executed between the parties, it is no more open to the defendant to resist the claim of the plaintiff on the ground that there was a default on their part in performing their part of the contract, before the suit was filed by them or before 06th February, 2006. The learned counsel for the defendant pointed out that on 29th March, 2001, The learned counsel for the plaintiffs made a false statement in the Court that the copies of Income-Tax Clearance Certificate and NOC which were supplied to her on 21st March, 2001, did not relate to the suit property, though on 16th December, 2005, the counsel, on instructions from the plaintiff, accepted those very documents by stating that they were no longer disputing that the documents did not relate to the suit property which, according to the learned counsel, clearly shows that the plaintiffs were not interested in completing the

transaction and that is why they deliberately disputed the Income-Tax Clearance Certificate and NOC which the defendant had obtained, in order to complete the transaction. It has come in the deposition of the plaintiff that the particulars of land given in the documents filed by the defendant did not tally with the particulars of the land given in the agreement to sell, executed by the defendant in their favour. The learned counsel for the plaintiffs has pointed out that khasra numbers given in the agreement to sell dated 15th November, 1996 are “Mustatil No. 94, Killa Nos. 2/2 (1-16), 14/1 Min (0-15), 14/2 Min (0-8), 3 (4-16), 4 (4-16), 7 (4-16), 8 (4-16), 27 (0-2), Mustatil No. 67, Killa Nos. 23 South (0-15), Khasra No. 311 (0-16)”, whereas the particulars given in Income-Tax Clearance Certificate and NOC, DW-1/1 and DW-1/2 are “94/7 Min. 3-14, 14/2 (0-8), 94/14/1 (0-15), 94/08 Min (0-19½) = 5-16½” and that was the reason why she told the Court that the particulars given in the documents were different from the particulars given in the agreement to sell dated 15th November, 1996. It was also submitted by the learned counsel for the plaintiffs that since the defendant claimed that in the partition, which he had with his brothers, the land described in Ex.DW-1/1 and

DW-1/2 had fallen to his share, the plaintiffs decided to accept his claim and gave up their objection in this regard. It was also pointed out by the learned counsel for the plaintiffs that the particulars of the land given in the NOC at the time signature of the plaintiffs were obtained on the document were exactly the same as are given in the agreement to sell dated 15th November, 1996 and the defendant scored off those particulars and wrote revised particulars, without getting the documents signed by the plaintiffs after this alteration had been done. A bare perusal of the Ex.DW-1/1 confirms the alternation pointed out by the learned counsel for the plaintiffs. In these circumstances, it would not be appropriate to conclude, on account of the objection raised by the plaintiffs on 29th March, 2001, with respect to particulars of the land given in these documents, that the plaintiffs were not ready and willing to perform their part of the contract. The Court cannot lose sight of the fact that after serving notices on the defendant, the plaintiffs filed the suit and were duly prosecuting it. During pendency of the suit, the plaintiffs also obtained a pay order of Rs 28,81,526/- dated 11th January, 2005 in favour of the defendant. A copy of that

pay order is available on the Court record. The act of the plaintiffs in obtaining the aforesaid pay order in favour of the defendant is a clear indicator that they were ready and willing to complete the transaction in terms of their agreement with the defendant. It was contended by the learned counsel for the defendant that the pay order dated 11th January, 2005 was never offered to the defendant. This, however, was disputed by the learned counsel for the plaintiffs, who stated that the pay order was tendered to the defendant who refused to accept the same and therefore, it was at a later date encashed by the plaintiffs. The record does not indicate whether the pay order was tendered to the defendant in the Court or not. However, it is unlikely that even after getting the pay order prepared, the plaintiffs would not offer the same to the defendant. More importantly, even after January, 2005, the defendant told the Court on 12th January, 2005 that since validity period of NOC had expired, he was taking steps to get the same renewed from the Competent Authority for which six weeks were required. As noted earlier on 06th February, 2006, the counsels for the parties told the Court that they had settled the matter and only payments were to be made. Had there

been default on the part of the plaintiffs, the defendant would not, on 12th April, 2005, have sought six weeks time to obtain renewal of the NOC. This is also not the case of the defendant that during the pendency of the suit, the parties had agreed to terms other than those stipulated in the agreement to sell dated 15th November, 1996. In these circumstances, I hold that the plaintiffs were all along ready and willing to perform their part of the agreement to sell dated 15th November, 1996.

10. As regards availability of the land, since the case of the defendant is that out of joint land subject matter of the agreement, the land measuring 5 bighas 16 ½ biswas comprised in Khasra No. 94/7 Min. 3-14, 14/2 (0-8), 94/14/1 (0-15), 94/08 Min (0-19½) has fallen to his share in the partition, which he had with his brothers and the plaintiff has accepted this position, the defendant can be directed to execute the sale deed by executing the sale deed in respect of the aforesaid land measuring 5 bighas and 16 biswas. The issues are decided accordingly.

Issues No. (vii) to (x)

11. In view of my findings on the issues, the plaintiffs are entitled to specific performance of the agreement to sell

dated 15th November, 1996.

12. The next question which comes up for consideration is whether the facts and circumstances of the case, including the fact that the agreement was executed about 15 years ago and the land prices in the meanwhile have escalated quite substantially, justify payment of amount in addition to the agreed sale consideration, to the defendant, in order to balance the equities.

As observed by Supreme Court in **Sardar Singh v. Krishna Devi and Anr.** *AIR 1995 SC 491*, the jurisdiction of the Court to decree specific performance being discretionary, the Court is not bound to grant such relief, merely because it is lawful to do so, though it can hardly be disputed that the discretion being a judicial discretion needs to be guided by the settled judicial principles and exercised in a reasonable manner.

In **Gobind Ram Vs. Gian Chand** *AIR 2000 SC 3106*, Supreme Court, in order to mitigate the hardship resulting to the vendor due to lapse of time and escalation of prices of urban properties, directed payment of further compensation to the vendor while granting a decree for specific performance, in terms of the agreement between the

parties.

In **Nirmala Anand Vs. Advent Corporation (P) Ltd. and Ors.** (2002) 8 SCC 146, Hon'ble Mr Justice Doraiswamy Raju, after noticing the facts and circumstances of the case, including that out of the total sale consideration of Rs 60,000/-, only a sum of Rs 35,000/- had been paid by the purchaser, observed that it would be not only unreasonable, but too inequitable for Courts to make the appellant the sole beneficiary of the escalation of real estate prices and the enhanced value of flat in question which the respondents had all along preserved by keeping alive the issues pending with the authorities of the Government and municipal bodies. The Hon'ble Judge was of the view that the balance of equity has also to be struck taking into account all the relevant aspects of the matter, including the lapses which had occurred and parties respectively responsible therefor. The Hon'ble Judge felt that before decreeing the specific performance, it is obligatory for the Courts to consider, whether by doing so any unfair advantage would result for the plaintiff over the defendant, the extent of hardship that may be caused to the defendant and if it would render such enforcement

inequitable, besides taking into consideration the totality of the circumstances of each case. The Court, therefore, directed the appellant to pay at least a sum of Rs 40 lakh to the respondent Nos. 1 and 2, in addition to the amount which she had already paid. She was also held entitled to a decree for specific performance only subject to compliance of condition for this additional amount. Hon'ble Mr Justice Ashok Bhan, however, had reservations with respect to this part of the order. Noticing that in certain cases, the Court in equity and to mitigate the hardship to the vendor had directed the vendee to pay further compensatory amount, His Lordship was of the view that this is not a principle of universal application and payment of additional compensation would depend on the facts and circumstances of each case. His Lordship was of the view that escalation of price during the period may be relevant consideration under certain circumstances for either refusing to grant the decree of specific performance or for decreeing the specific performance with a direction to the plaintiff to pay an additional amount to the defendant and compensate him. It would depend upon on the facts and circumstances of each case. His Lordship observed that the respondents cannot

take advantage of their own wrong and then plead that the grant of decree of specific performance would amount to an unfair advantage to the appellant. The view taken by his Lordship is that the appellant was entitled to specific performance of the agreement on the prices stipulated in the agreement to sell.

13. The proposition of law, which emerges from these judgments, is that though the vendors cannot claim payment of additional compensation to him, merely on account of appreciation in the price of the property nor can the Court direct such payment in each and every case, where there is appreciation in the price of the property subject matter of an agreement to sell, it is open to the court, in appropriate cases, if the facts and circumstances of the case so warrant, to direct payment of additional compensation by the vendee to the vendor, in genuine cases of hardship, so as to balance the equity between the parties.

In the case before this Court, the circumstances which justify additional payment to defendant are:

(i) the defendant is a farmer who had agreed to sell his share in the joint agricultural land to the plaintiffs;

- (ii) the agreement to sell was executed about 15 years ago and there has been astronomical appreciation in the price of land, including agricultural land during this period;
- (iii) the first notice to the defendant was sent only on 05th November, 1999, though the transaction was to be completed within three months from 15th November, 1996 and, therefore, the plaintiffs could have sent a notice at any point of time after 15th May, 1997 and could have come to the Court soon thereafter;
- (iv) the plaintiffs paid only a sum of Rs 3,95,000/- to the defendant, which constitutes only about 12% of the agreed sale consideration;
- (v) the plaintiffs took more than three years before they withdrew their objection with respect to the particulars of the land given in the NOC and Income-Tax Clearance Certificate obtained by the defendant;
- (vi) the defendant, on the second date of hearing after his service, expressed his willingness to complete the transaction and also obtained the NOC and Income-Tax Clearance Certificate, during pendency of the suit.

14. In fact, during the course of arguments, the learned counsel for the plaintiffs was not found averse to

make additional payment to the defendant so as to persuade him to agree to complete the transaction. I, therefore, feel that in the facts and circumstances of the case, the equities need to be balanced by directing the plaintiffs to pay the current circle rate to the defendant as the sale consideration after deducting the amount of Rs 3,95,000/- which they had paid to him, before filing of this suit.

ORDER

A decree for specific performance of the agreement to sell dated 15th November, 1996, with costs, is hereby passed in favour of the plaintiffs and against the defendant by directing the defendant (i) to execute the sale deed in favour of the plaintiffs, in respect of land measuring 5 bighas 16 ½ biswas comprised in Khasra No. 94/7 Min. 3-14, 14/2 (0-8), 94/14/1 (0-15), 94/08 Min (0-19½), subject to the plaintiffs' depositing the balance sale consideration in terms of this order, by way of a pay order in the name of Registrar General of this Court within four weeks and (ii) to hand over the peaceful and vacant possession of the aforesaid land to them. The balance sale consideration will be calculated by the plaintiffs on the basis of current circle

rate of land in question and deducting the amount of Rs 3,95,000/- which they have already paid to the defendant from the aforesaid amount. The sale deed will be executed by the defendant within six weeks of the plaintiffs' depositing the balance sale consideration in this regard under intimation to him. If the defendant fails to execute the sale deed in favour of the plaintiffs and/or hand over the possession of land in question to them, it will be open to the plaintiffs to apply to the Court for appointment of a Court Commissioner to execute the sale deed and for issue of warrant of possession of land in question in their favour.

(V.K. JAIN)
JUDGE

DECEMBER 13, 2011
VN/bg