IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2426 of 2015
Date of Decision: 18.08.2015

Shakuntla ....Appellant

Vs.

Vinod Kumar ....Respondent

RSA No.2427 of 2015
Date of Decision: 18.08.2015

Shakuntla ....Appellant

Vs.

Vinod Kumar ....Respondent

CORAM: HON'BLE MR. JUSTICE K.KANNAN

Present:- Ms.Bindu Goel, Advocate for the appellant.

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K.KANNAN, J. (Oral)

The plaintiff's suit for specific performance of an agreement dated 19.07.2005 for sale of a residential property by the defendant was sought to be specifically enforced and a decree was passed therefor. The defendant appealed but lost. The second appeal is against the concurrent judgments upholding the plaintiff's claim to specific performance.

As per the terms of the agreement dated 19.07.2005, the plaintiff had paid Rs.2,50,000/- and the balance of Rs.50,000/- was required to be paid before 18.06.2006. It happened to be Sunday and the plaintiff would state that he turned up at the Registrar's office on 19.06.2006 and when the defendant did not turn up, he took the endorsement of his presence from the Registering Officer but did not take it further to calling upon the defendant to execute the sale deed. However, the defendant was reported to have been present on 20.06.2006 and issued a notice on 11.07.2006 stating that the plaintiff was not present on the day i.e. 20.06.2006 even when she was ready and willing to execute the sale deed and called upon the plaintiff to express within a period of 15 days the time before when the sale deed was required to be written and if such an expression did not come through a reply in 15 days, the agreement dated 19.07.2005 must be taken as cancelled. The plaintiff was reported to have received the notice on 15.07.2006 but he issued a notice on 01.08.2006 setting up a date, namely, 17.08.2006 as a date when he would be willing to have the sale deed registered. The defendant contended that the time given in the notice issued by her on 11.07.2006 had already expired and the agreement stood cancelled.

The defendant filed a suit for cancellation of the agreement and sought for mandatory injunction against the plaintiff from executing the agreement and the plaintiff filed a suit for specific performance. The cases were taken together and decree for specific performance was granted in favour of the plaintiff. As a corollary is meant the dismissal of the defendant's suit for mandatory injunction. The appeals are against the two judgments. The reference to the plaintiff in this case shall be the plaintiff who filed a suit for specific performance and the reference to the defendant is to the defendant in the said suit.

Learned counsel appearing on behalf of the defendant would point out that the two courts below were in error in stating that there was no particular proof for date of receipt of notice issued by him and the 15 days time for cancellation of the agreement ought to therefore, be taken as having operated against the plaintiff to result in its cancellation. The counsel would argue that the proof of delivery was made available by the plaintiff in Court through the post-office delivery endorsement and it showed that the registered notice sent through counsel was delivered on 15.07.2006. The 15 days time for cancellation to operate as per the said notice concluded on 31.07.2006 and the plaintiff did not have any subsisting right to seek for its enforcement through a notice issued on 01.08.2006. The Courts below had wrongly inferred the plaintiff was ready and willing to perform her part of the contract failing to note that the defendant alone was actually present even on 20.06.2006 at the Registrar's Office and the plaintiff had not expressed anywhere through a notice immediately after 20.06.2006 that he was ready and willing to perform his part of the contract. On the other hand, the plaintiff literally kept quiet till the defendant issued a notice on 11.07.2006 calling upon him to stipulate a date before when the sale could be executed. Even within the period stipulated, the plaintiff had not reacted and this would clearly show the plaintiff was not ready and willing, while the defendant always was. The arguments is that the legal requirement under Section 16(c) of the Specific Relief Act would mandate the plaintiff to disclose his readiness and willingness by pleadings and conduct which were unavailable in this case.

In my view, the contentions urged by the defendant cannot merit acceptance for the only reason that the first crucial date namely, 18.06.2005 for performance of the contract for sale was Sunday and consequently, the plaintiff's conduct on the day immediately following was surely relevant. The plaintiff had brought on record a proof of Registering Officer's endorsement of his presence at the Registrar's office and it would show, therefore, that the plaintiff had by his conduct exhibited his readiness on that day. If the plaintiff had not immediately acted, the defendant held the plaintiff to re-position himself to a date when the sale could be executed, when she caused a notice issued on 11.06.2006. She did not stipulate a time period before when the sale must be concluded. On the other hand, she was prepared to allow the benefit to the plaintiff to choose a date before when the sale could be completed. By the terms of the notice, the 15 days period mentioned was to invite the plaintiff to secure a sale deed by specifying the date before when the document formalities could be completed. This conduct would mean that the time stipulation was not really taken as of its essence though it was perfectly competent to make it so even for a document which did not spell out the time to be of its essence by a specific stipulation. The time would become the essence of the contract by a subsequent notice or an endorsement in the agreement itself. If the notice of the plaintiff was not requiring the completion of sale deed within a period of 15 days but only required the plaintiff to specify within 15 days, the time when he would be willing to have the sale deed registered, by her conduct she was allowing the plaintiff to dictate a time before when the sale could be completed. It was no body's case that the plaintiff did not have the money to purchase the property. On the other hand, the defence was that she had only borrowed Rs.1,50,000/- from the plaintiff and an argument was made as though it was an agreement on an understanding that she will repay the loan and take back the document and when she knew that she was not in a position to pay back she was willing to treat it as an agreement of sale and suffer the obligations of executing the sale deed. The defendant was, therefore, actually recognizing the credit worthiness of the plaintiff and his ability to garner resources and she was treating him as her own creditor. So long as the defendant did not persist that the agreement really operated only as a loan transaction and that by her own conduct, she was prepared to treat it as an outright sale agreement, all that would become essential for examination is whether the time of performance sought by the plaintiff through a notice dated

01.08.2006 was such as to evidence that he had lost the right by the notice issued by the plaintiff on 11.07.2006. If the 15 days period must be taken, it must be taken only to consider whether the plaintiff was responding with the time stipulation for completion of sale. The response in the notice that was solicited by the defendant did not require a sale deed to be completed before 31.07.2006. The plaintiff had issued a notice on 01.08.2006, set a date for completion of the sale on 17.08.2006 and when she did not come about to execute the sale deed, filed a suit on 24.08.2006. I do not think that the plaintiff has lost time to institute a suit.

As a general principle, time for performance in respect of immovable property is never an essence. There have been new judicial approaches recognizing the inflationary trends and how a delay would be seriously considered for disallowing the prayer for specific performance. The delay must be such as to make for an inference that the plaintiff's conduct had been so unworthy that he must be denied the benefit. The delay caused again must be such as to cause to a very serious hardship to the defendant-vendor. If, in this case, the plaintiff was stipulating a period for respond to a stipulated date within a period of 15 days and the defendant issued a notice on the 16th day after receipt of notice, the conduct of the plaintiff does not show that he was giving up his right nor would it show that the defendant has been put to any additional loss on account of the same. The precept of law still is that if there is a delay, it is a delay sanctioned by statute. Article 54 of the Limitation Act allows for a period of 3 years for specific performance from the date when the time stipulated as expired. The Supreme Court has stated in ***Mademsetty Satyanarayana Vs. G.Yellogi Rao and others AIR 1965(SC) 1405*** that a suit for specific performance cannot be dismissed as barred by limitation or barred by laches if the suit was filed within three years, unless the conduct exhibited that the plaintiff had given up his right and he had not been shown to be ready and willing to perform the part of the contract.

I do not find any of such fallibility as attaching to the plaintiff's conduct. The decree granted by the trial Court as affirmed by the appellate Court in favour of the plaintiff is bound to be supported and the second appeal has no merits for consideration to require any substantial question of law to be framed. The points of law involved are well taken care of by several judicial pronouncements already and there is nothing new for its application in this case. Both the appeals are dismissed.

(K.KANNAN)
JUDGE

18.08.2015
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