

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No. 4846 of 2014 (O&M)
Date of decision: August 24, 2015

Darshan Singh and another

...Appellants

Versus

Amarjit Singh

...Respondent

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?**

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Naveen Shoekand, Advocate,
for the appellant.

K. KANNAN, J. (Oral)

1. The plaintiff who filed a suit for specific performance of an agreement dated 16.3.1995 was successful in securing a decree for specific performance. The defence was that the plaintiff had not been ready and willing to perform his part of the contract and the plaintiff was not present on the date when the balance sale consideration had to be paid, namely on 31.5.1995. The suit itself had been filed on 17.1.1996 i.e. nearly 7 months later after issuing a notice on 14.1.1996. Both the parties were fencing on mutual assertions of the other being responsible for the breach of the contract. The plaintiff gave evidence in court that he was present at the Register's office on 31.5.1995, but the defendants were not, while the defendants contended that they were actually present and got their own affidavits prepared and attested by the registering officer. The plaintiff

joined the issue to explain the lack of such similar evidence of the affidavit being attested by the Registering officer stating that he did not know of such procedure as possible.

2. The trial court decreed the suit finding that the plaintiff had proved his willingness and readiness and the defendants were actually setting up a new story that they actually were present at the time when the document was to be registered on 31.5.1995 and that they went to the plaintiff's house the next date and called upon him to perform his part of the contract and only when he failed to do so, they left for U.K. This aspect of the evidence was found to be not genuine and the decree of specific performance was granted which was affirmed in appeal by the Appellate Court.

3. Learned Senior Counsel appearing on behalf of the defendants points out that the suit was instituted on 17.1.1996 and an ex-parte decree was passed on 24.3.2000 only because the plaintiff had deliberately taken notice of the suit to an address at Chandigarh, whereas the plaintiff knew all along that the defendants were residing in U.K. and the suit notice had been issued by the plaintiff only to the address at U.K. The application for setting aside the ex-parte decree had been filed and their application was dismissed. The appeal against the order by the defendants had been dismissed and the revision to this court was also dismissed. It was not until the Supreme Court intervened to set aside the ex-parte decree on 14.9.2009 that the matter went back to the trial court for consideration of the case on merit. The manner of obtaining an ex-parte decree and engaging the defendants in a contest in all the forums upto the Supreme Court, according to the defendants, exhibited conduct that ill-behoved a fair approach and

this conduct must be held out against the plaintiff for denying him the specific performance. I discard this argument as without merit, for, the defendants themselves got an opportunity by the Supreme Court to have the case contested. If the three courts had found that there was no justification made to set aside the ex-parte decree, I cannot allow the fact that the plaintiff had taken steps to the address at Chandigarh for service of summons in suit to be held out against him, unless there was a finding by the Supreme Court itself that made any inference about a deliberate conduct of the plaintiff or something elicited at the trial that betrayed a wrong conduct on the part of the plaintiff. I will make no inference that the plaintiff had manipulated the proceedings to secure an ex-parte decree. I will find the incident of an ex-parte decree and the later permission given by the Supreme Court to have a contest on merit to be wholly irrelevant to decide on whether the plaintiff should be given the liberty of securing of specific performance or not.

4. The defendants' contention is that the property is situated in an urban area and the prices have gone several time fold, therefore, the specific performance ought not be granted. According to them, the only appropriate relief would be damages and not specific performance. The learned Senior Counsel would refer me to the decision in Nanjappan Versus Ramasamy and another AIR 2015 (SCW) P. 1659 and Satya Jain (D) thr. Lrs. and others Versus Anis Ahmed Rushdie (D) Thr. Lrs. and others 2013 AIR (SC) 434 to state that the appropriate relief would be only damages. I must point out that the proposition pleaded by the Senior Counsel is wide off the mark. It will be distatrous consequence for plaintiff to be punished in every case because of the systemic delay that we ever experience in every civil

litigation in India. A mere delay that cannot be attributed to a plaintiff's conduct cannot be a ground made against the interest of the plaintiff. In Nanjappan's case the court was finding that the agreement had been executed about 23 years earlier. The court was making reference to the earlier decision taken in Sardar Singh V. Smt. Krishna Devi 1994 (2) R.R.R. 391 where the court reminded as a measure of prudent practice that jurisdiction for decreeing the specific performance is a discretion and would depend on the facts and circumstances of each case. The Supreme Court was dealing with a case where the agreement had been executed in the year 1987. The Supreme Court was holding that the case involved an advance Rs. 25,000/- as having been paid by the plaintiff and the balance was payable within a period of 2-1/2 years thereafter to get the sale deed executed. There was a second agreement of sale executed on 21.3.1990 where it was stated that the plaintiff was unable to pay the balance within the stipulated period and get the sale deed executed and, therefore, a second sale agreement was executed providing for further period of three years. The Court was finding that from the recital in the second agreement itself, it was evident that the plaintiff was unable to pay the balance to get the sale deed executed. It was in that context that the conduct of the parties was relevant to deny him the specific performance and Section 20 of the Specific Relief Act itself provides that the relief will not be extended merely because it was lawful to do so. In the judgment in Satya Jain (Supra) again, it was not merely a case of escalation of prices during over the period of time. The Court had found that litigation ensued between the parties lasted for about 40 years for the no fault of vendee. The Court was holding that no straight jacket formula could be laid down as regards readiness and willingness and

it will depend on over all conduct of the parties before and subsequent to the filing of the suit. The Court was only disposing of the case directing the trial court to re-determine the value and remitted the matter to the trial court for fresh consideration as regards determination of value. A discretion that is vested in courts to grant and not to grant the relief ought not be understood as not merely to grant the relief. In Indian experience, no case comes for admission to either the High Court or the Supreme Court before 20 years of trial and the appellate court proceedings. I cannot see the judgment in Satya Jain (supra) to expound a proposition of what is now being canvassed before me that if there has been delay, the courts will direct re-determination of prices. Re-determination of prices of what the Supreme Court thought was essentially where the case was pending more than 40 years where the Courts had directed notice to be issued in appeal and took up the case for hearing a year later I should be in the first place convinced that there is something substantial for consideration in appeal on a point of law. The only law made is that the courts will not order for specific performance in relation to urban properties where litigation has progressed for 20 years, I am afraid that we are trying to bring a new proposition which does not exist.

5. Readiness and willingness to perform his part of the contract, learned Senior Counsel would argue is not brought through any specific pleading that he was not present at the Registrar's office on 31.5.1995 and it was not stated either in the notice or in the plaint and it was only stated so in his evidence. I must observe that readiness and willingness is a necessary averment that is mandated in Section 16 (c) of the Specific Relief Act. However, the readiness and willingness is invariably a matter of evidence. If there is also a pleading in that regard, it is fine; if there is no pleading how

he was ready, it is still possible by the provision of the Code of Civil Procedure. Order 6 Rule 2 CPC states that the pleadings shall state the material facts and evidence. How the readiness and willingness was exhibited by the plaintiff could be merely a matter of evidence. Any party has an option either to set out all aspect of the evidence or may confine himself to what is legally mandated and thereafter set out aspects of appropriate evidence at trial. Indeed, the Civil Procedure Code itself provides for the forms of pleadings for specific performance. In forms 47 and 48 in Appendix A, it could be noticed that in form 47, para 3, all that is stated is that the plaintiff is ready and willing to perform his part of the agreement of which the defendant had notice. Form 48, which is relatively more expansive, states no more than additional reference to issuance of a notice and the failure of the defendant to comply with the demand. In this case, if it states in evidence that he was present on 31.5.1995 at the Registrar's office and that the defendants did not come to execute the sale deed and it is a matter of fact that the defendants were not even available soon thereafter and they had left for U.K. There was nothing for the plaintiff except to issue a notice. If the plaintiff had taken six months' time to issue a notice and he had expressed there also that he had been ready and willing, what could expected was sound cross-examination on an important aspects of what the plaintiff was stating about his state of readiness and test it by appropriate facts. All that the plaintiff was expected to explain his readiness and willingness was to give evidence of his presence at Registrar's office, make reference to his notice reiterating his readiness and stating so at the trial. Instances where a person could not be ready, might be in a situation where the balance payable is enormous and the plaintiff was

not shown to have enough resources to pay the balance. There is no suggestion even at the trial that the plaintiff did not have the resources to make payment. Such as is situation, we have observed in the decision of the Supreme Court in Nanjappan's case (supra). I asked the Senior Counsel to read to me the manner of cross-examination adopted against the plaintiff which would refer to his readiness and willingness. He had all the time to ask about what he had done after 31.5.1995 till the notice is issued on 14.1.1996. The plaintiff could have been shown his bluff, if the defendants contention was true that they went to the plaintiff's house, they confronted him with the unwillingness on his part and only when the plaintiff was not willing, they had gone away to U.K. The defendants had not done anything till the issue of notice for getting the document executed. If these were the circumstances, as spoken to by the defendants, one would have expected a suggestion in that regard and elicited appropriate facts.

6. Readiness and willingness in a suit for specific performance are not magical expressions. They are proved by appropriate evidence. As far as the plaintiff is concerned, an assertion of his readiness and the availability of resources are the only key issues. There was never a doubt on title of the defendants for the defendants to exhibit any laxity. If such assertion and availability of resources are established, every other circumstance which would show the laches or laxity on the part of the plaintiff ought to be aspects which are specifically brought out in the cross-examination. The cross-examination is an important forensic exercise that consumes the maximum court's time and is not without purpose. It is the very linchpin upon which the truth of the case gets exposed at the trial. A good opportunity to expose of hollowness, if it existed, has been lost by

inept handling of the trial and all the exuberance in the second appeal by forceful arguments by counsel bring no weight to an already weakling of the defence that was brought to state that the plaintiff lost the right because the suit has languished in the courts for about two decades.

7. We will come by a different disposition, if only we strategise and adopt new procedures for resolution of disputes through voluntary negotiation between parties or adopt mediation. As of now, I find the proposition advanced to be too wide to merit acceptance that in a suit for specific performance, decree will be refused only because the courts take long time for disposal of the cases. It will then pay for a party to allow for prolongation of trial and cite the very inability of the court's difficulty to dispose of the cases as a point empowering a defence. It is here that the parties must know and the counsel must advise how it could be productive to re-negotiate a deal which could be mutually satisfactory. If the parties must only believe that forcing every case through a litigative process and allow for the trial to go on and appeal to languish its own time that they will come by benefit, they are sadly mistaken. It is just not lack of resourcefulness of the parties but it is lack of appropriate assistance by a counsel as well. The counsel do not allow for two decades to pass by to make an issue of such a delay to be a favourable point. The delay could never favour anyone. It could harm either party. The plaintiff would be more harmed that after all these two decades of fight that he will lose out the right in the property which he had bargained for and which he could not have the benefit after all these years. There is simply no justification for denying the relief for specific performance.

8. The reliance on decisions by the learned Senior counsel of

other decisions of the Supreme Court, namely, Ram Awadh (dead) by Lrs. Versus Achhaibar Dubey 2000 AIR (SC) 860, Narinder Singh Versus Assa Sing 2010 (2) PLR 805, Vimaleshwar Nagappa Shet Versus Noor Ahmed Sheriff and others 2011 AIR (SC) 2057, and Saradamni Kandappan Versus S. Rajalakshmi and others 2011 AIR (SC) 3234 underscore the same point the old proposition that time was not the essence of contract for immovable properties would require to be revisited in the modern days of spiral prices. If it were to be contended anywhere in the suit that there was delay in performance and that delay was not sanctioned by law, it will be possible to confront the above decisions to say that even in respect of immovable properties time will be the essence. There is no such attempt in the trial for the defendant to plead that there was a delay and he had forfeited his right to obtain the benefit by such delay. On the other hand, the evidence was that on the date specified, namely, 31.5.1995, the plaintiff was ready and willing and the defendants had gone away and a notice is issued within six months time and the suit filed immediately thereafter. There is hardly any delay which the defendants could point out to make it possible for the application of the decisions of the Supreme Court laying down that the time ought to be taken as essence even in respect of sale of immovable properties. The points of law that are involved are well answered in the dialogue that I have engaged and in the decisions I have cited and no new proposition requires to be laid down.

9. The second appeal is dismissed.

August 24, 2015
prem

(K.KANNAN)
JUDGE