

*** HIGH COURT OF DELHI: NEW DELHI**

% Judgment delivered on: 17.09.2012

+ CS (OS) No.602/2005

SIDDHARTH SURI Plaintiff

**Through: Mr. Mohinder Singh with Ms. Diksha
Ahuja, Adv.**

Versus

MUNISH SETHI & ORS Defendants

**Through: Mr. Dinesh Garg with Ms. Rachana
Agarwal, Adv.**

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The plaintiff has filed the suit for specific performance of contract and seeks following reliefs:

“a) a decree for specific performance of the Agreement dated 24.1.2005 be passed in favour of the Plaintiff and against the Defendants and the Defendants be directed to execute a Sale deed in favour of the Plaintiff in respect of the property in question i.e. basement and Ground Floor (front portion) consisting of three bed rooms, four bath rooms, kitchen, lobby, with front lawn on the ground floor and one drawing cum dining room in the basement (front portion), alongwith proportionate undivided indivisible and impartible ownership rights (more specifically shown in red in the site plan) alongwith common drive-ways, stair case, appertunances, passages, common areas, common facilities, doors, entrances and other common services (more specifically shown in green in the site plan) in respect of property bearing No.C-56, Friends Colony East, New Delhi – 110 065;

b) in the alternative appoint an officer of this Hon'ble Court to execute a Sale Deed in favour of the Plaintiff for and on behalf of Defendants in respect of property in question i.e. part of property no.C-56, Friends Colony East, New Delhi – 110 065 described herein above in clause (a) on payment of requisite stamp duty and registration charges by the Plaintiff and to have the same registered with the concerned Sub-Registrar, Delhi under the Indian Registration Act against the receipt of balance consideration.

c) costs of the suit be awarded to the Plaintiffs and against the Defendants.”

2. Brief admitted facts of the matter are:

- a) On 24th January, 2005, an agreement to sell was executed between the plaintiff and defendant No.1 by which the defendant No.1 for himself and as attorney of defendant No.2 agreed to sell basement and ground floor front portion of Property No. C-56 Friends Colony East, New Delhi (hereinafter referred to as the 'suit property') for a sum of Rs.1,60,00,000/- in which the defendants acknowledged to have received a sum of Rs.30,00,000/- from the father/Attorney of the plaintiff. The suit property was consisting of three bedrooms, four bathrooms, kitchen, lobby, with front lawn on the ground floor and one drawing-cum-dining room in the basement (front portion) along with proportionate, undivided, indivisible and impartible ownership rights in the freehold land underneath measuring 600 sq. yards.
- b) It was agreed in the agreement to sell that the defendants would execute the sale deed on or before 10th April, 2005 and in case

any of the parties needed extension, the sale deed would be executed on or before 30th April, 2005.

- c) On 22nd February, 2005 the defendant No.1 again received Rs.2,00,000/- from the plaintiff. In all, the defendant received a sum of Rs.32 lac as advance money from the plaintiff/attorney till 10th April, 2005.
- d) According to the terms of the agreement to sell, the defendants were to deliver mutation certificate in respect of the portion of the property in question, No Dues Certificate of House Tax upto 31st March, 2005, No Dues Certificate in respect of the Electricity Charges as well as Water Charges, Clearance Certificate from Income Tax Department in respect of the property in question, Original Power of Attorney executed by defendant No.2 in favour of defendant No.1 duly stamped by Indian Consulate in America and adjudication Stamp affixed by the Collector of Stamps, New Delhi.
- e) The title deed in respect of the portion of the property in question were to be delivered by the defendant No.1 to the plaintiff or his father/attorney before the sale deed could be finally executed and registered in respect of the portion of the property in question.

3. **Case of the Plaintiff**

- i) Till 10th April, 2005 the defendant No.1 did not arrange any of the aforesaid documents, therefore, by mutual consent the time was extended for execution of the sale deed till 30th April, 2005.
- ii) On 21st April, 2005 a meeting took place and the defendant further took time of two days to produce the same and asked the plaintiff to

prepare a draft of sale deed. The plaintiff got the draft of sale deed prepared. The defendant did not produce any of the above original title documents to the plaintiff till 24th April, 2005. On 24th April, 2005 the plaintiff tried to contact the defendant No.1 and also in the meanwhile got the draft of sale deed prepared. The defendant No.1 was not available. He absented from his house and his wife refused to receive the draft of the sale deed from the plaintiff. Throughout these 4 days i.e. till 25th April, 2005, the defendant No.1 was not traceable. Because of non-availability of defendant No.1, the plaintiff, being apprehensive about the malafide intention of the defendant No.1, got served a notice through a notary public to the defendant No.1 in his presence as due to short time the notice could not have been served in time.

- iii) That on 26th April, 2005 the plaintiff in the presence of the Notary Public pasted a copy of the draft sale deed on the main door of the house of the defendant No.1. In the meanwhile, the defendant No.1 also came to the door and opposed such pasting. Photographs were taken at the time of pasting, in which the defendant No.1 also appeared.
- iv) That from 27th to 29th April, 2005 the plaintiff tried to contact the defendant No.1 through commonly known persons, but the defendant No.1 was not traceable. 30th April, 2005 was Saturday, and as such no sale deed could be executed.
- v) The plaintiff submits that he had enough money in his bank account as well in the firm (in his share to make the payment of the balance amount of sale consideration to the defendant, but since the prices of

properties in the locality had suddenly gone up, the defendant No.1 made efforts to wriggle out from the execution of the sale deed till 29th April, 2005. 30th April, 2005 and 1st May, 2005 were Saturday and Sunday. The present suit was filed on 4th May, 2005.

Main Case of the Defendants

4. After filing the suit, on 30th May, 2005 partition deed Ex.PW1/F was executed and registered between two brothers i.e. defendants No.1 and 2 by which the defendant No.1 became exclusive and absolute owner of the suit property. His share was shown in red colour in the site plan attached with the partition deed Ex.PW1/G.

5. The defendants filed a written statement wherein they did not dispute the ownership of the suit property as well as execution of the agreement to sell, however, they have taken the defence in written statement that the amount paid by the plaintiff's father/attorney was forfeited because the plaintiff did not pay the balance sale consideration amount to the defendant No.1 on or before 30th April, 2005 and the defendants were entitled to forfeit the said amount. The defendants had even got the property mutated in their names in Municipal Corporation of Delhi vide letter dated 19th April, 2005. Copy thereof was provided to the plaintiff with a request to complete the transaction on making the payment of the balance sale consideration but not later than 30th April, 2005. Since there was a default on the plaintiff's side and time was the essence of contract, the advance amount was rightly forfeited.

6. It was further submitted in the written statement by the defendants that on 24th April, 2005, the defendant No.1 received a copy of the proposed sale deed in which the area agreed to be sold was more than

the area agreed between the parties and that the agreed sale consideration was Rs.1,60,00,000/- whereas the plaintiff intended to get the sale deed executed only for Rs.60,00,000/- and that the plaintiff also wanted the additional area in the sale deed, which was never agreed to be sold under the agreement to sell.

7. It was also alleged that since the proposed sale deed was not as per the terms of the agreement to sell, the defendants asked the plaintiff to make it strictly in accordance with the agreement to sell and pay the balance sale consideration on or before 30th April, 2005. It is submitted by the defendants that the plaintiff promised to send revised sale deed on the next day. The plaintiff has filed the fabricated draft sale deed which is different than the draft sale deed filed by the defendants as Annexure-A along with the written statement. Since the plaintiff did not make the balance consideration to the defendants on or before 30th April, 2005, the defendants had rightly forfeited the amount and intimation was given to the plaintiff by notice dated 2nd May, 2005 who concealed the receipt of notice in the plaint.

Issues

8. From the pleadings, on 29th November, 2005 following issues were framed:

1. Whether the plaintiff is entitled for specific performance of agreement dated 24th January, 2005, if so, on what terms and conditions? OPP
2. Whether the plaintiff has always been ready and willing to perform his part of the agreement? OPP
3. Whether the defendants were entitled to forfeit the earnest money on account of defaults as alleged in the written statement, if so, to what effect? OPD
4. Relief.

Evidence of the Parties

9. The plaintiff produced three witnesses namely PW-1 plaintiff's attorney, PW-2 Mr Vinay Kumar Sahni, who was a witness to the pasting of the notice and copy of the draft sale deed on the door of the defendant No.1 and PW-3 Mr.C.M. Baweja, Advocate, Notary Public.

10. From the defendants' side, DW-1 Munish Sethi (defendant No.1) was examined, who being attorney of the defendant No.2, made the statement on his behalf also on filing of affidavit Ex.DW1/A. He admitted the following documents of the plaintiff at the time of admission/denial of the documents:

- (i) Ex. P-1 - Agreement to sell
- (ii) Ex. P-2 to P-6- Receipts of Rs. 5 lacs, Rs. 10 lacs, Rs. 5 lacs, Rs. 10 lacs and Rs. 2 lacs.
- (iii) Ex. P-7 – Notice dated 25.04.2005 issued by Mr. Mohinder Singh, Advocate, which was pasted on the door of the Defendant.
- (iv) Ex. P-8 – Photograph of the defendant, Mr. C.M. Baweja and Mr. Viney Kumar Sahni while pasting the Notice as well as draft sale deed on the door of the defendant.

11. The plaintiff through his witnesses exhibited the following documents:-

- (i) Ex. PW-1/A – Special Power of Attorney executed by the plaintiff in favour of his father/Attorney.
- (ii) Ex. PW-3/A – Notice dated 25.04.2005 issued by Mr. Mohinder Singh, Advocate on behalf of the plaintiff.
- (iii) Ex. PW-1/B - Ex. PW 3/B – Draft of Sale Deed for Rs.1,60,00,000/-

- (iv) Ex. PW-1/3 – Report of Mr. C.M. Baweja, Notary Public
- (v) Ex. PW-1/D – Photograph of Notary Public
- (vi) Ex. PW-1/E – Complaint dated 28.04.2005 sent by Plaintiff's Attorney to the police station.
- (vii) Ex. PW-1/F – Partition Deed between the defendants executed and registered on 30.05.2005.
- (viii) Ex. PW-1/G – Site Plan
- (ix) Ex. PW-1/H – Bank Account of Plaintiff with Syndicate Bank and Balance sheet of the Firm M/s Hansa Exports
- (x) Ex. PW-1/I – Schedule of Capital and balance sheet
- (xi) Ex. PW-1/J – Two pages plan.

Issue Nos.1 and 2

12. I shall take up the issue Nos.1 and 2 together as they are inter-linked. PW-1 Sh.S.K. Suri is the father of the plaintiff Sh. Siddharth Suri. He has also filed Special Power of Attorney (Ex.PW1/A).

13. It is also stated in the affidavit that the defendant No.1 approached the plaintiff and represented that he was the exclusive owner of the Basement and the Ground Floor (front portion) of Property No.C-56, Friends Colony East, New Delhi-110 065, consisting of three bedrooms, four bath-rooms, kitchen, lobby with front lawn on the Ground Floor and one drawing-cum-dining room in the Basement (front portion) alongwith proportionate undivided indivisible and impartible ownership rights in the free hold land measuring 600 sq. yds. in the residential colony, with all rights, title and interest, easement, privileges and appurtenances thereto with all fittings, fixtures, electricity and water connection with all rights in

common driveway, entrances, passages and amenities provided therein. The defendant No.1 on his behalf and on behalf of defendant No.2 proposed to sell the property in question for a total consideration of Rs.1,60,00,000/- and the said proposal was accepted by the plaintiff. The defendant No.1 for self and on behalf of defendant No.2 agreed to sell the said portion of the said property and executed an agreement to sell dated 24th January, 2005 received and acknowledged to have received a sum of Rs.30,00,000/- in the text of the agreement and further received and acknowledged to have received a sum of Rs.2,00,000/- on the last part of the said agreement, thus totaling to Rs.32,00,000/- out of the total consideration of Rs.1,60,00,000/-. The defendants agreed to sell the property in question before 10th April, 2005 and also agreed to extend this period by 20 days with mutual consent of parties till 30th April, 2005. The agreement to sell dated 24th January, 2005 is Ex.P-1. Receipts dated 10th January, 2005 for Rs.5,00,000/-, dated 17th January, 2005 for Rs.10,00,000/-, dated 24th January, 2005 for Rs.10,00,000/-, dated 24th January, 2005 for Rs.5,00,000/-, dated 24th January, 2005 for Rs.10,00,000/- and dated 2nd February, 2005 for Rs.2,00,000/- are Ex.P-2 to Ex.P-6.

14. In addition to that the plaintiff proved various document i.e. copies of the notice and sale deed pasted and the same are proved as Ex.P7 and Ex.P1/B. The report of the notary public in whose presence the notice was tendered to the defendant No.1 and pasted on the door is Ex.PW-1/C. The photographs taken on the spot while affixing the notice on the gate of the property in question showing the presence of the defendant No.1 are Ex.P-8 and PW1/D. In the affidavit, PW-1 has also filed the copy of the

complaint against the defendant No.1 and others with the Police Station New Friends Colony, New Delhi. The same was exhibited as Ex.PW-1/E.

15. PW-1 also deposed that during the pendency of these proceedings, the defendant Nos.1 and 2 executed a partition deed. The same was admitted to have been executed and registered by the parties in the proceedings dated 29th November, 2005 which proved that the defendant No.1 is the owner of front portion of basement and ground floor along with one servant quarter and joint bathroom at the rear of the ground floor of the property. The partition deed is exhibited as Ex.PW-1/F. The site plan of the property in question is Ex.PW-1/G.

16. In order to prove on record that on 27th April, 2005, three days prior to the deadline as per agreement i.e. 30th April, 2005, he had a balance of Rs.1,78,86,277.65 and on 30th May, 2005 when the deed of partition was executed and registered more than Rs.1,71,00,000/- was in his account of Syndicate Bank, 24-B/6, D.B. Gupta Road, Dev Nagar, New Delhi-110050. The documents with regard to required balance amount are proved as Ex.PW-1/H and Ex.PW-1/I.

17. PW-2 Sh. Vinay Sahni has deposed that Sh. S.K. Suri on 26th April, 2005 requested him to accompany him for serving a notice on Sh. Munish Sethi, defendant No.1, who was also known to him, being resident of the same locality and he accompanied Sh. S.K. Puri along with Sh. C.M. Baweja, Advocate/Notary Public, Sh. Mohinder Singh, Advocate and Sh. Harish Sethi to the residence of defendant No.1 and defendant No.2 at C-56, Friends Colony East, New Delhi, and in presence of Sh. S.K. Suri along with Sh. C.M. Baweja, Advocate/Notary Public tendered a copy of notice dated 25th April, 2005 which is exhibited as Ex.P-7 along with a draft Sale

Deed exhibited as Ex.PW-1/B to Mr. Munish Sethi who refused to accept the same. On his refusal, the Notary Public pasted the notice of 5 pages and a draft copy of sale deed containing 9 pages at the door of the house No.C-56, Ground Floor, Friends Colony (East), New Delhi. In his presence, Notary Public also took the photographs at the time of pasting the notice and in one of the photographs the defendant No.1 is also visible. The said photograph is exhibited as Ex.P-8. Another photograph is exhibited as Ex.PW-1/D which was taken on the spot.

18. PW-3 Mr.C.M. Baweja, Advocate/Notary Public was examined in Court on 31st August, 2007. In his examination-in-chief, he has stated that on 26th April, 2005 he had pasted a notice and a copy of the sale deed relating to property No.C-56, Ground Floor, Friends Colony East, New Delhi, on the outer door of property No. C-56, Ground Floor, Friends Colony East, New Delhi. He has proved his report as Ex.PW-1/C. Attested copy of the notice is Ex.PW-3/A and copy of the sale deed is Ex.PW-1/B. He made a statement that when Mr. Munish Sethi refused to receive the notice and copy of the sale deed, the same were pasted on the outer door of the house and a photographer was also called who had taken his photographs while pasting the notice and the copy of the sale deed on the outer door of the house. He had confirmed that the photographs are Ex.P-8 and Ex.PW-1/D.

19. The defendant No.1 (DW-1) in his testimony made the statement on his behalf as well as on behalf of defendant No.2. In his affidavit, he has produced copy of General Power of Attorney on behalf of defendant No.2 which is exhibited as Ex.DW-1/2. He has admitted that the deal was negotiated between the plaintiff and the defendant No.1 at a sum of

Rs.1,60,00,000/-. He admitted the execution of the agreement to sell Ex.P-1 as well as his signatures. He also admitted that out of Rs.1,60,00,000/-, Rs.32,00,000/- was paid. He deposed that the balance of the sale consideration was to be paid on or before 30th April, 2005. The property was mutated in their names in Municipal Corporation of Delhi vide letter dated 19th April, 2005 which was proved as Ex.DW-1/2. He produced copy of the proposed sale deed received on 24th April, 2005 which is filed along with the written statement as Annexure A and was exhibited as Ex.DW-1/3. He stated that the proposed sale deed was not as per the terms and conditions of the agreement to sell and the plaintiff was requested to make it strictly in accordance with the agreement to sell and to pay the balance sale consideration on or before 30th April, 2005. In his testimony, he stated that the plaintiff agreed to revise the draft sale deed on the next date but the same was not sent by the plaintiff and in order to cover up the lapses and breaches on the part of the plaintiff, the plaintiff had allegedly pasted a notice on the property on 29th April, 2005, which was full of false facts and figures which is an afterthought with the malafide intention. He also referred the matter to the police. Copy of the complaint dated 29th April, 2005 is exhibited as Ex.DW-1/4. DW-1 also deposed that since the plaintiff did not pay the balance sale consideration, a notice was issued by his Advocate on 2nd May, 2005 after the expiry of the time fixed in the agreement i.e. 30th April, 2005. He mentioned the factum of forfeiture of the money paid by the plaintiff. The said notice dated 2nd May, 2005 is Ex.PW-1/D1 and original A.D. Cards are Ex.D-1 and Ex.D-2.

20. The plaintiff cross-examined the DW-1 on the basis of the affidavit Ex.DW-1/A. In his cross-examination, DW-1 admitted that he

agreed to sell front portion of the basement and ground floor of the suit property and had also admitted execution of agreement to sell. The DW-1 also admitted the partition deed (Ex.PW-1/F) and he agreed to sell his share of portion to plaintiff. It was also admitted by him that he got this partition deed after 30th April, 2005. He was shown the partition deed Ex.PW-1/F as well as site plan. He admitted having the portion bounded by red line as shown in page 1 and on page 3 to be under his possession and ownership. He admitted that the site plan running into four pages annexed with documents Ex.PW-1/F (partition deed) was the correct site plan of the property in question. After comparing the site plan Ex.PW-1/G and the site plan attached with document Ex.PW-1/F, he agreed that both the plans are the same and both plans are correct plans for the ground floor and basement of the property in question. The statement was made by him that it was correct that he agreed at the time of execution of agreement to sell, to provide the plaintiff no due certificate in respect of the electricity and water charges till 31st March, 2005. At the time of execution of the agreement to sell Ex.P-1, he understood that he was the exclusive owner of the portion of the property in question which he agreed to be sold to the plaintiff before 30th April, 2005. He also admitted that he had obtained the power of attorney from defendant No.2 in respect of the front portion before 30th April, 2005. As regarding the servant quarter and small bathroom mentioned by him in his cross-examination on 20th August, 2008, he stated on 21st August, 2008 that he does not know if the servant quarter and the small bathroom were not included in the sanction plan sanctioned by the Municipal Corporation of Delhi.

21. The witness was again shown the site plan annexed with the partition deed Ex.PW-1/F. After seeing the site plan, he was unable to point out the servant quarter and the small bathroom as claimed to be under his possession in the site plan on the ground that the site plan was not clear. However, he admitted that the power of attorney given by the defendant No.2 to him did not include servant quarter and small bathroom in it. He also admitted that there were only two occupants at the ground floor i.e. himself and the person occupying rear portion of the ground floor and also admitted that both of them were entitled to use one servant quarter each and the common bathroom. In cross-examination, the statement was made that it was correct that the servant quarter and the bathroom in question situated at the rear set back was the only servant quarter and bathroom available for the front portion user and could not say that if the entrance to the rear portion of the property in dispute was from the common bathroom situated at rear set back and meant for the servants as he never seen the same and he also did not know if the electricity and water connections meters were installed at the rear set back. He admitted that police did not take any action against the plaintiff or his father on complaint dated 29th April, 2005 Ex.DW-1/4.

22. Small part, which is relevant, of his cross-examination is reproduced below:

“Q. Upto which dated in April 2005 you were prepared to execute the sale deed?

A. I was ready as per our agreement upto 30.04.05.

Q. Were you not ready and willing to execute the sale deed on 01.05.05 or subsequently?

A. I would have agreed if the terms of the draft sale deed had been rectified in time.

Q. I put it to you that you that it was a Saturday on 30.04.05 and Sunday on 01.05.05 and as such you never contacted the attorney of the plaintiff for executing the sale deed?

A. I had got the legal notice pasted on my house on 29.04.05 and the rectification had not been made and as such there was no question of my contacting the attorney of the plaintiff on 30.04.05 and 01.05.05. After receiving the notice I had contract my counsel.”

He admitted that he did not vacate the suit property till 30th April, 2005 because of the reason the he was to shift only to the back portion could have been done within two hours. When the question was asked that the said portion belonged to defendant No.2 how was it possible, he gave the reply that the defendant No.2 was residing in USA and the said portion was in his possession.

LEGAL DISCUSSION

23. Learned counsel for the defendant has argued his case mainly on the following points:

1. No readiness and willingness on the part of the plaintiff.
2. Not a fit case to exercise discretion to grant of Specific Performance.
3. Interpolation on the proposed sale deed.
4. Misrepresentation before Court.

24. Mr. Dinesh Garg, learned counsel for the defendants, argued that the plaintiff was not ready and willing to complete his part of obligation as the plaintiff did not purchase the stamp paper and did not make out the pay orders for the balance sale consideration. As the time was the essence of the

contract, the plaintiff failed to pay balance sale consideration as the balance amount of Rs.1.28 crore was not available in their account at the relevant period. The plaintiff also did not get the document of sale drafted/corrected strictly as per the agreement to sell Ex.P-1 and was not willing to take the area what was agreed upon but desired more area i.e. one room in the rear side for which the defendant never agreed. According to him, there are sufficient reasons for the Court to draw the inference that the plaintiff was not ready and willing to purchase the suit property except to delay the transaction period due to increase of prices.

25. In view of the above said facts and circumstances, the present case is not a fit case where the discretion should be exercised by this Court in favour of the plaintiff to grant of specific performance.

26. Learned counsel for the defendant has referred to Section 16 of the Specific Relief Act, 1963 as well as the following judgments:

- a) In *Sanjay Passy Vs. Iqbal Chand Khurana and Anr.*, 2010 (117) DRJ 209 it was held as under:

“27. The plaintiff is correct in saying that time should not be considered as of the essence of the contract, in respect of sale of immovable property. **However, the rule does not mean that when called upon to issue an equitable relief – even a temporary injunction, the court has to disregard express stipulations for time, contained in the contract. A party’s conduct, in the performance of its express obligations, is an important aspect which has to be considered when deciding whether ad-interim injunction should be granted.**

29. This court is mindful of the circumstance, in this context that even though time is not deemed to be of the essence of the contract, the prevailing circumstances, in the realty sector is such that property prices are escalating almost on a daily basis. This aspect would be necessity, caution the courts in their approach to grant injunctions on

routine basis. An unjustified interim order, at the behest of a casual purchaser, can lead to oppression of the owner or vendor, or even a third party purchaser and cause economic hardship.”

- b) In the case of **Sanjeev Kumar Mittal Vs. The State, 174 (2010) DLT 214**, the court held as under:

“6.6. If there is falsehood in the pleadings (plaint, written statement or replication), the task of the Court is also multiplied and a lis that could be decided in a short time, then takes several years. It is the legal duty of every party to state in the pleadings the true facts and if they do not, they must suffer the consequences and the Court should not hold back from taking action.

- c) In the case of **H.P. Pyarejan v. Dasappa, (2006) 2 SCC 496**, at page 504, the court held as under:

“13. The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.

16. The finding on the question of readiness and willingness to perform the contract which is a mixed question of law and fact has been upset. It is statutorily provided by Section 16(1)(c) of the Act that to succeed in a suit for specific performance of a contract the plaintiff shall aver and prove that he has performed and has always been ready and willing to perform the essential terms of the contract which were to be performed by him other than the terms the performance of which has been prevented or waived by the defendant.

- d) In the case of **Uma Bai Vs. Nilkanth Dhondiba Chavan (Dead)**

By Lrs. and Anr, JT 2005 (IV) SC 292, the court held as under:

“32. It is well-settled that the conduct of the parties, with the view to arrive at a finding as to whether the plaintiff-respondents were all along and still are ready and willing to perform their part of contract as is mandatorily required under Section 16(c) of the Specific Relief Act must be determined having regard to the entire attending circumstances. A bare averment in the plaint or the statement made in the examination-in-chief would not suffix. The conduct of the plaintiff-respondents must be judged having regard to the entirety of the pleadings as also the evidence brought on record.”

- e) In the case of **Aniglase Yohannan v. Ramlatha, (2005) 7 SCC 534, at page 540**, the court held as under :

“12. The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.”

- f) In the case of **K. Narendra v. Riviera Apartments (P) Ltd., (1999) 5 SCC 77, at page 92** the court held as under :

“33. The Court has further proceeded to hold:

All this only means that while exercising its discretion, the court should also bear in mind that when the parties prescribe certain time-limit(s) for taking steps by one or the other party, it must have some significance and that the said time-limit(s) cannot be ignored altogether on the ground that time has not been made the essence of the contract (relating to immovable properties).”

27. Learned counsel for the defendants argued that the proposed sale deed (Ex.PW-1/B) filed by the plaintiff is a fabricated one for the purpose of filing the present case. There is an interpolation in the said document of figure '1' so as to make the amount of Rs.60,00,000/- as Rs.1,60,00,000/-. It is apparent if Ex.PW-1/B is compared with the document Mark A. In the document Ex.PW-1/B filed by the plaintiff, the calculation of stamp duty has also been deleted. It is argued by the learned counsel for the defendant that in view of filing of fabricated documents, the plaintiff is not entitled to discretionary relief claimed by the plaintiff. It was also argued by Mr. Dinesh Garg, learned counsel for the defendant, that when the plaintiff filed the suit before this Court, the factum of receiving the notice of 2nd May, 2005 was not mentioned in the plaint. Therefore, the plaintiff is also guilty of concealment of material document.

28. Before dealing with the submission of the learned counsel for the defendant, let me mention here that as far as the ownership of the suit property is concerned, the defendant No.1 in his testimony has admitted that he is the owner of the ground floor of the suit property. The DW-1 in his testimony also admitted the agreement to sell Ex.P-1. The receipts Ex.P-2 to Ex.P-6 of the amount of Rs.32 lac. The sale deed was to be executed on or before 30th April, 2005. The plaintiff has proved on record issuance of notice dated 25th April, 2005 Ex.P-7 as well as photograph Ex.P-8. He has also proved the site plan Ex.PW-1/G as well as partition deed Ex.PW-1/F. He proved the report of Mr.C.M. Baweja, Advocate/Notary Public as Ex.PW-1/3. Ex.PW-1/H bank account of plaintiff with Syndicate Bank and balance sheet of the Firm M/s Hansa Exports as well as Ex. PW-1/I

Schedule of Capital and balance sheet. There was a sufficient balance on the relevant date to pay the balance consideration payable by the plaintiff.

29. The evidence adduced by the plaintiff clearly indicates that the plaintiff was making efforts for the purpose of completing the transaction on time and was ready with the balance consideration. Defendant No.1 was avoiding meeting the plaintiff and further discuss if he had any grievance or clarification about the draft sale deed. The statement made by the plaintiff as PW-1 was corroborated by PW-2 and PW-3. The defendants failed to demolish the case of the plaintiff on this issue. Even so, there was a delay on the part of execution and registration of partition deed as the same was registered on 30th May, 2005. The blame for short period has to be put upon the defendants. Admittedly the suit was filed on 4th May, 2005. Even otherwise, the defendants failed to prove any evidence contrary to the case of the plaintiff.

30. Therefore, the arguments of the defendant that the time was the essence of the contract are totally false and frivolous as the plaintiff was ready with the balance consideration as it has been proved through Ex.PW-1/H and Ex.PW-1/I which establish that the plaintiff had the sufficient funds to make the remaining balance sale consideration to the defendant. In fact, the plaintiff has proved his case beyond any doubt that he was ready and willing to perform part of his obligation in respect of the agreement to sell as he had enough money in his own bank account as well as in the account of his firm namely M/s Hansa Exports, which are Ex.PW-1/H and Ex.PW-1/I to be payable to the defendant No.1 at the time of execution of sale deed. It was the defendant No.1 who absented himself to meet the plaintiff.

31. As regarding the allegation made by the defendants about the interpolation of draft sale deed is concerned which has been filed, the plaintiff never denied that the total sale consideration agreed by the defendants to sell suit property was for a sum of Rs.1,60,00,000/-. The plaintiff had acknowledged the said amount from the day one. Even in the suit, the plaintiff has mentioned the said amount. Same amount is mentioned in agreement to sell Ex.P-1 as well as in the receipts Ex.P-2 to Ex.P-6. The controversy that the draft sale deed contained the figure of Rs.60,00,000/- only as raised by the defendant is without any substance.

32. No issue was framed on the aspect of interpolation of the document by the plaintiff as argued by the learned counsel for the defendants. In case in the draft sale deed the total consideration of Rs.60,00,000/- was mentioned instead of Rs.1,60,00,000/-, it would have been pointed out by the defendants and could have been clarified as it was not the case of any party that total consideration was not Rs.1,60,00,000/- it could have been settled if defendant No.1 would have met the plaintiff who tried to contact him in many ways. The defendant No.1 was avoiding him in order to frustrate the agreement executed between the parties. The plaintiff had no option but to affix the said documents at the main gate of the defendants. The defendant No.1 is appearing in the photographs i.e. Ex.P-8. These circumstances show that the plaintiff was making efforts to approach the defendant No.1 to finalize the draft sale deed but the defendant No.1 was avoiding meeting the plaintiff. Hence, with no loss of time, the suit was filed before this Court. As regards the argument of the defendants about non-disclosure of legal notice PW1/D1 dated 29th April, 2005, learned counsel for the plaintiff has pointed out that 30th April, 2005 and 1st May,

2005 were Saturday and Sunday and the suit was filed on 4th May, 2005 and the said notice was not received at the time of filing of the suit. Even otherwise, the factum of notice issued by the defendants was not very relevant when the plaintiff was carrying the balance consideration and defendant No.1 was trying his best not to meet him.

33. The grievance of the defendants that the plaintiff had not purchased the stamp paper and prepared the pay orders for the balance sale consideration is also totally without any substance due to the reason as mentioned above that the defendant during last week of April, 2005 was deliberately avoiding the plaintiff to get deal finalized. Thus, the objection raised by the defendants is totally misconceived as the plaintiff had sufficient funds to purchase the stamp-paper and to pay balance consideration and at the same time, defendant No.1 was ready to discuss the deal any further during the last week of April 2005.

34. It appears from the facts and circumstances of the case that the plaintiff was ready and willing to purchase the property in question. In case the plaintiff was insisting for extra portion of the suit property which was not strictly in accordance with agreement to sell, the defendants have been unable to prove before this Court that the defendant issued any communication to the plaintiff in this regard. Rather, the defendant No.1 admitted in his deposition that there was one servant quarter for rear portion and another servant quarter meant for portion to be sold to the plaintiff and one bathroom meant for both the servant quarters. The defendant No.1 also admitted that he did not have any registered title deed in his position till 30th April, 2005 in respect of the portion of the property in question and he did not give any copy of the title deed to the plaintiff which could disclose that

he was registered owner of the portion of the property in question. The defendant No.1 admitted in his deposition that he did not furnish any copy of the No Dues Certificate of house tax, electricity charges and water charges in respect of the property in question as well as No Dues Certificate of claim from the Income Tax Department.

35. On the other hand, the plaintiff has proved on record that from 20th April, 2005 to 29th April, 2005 the plaintiff was pursuing the defendant for furnishing the said documents and to execute the sale deed and get the sale deed registered with the Sub-Registrar, New Delhi. The plaintiff has also proved that the defendant No.1 was not available at his house and was absenting himself from his house and did not come forward to perform his part of the obligation as per the agreement to sell.

36. I am of the considered view that the defence taken up by the defendants in the written-statement was totally unbelievable. There is no valid reason as to why the relief of specific performance in the present should not be granted as the plaintiff has satisfied all the requirements of Section 20. All the decisions referred to by the defendant and law laid down therein goes in favour of the plaintiff and against the defendants in view of the facts and circumstances of the present case.

37. After having considered the entire gamut of the matter, it is clear that the plaintiff was ready and willing to perform his part of the agreement. Issue Nos.1 and 2 are accordingly decided in favour of the plaintiff and against the defendants. The suit of the plaintiff is decreed as per prayer with cost.

Issue No.4: Relief

38. It is settled law that the grant of decree of specific performance lies in the discretion of the Court and it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further settled law that a Court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while grant or refusing decree for specific performance.

39. Even then if the Court examined the case purely from the point of view of equity, no doubt there has been increase in the price of the suit property. Under these circumstances, the Court can direct a party that as a matter of fact good gesture to make additional payment to the defendant so as to persuade him to agree to complete the transaction. (See (2002) 8 SCC 146, *Nirmala Anand vs. Advent Corporation (P) Ltd. and Ors*, (2010) 7 SCC 717, *Laxman Tatyaba Kankate and Anr. vs. Taramati Harishchandra Dhatrak*, (2007) 10 SCC 595, *Vishwa Nath Sharma vs. Shyam Shanker Goela and Anr.* and 2012 (4) AD (Delhi) 466, *Surinder Kumar vs. Brahm Prakash*)

Conclusion

40. Considering the above settled law and in view of the facts and circumstances as good gesture and applying the principles of equity, it is directed to the plaintiff to pay additional amount of Rs.1 crore apart from the balance sale consideration payable to the defendant as per the agreement as even during the hearing both parties discussed on this aspect two times when plaintiff agreed to pay some extra amount but there was no consensus between them to arrive at final figure. The sale deed will be executed by the

defendant within ten weeks on the plaintiff depositing the balance sale consideration in this regard under intimation to him.

41. In case the defendants fail to execute the sale deed in favour of the plaintiff and to hand over the possession of the suit property, it is open to the plaintiff to apply to the Court for appointment of Local Commissioner to execute the sale deed and for issuance of warrants of possession of the suit property in question in his favour. The requisite stamp duty and other charges would also be paid by the plaintiff.

42. Decree be drawn accordingly.

Issue No.3

43. As regard the issue No.3 is concerned, in view of the findings arrived at on issue Nos.1 and 2, the said issue is also decided in favour of the plaintiff and against the defendants as the defendants have failed to discharge his burden to prove that the defendants were entitled to forfeit the earnest money on account of defaults as alleged in the written statement.

MANMOHAN SINGH, J.

SEPTEMBER 17, 2012/jk