

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.343/2014

Smt. Prembala w/o Manmohan Chawla

..Versus..

Shri Gulabrao s/o Shriram Mahale and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 14.10.2015

Heard Shri S.S. Sharma, advocate for the appellant and Shri Rohit Joshi, advocate for the respondents.

The learned advocate for the appellant, relying on the judgment given by the Hon'ble Supreme Court in the case of *Saradamani Kandappan V/s. S. Rajalakshmi & Ors.* reported in **2011 (12) SCC 18** has submitted that the subordinate Courts have committed an error in granting decree for specific performance of the agreement overlooking the considerations as enunciated in the above referred judgment. The learned advocate relied on the paragraph nos.27 and 28 of the judgment which read as follows :

"27. A correct perspective relating to the question whether time is not of the essence of the contract in

contracts relating to immovable property, is given by this court in K.S. Vidyadnam and Others v. Vairavan - (1997) 3 SCC 1 (by Jeevan Reddy J. who incidentally was a member of the Constitution Bench in Chand Rani). This Court observed:

"It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect.

In the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades - particularly after 1973.We cannot be oblivious to the reality and the reality is constant and continuous rise in the values of urban properties - fuelled by large scale migration of people from rural areas to urban centres and by inflation.

Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties - evolved in times when prices and values were stable and inflation was unknown - requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so."

(emphasis supplied)

Therefore there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the current position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices. We do not propose to undertake that exercise in this case, nor referring the matter to larger bench as we have held on facts in this case that time is

the essence of the contract, even with reference to the principles in Chand Rani and other cases. Be that as it may.

28. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyadnam (supra) :

(i) Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) Courts will apply greater scrutiny and strictness when considering whether the purchaser was ready and willing to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. Courts will also frown upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser."

It is submitted that the agreement between the parties was entered into on 18th April, 1998 and as per this agreement the sale deed was required to be executed within one month. It is submitted

that on 18th May, 1998 the agreement was modified and the sale deed was required to be executed within two months from 18th April, 1998. The civil suit is filed on 19th June, 2000. Considering the proposition of law laid down in the above judgment, the following substantial questions of law arise for consideration :

“(i) Whether the subordinate Courts are right in granting decree for specific performance of the agreement without considering the delay on the part of the respondents in filing the suit ?

(ii) Whether the respondents are entitled for decree for specific performance of agreement overlooking the time specification provided in the agreement ?

(iii) Whether the findings recorded by the subordinate Courts on the point of 'readiness and willingness' of the respondents to get the sale deed executed are proper ?”

The appeal is **admitted** on the above substantial questions of law.

Shri Rohit Joshi, learned advocate waives notice for respondents.

The appellant shall file private paper book and decree forms within six months.

C.A.S. NO.847/2014

Considering the facts of the case, I am satisfied that the appellant has made out *prima facie* case for grant of interim order. The execution of the decree is stayed on condition that the appellant deposits an amount of Rs.5,00,000/- (Rs. Five Lakhs Only) with the Registry of this Court till 11th January, 2016. If the amount is deposited within the stipulated time, it shall be kept in fixed deposit. If the amount is not deposited within stipulated time, the interim order shall stand vacated without reference to Court. The Civil application is allowed in the above terms.

As the prayer made in the civil application is not in consonance with the provisions of Order 41 Rule 5 of the Civil Procedure Code, the appellant shall deposit Rs.500/- (Rs. Five Hundred Only) with the Legal Aid Services Sub-Committee, High Court, Nagpur and produce the receipt on the record, within two weeks.

JUDGE