

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4155 of 2014 (O&M)
Date of Decision.16.09.2015

Rajinder Singh @ Harjinder Singh and anotherAppellants

Versus

Paramjit Singh and anotherRespondents

Present: Mr. Vishal Sharma, Advocate
for the appellants.

Mr. GBS Dhillon, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J.(ORAL)

1. Delay of 152 days in filing and 139 days in refiling the appeal is condoned.
2. The defendant is the appellant before this Court. The suit for specific performance filed against the defendant was on the basis of an agreement dated 17.03.2010 and the time specified in the document was 25.06.2010 and it was contended by the plaintiff that time stipulated was extended upto 20.7.2010. The suit for specific performance was filed on 29.07.2010. Even before the plaintiff's suit was filed, the defendant himself had filed the suit saying that the time of extension which was made from 25.06.2010 to 20.07.2010 was brought about by force and coercion by the plaintiff at the police station and for a declaration that he had purported to rescind the contract and

filed the suit on 16.07.2010 that the agreement dated 17.03.2010 had become unenforceable. The suit filed by the defendant was kept pending although he had taken a defence that by virtue of his suit, the plaintiff had lost his right of enforcement. For whatever reason, the defendant was not able to prevail on the trial Court to take up the suit instituted by him earlier in point of time which could have been taken up along with suit for specific performance and being the subject of instant appeal, suit came to be decided independently. I am informed that the defendant's suit is still pending.

3. The suit which was decreed was confirmed in appeal by both courts holding that the agreement was enforceable. The plea of alleged coercion brought about at the police station was not accepted. The counsel appearing on behalf of the appellant projects as foremost point that when his suit for rescission of the contract was pending, the plaintiff's suit could not have been instituted without having a declaration that he was entitled to have it enforced. The counsel relies on a judgment of the Supreme Court in I.S. Sikandar (D) by LRs Vs. K. Subramani and others 2014(1) RCR (Civil) 236 to state that when agreement to sell a property was to an action for specific performance and the vendor was terminating the contract, a suit for specific performance from purchaser must contain a declaratory relief to declare termination of sale as bad in law. In the absence of such prayer by the plaintiff, the original suit filed by him for grant of declaration of specific performance was not sustainable. The relief seeking for termination of sale was wholly unsustainable in law. The contention, therefore, is that the suit for specific performance could not have been laid at all.

4. The contract is always a two way process. A rescission in order that it takes effect must be founded on any of the circumstances which the law allows for, namely, that it is vitiated by any of the circumstances that allow for transaction to be set aside which the Contract Act specifies or any statute provides for. If the defendant's contention was that the contract was vitiated which was brought about by the plaintiff by coercion, the relief of specific performance will be considered from the point of view whether there had been any vitiating circumstance that prevailed to say that the relief for specific performance could not be granted. I have seen through the judgment in I.S. Sikandar's case that it was a case of a stipulation mentioned in the document that the sale deed has to be secured within a period of five months. A further extension of two months was taken by the plaintiff making the time the essence and seeking also for certain statutory clearances to be obtained. In the situation dealt with by the Supreme Court, the extended time that had been specifically stipulated as of the essence was not complied with, the defendant had issued notice rescinding the contract. In such case, the Court held that a suit which was instituted 11 months later amounted to an enforcement of agreement which had been rescinded and if there had been not even a declaration sought that the rescission was bad in law, the specific performance of the contract could not have been possible.

5. I asked the counsel specifically of whether there was any specific clause in the agreement making it the essence of the contract. He is unable to show anything beyond stating that the Court observed somewhere that the time was the essence. There is sufficient case law

to the effect that in respect of immovable property, time is not of the essence. However, there has been a recent trend for looking for appropriate justification for a person not to comply with the terms having regard to the spiraling prices and the inflationary trends in the market that one party who has agreed to obtain a conveyance within a particular date shall at all times show his readiness and willingness and perform his part of the contract and if it was not done, the delay would cause very serious hardship and that therefore, the law would require to be restated that specific performance will be declined unless it is shown that there is nothing attributable to the conduct of the plaintiff that had constituted a delay. In this case, the date which was mentioned was 25.06.2010 and an extension was made upto 20.07.2010. If the extension was not found by the Courts below as having been wrought by any coercion, then the very fact that the suit was instituted on 29.07.2010 would show that there had been no lack of readiness and willingness. It must be a typical case of plaintiff enforcing his right, when his action to secure a sale deed voluntarily from the defendant failed. If the document is made on 17.03.2010 providing for three months time for complying with the terms of contract, then I do not find that there is anything that would turn on the defendant for filing a suit and when he has kept his own suit pending. The finding by the Courts already that the agreement is enforceable will conclude the adjudication and bind the defendant in his won suit for rescission. The adjudication in the suit which the defendant had instituted cannot be any different from what the trial Court has done in a suit for specific performance. In fact the issue decided in this case will dictate the issue

to be decided in the other. If two suits had not been taken up together, the suit which is decreed by the trial Court on the finding that the plaintiff had shown his readiness must literally result in a finding of the defendant not being justified in seeking for rescission of contract. The learned counsel states that the very fact of institution of the suit must be taken as proof that the plaintiff had not been ready and willing. Rescission as I have already observed is not one way in so far as it can be justified by his own unilateral act. It must be justified by proof of certain vitiating factors which was not evidenced. In this case, the fact of pendency of the case cannot give any special benefit to the defendant and obstruct the plaintiff for enforcement of a right of specific performance. The plea by the defendant that the extension of time was obtained by coercion at the police station had been suggested to the plaintiff but he has repulsed the suggestion by volunteering a reply in his deposition that he approached the plaintiff only to prevail upon the defendant to execute the sale as per agreement. I will find no defect or error in the decisions of the Court below for interference.

6. The second appeal is dismissed.

(K. KANNAN)
JUDGE

September 16, 2015
Pankaj*