

\$~14

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : July 09, 2015*

+ **RFA(OS) 34/2015**

JAGJIT SINGH OBEROI Appellant

Represented by: Mr.Sanjeev Singh, Advocate

versus

RANJEET KAUR & ORS Respondents

Represented by: Mr.Mukul Sharma, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. Respondents No.2 and 3 have already been proceeded against ex-parte. We have heard learned counsel for the appellant and respondent No.1.
2. A very short issue arises for consideration. Whether the learned Single Judge has correctly applied the law by enhancing sale consideration to be paid by the appellant by a further sum of ₹1,00,000,00/- (Rupees One Crore only) while decreeing the suit seeking specific performance of an agreement to sell dated March 18, 2007.
3. We would be referring to the parties in the suit by their names because it would give clarity to our decision.
4. Abnesh Kaur, impleaded as defendant No.2 in the suit was the mother of Ranjeet Kaur, impleaded as defendant No.1 in the suit. When the suit was filed and till when the impugned decree dated December 24, 2014 was

passed Abnesh Kaur was alive. She expired on February 14, 2015. Apart from Ranjeet Kaur she was survived by two daughters named Ajit Kaur and Maninder Kaur. The respondents in the appeal are Ranjeet Kaur, in her capacity as defendant No.1 in the suit and as the legal heir of Abnesh Kaur. Ajit Kaur and Maninder Kaur have been impleaded as respondents No.2 and 3 in the appeal as legal heirs of their deceased mother.

5. Abnesh Kaur was the registered owner of property bearing No.I-34, Jangpura Extension, New Delhi. By and under a registered sale-deed dated January 25, 2005, she sold the second floor of the building constructed by her to her daughter Ranjeet Kaur, with proportionate interest in the land and received the sale consideration in sum of ₹8,00,000/- (Rupees Eight Lacs only). By another registered sale-deed dated September 27, 2006 she sold the basement and the terrace rights above the second floor of the property to her daughter Ranjeet Kaur and received a sale consideration in sum of ₹3,00,000/- (Rupees Three Lacs only). In this manner Ranjeet Kaur became the owner of the basement, the second floor and the terrace rights above the second floor of property bearing Municipal No.I-34, Jangpura Extension, New Delhi.

6. On March 18, 2007, Ranjeet Kaur entered into an agreement to sell the basement, the second floor and the terrace rights above with proportionate share in the land to Jagjit Singh Oberoi, the plaintiff in the suit and the appellant in the appeal, for a sale consideration in sum of ₹1,31,00,000/- (Rupees One Crore and Thirty One Lacs only). Ranjeet Kaur received ₹10,00,000/- (Rupees Ten Lacs only) as earnest money-cum-part sale consideration when the agreement to sell was executed. It was agreed that the balance sale consideration in sum of ₹1,21,00,000/- (Rupees One

Crore and Twenty One Lacs only) shall be paid when the sale-deed would be executed before the sub-Registrar on July 31, 2007, the date which was further extended to October 31, 2007.

7. On July 31, 2007, Abnesh Kaur filed a suit for declaration and cancellation of the sale-deeds dated January 25, 2005 and September 27, 2006 which she had executed in favour of her daughter Ranjeet Kaur, which suit resulted in a decree being passed on a compromise on November 16, 2007. The compromise recorded that Ranjeet Kaur admitted her mother to be the owner of the entire property comprising the basement, the ground floor, the first floor and the second floor on plot bearing Municipal No.I-34, Jangpura Extension and that Abnesh Kaur had agreed that she would give the second floor of the property to Ranjeet Kaur.

8. It is apparent that as a result of the compromise decree between the mother and the daughter resulted in Ranjeet Kaur agreeing not to be the owner of the basement and the terrace rights above the second floor of the property, the ownership of Ranjeet Kaur in the property diminished vis-a-vis the basement and the terrace rights above the second floor.

9. There obviously came a hindrance in the way of Jagjit Singh Oberoi, who was compelled to institute a suit seeking specific performance of the agreement to sell dated March 18, 2007 executed by Ranjeet Kaur and himself. He impleaded Abnesh Kaur as a defendant, bringing to the notice of the Court that the mother and daughter had entered into a collusive settlement, resulting in a decree being passed as aforementioned.

10. Served with summons in the suit, counsel appeared for the mother and the daughter, and we note that two different counsels appeared. Whereas inspite of opportunities granted Abnesh Kaur filed a written statement,

Ranjeet Kaur did not file any written statement. She was proceeded against ex-parte.

11. In the written statement filed by Abnesh Kaur she questioned the two sale-deeds which she had executed in favour of her daughter Ranjeet Kaur and sought to defend the compromise decree between herself and her daughter.

12. Considerable time was spent in trying for a settlement through mediation, which failed.

13. On November 01, 2010, on the pleadings of the parties i.e. the plaint instituted by Jagjit Singh Oberoi and the written statement filed by Abnesh Kaur, with Ranjeet Kaur being proceeded against ex-parte, following issues were settled:-

“1. Whether the Plaintiff is entitled to the decree of specific performance against the Defendant No.1 directing her to perform her contractual obligations in terms of Agreement to Sell dated 18th March 2007 by executing the Sale Deed/General Power of Attorney and other related documents for a valid and legal transfer and for possession of the suit property? OPP

2. Whether the Plaintiff is entitled to the decree of injunction restraining the Defendants, their legal heirs, agent assignees from selling, transferring, alienating the suit property? OPP

3. Whether there is no privity of contract between the Plaintiff and Defendant No.2? OPD-2

4. Whether the Plaintiff has not come with clean hands and the agreement between the Plaintiff and Defendant No.1 is unlawful? OPD-2

5. Whether the Plaintiff was not ready and willing to

perform his part of the contract? OPD-2

6. *Relief.”*

14. Parties proceeded to lead evidence by way of affidavit. Jagjit Singh Oberoi proved 5 documents Ex.PW-1/1, Ex.PW-1/4, Ex.PW-1/5, Ex.PW-1/6 and Ex.PW-1/7. Two documents referred to in his affidavit by way of evidence as Ex.PW-1/2 and Ex.PW-1/3, being photocopies were marked documents as ‘X’ and ‘Y’. He proved the agreement to sell, certified copy of entire record of the suit filed by Abnesh Kaur against Ranjeet Kaur. A legal notice sent by him on April 28, 2008 and a postal receipt evincing dispatch of the same and a reply received by him on May 12, 2008. Abnesh Kaur made a statement that she does not want to lead any evidence and thus on September 25, 2012 her evidence was closed. After 10 months she filed an application seeking recall of the order dated September 25, 2012 which was dismissed on October 09, 2013.

15. In view of the evidence led the learned Single Judge has held in favour of Jagjit Singh Oberoi of he being entitled to the specific performance of the agreement to sell. But noting the decision of the Supreme Court reported as Satya Jain (Deceased) Through LRs & Ors. Vs. Anis Ahmed Rushdie (Deceased) Through LRs & Ors. as also the decisions reported as (2002) 8 SCC 146 Nirmala Anand Vs. Advent Corporation (P) Ltd. & Ors., (2010) 7 SCC 717 Laxman Tatyaba Kankate & Nr. Vs. Taramati Harishchandra Dhatrak, (2007) 10 SCC 595 Vishwa Nath Sharma Vs. Shyam Shanker Goela & Anr. and 2012 (4) AD (Delhi) 466 Surinder Kumar Vs. Brahm Prakash the learned Single Judge has held that due to increase in price of the suit property, in equity, the Court can direct further

amount to be paid as sale consideration.

16. Jagjit Singh Oberoi is in appeal. The defendants in the suit have accepted the decree evidenced by the fact that neither a cross appeal nor any cross objections have been filed.

17. There is no evidence referred to by the learned Single Judge as regards the increase in the price of the property. That apart, the law on the subject concerning a court of equity directing a plaintiff in a suit seeking specific performance of an agreement to sell, paying additional sale consideration has been misapplied by the learned Single Judge is the argument advanced by learned counsel for the appellant.

18. According to the reply by learned counsel for respondent No.1 is that his client was always ready and willing to execute a sale-deed and it was the mother who litigated with the appellant. Thus, learned counsel urges that the respondent No.1 was entitled to be recompensed in equity.

19. The argument of learned counsel for respondent No.1 holds no water for the reason the record of the suit shows that the respondent No.1, who was impleaded as defendant No.1 in the suit chose not to appear in the Court. She never volunteered to execute the sale-deed.

20. The law on the power of a Court to enhance the sale consideration has been pithily culled out by a three Judge Bench of the Supreme Court reported as AIR 2002 SC 3396 Nirmala Anand Vs. Advent Corporation (P) Ltd. & Ors. In paragraph 5 and paragraph 6 of the decision it was held as under:-

“5. The appellant is prepared and willing to take possession of the incomplete flat without claiming any reduction in the purchase price and would not hold respondent Nos. 1 and 2 responsible for anything incomplete in the building. It has been

concurrently held that she did not commit breach of the agreement to sell. She has always been ready and willing to perform her part of the agreement. The appellant is ready and willing to pay to respondents 1 and 2 interest on sum of ₹25,000/-. The breach was committed by respondents 1 and 2 as noticed hereinbefore. It is evident that the appellant is ready to take incomplete flat and pay further sum as noticed, most likely on account of phenomenal increase in the market price of the flat during the pendency of this litigation for over three decades. We see no reason why the appellant cannot be allowed to have, for her alone, the entire benefit of manifold mega increase of the value of real estate property in the locality. In our view, it would not be unreasonable and inequitable to make the appellant the sold beneficiary of the escalation of real estate price and the enhanced value of the flat in question. There is no reason why the appellant, who is not a defaulting party, should not be allowed to reap to herself the fruits of increase in value.

6. *It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree or specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is as to who is the*

defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing the specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen.”

21. Similar is the view taken in the decision reported as AIR 2014 SC 1155 Rajender Kumar Vs. Kuldeep Singh & Ors. wherein the Supreme Court held that the conduct of the parties to the litigation has to be considered.
22. To put it simply, equities for and against the parties have to be kept in mind and balanced.
23. This is the principle of law laid down in all the decisions referred to by the learned Single Judge.
24. Except for recording that there has been an increase in the price of the property, no equity has been culled out by the learned Single Judge in favour of the defendants.
25. Far from there being any equity in favour of the defendants, the facts noted hereinabove would show that the mother and the daughter entered into a collusive decree obviously with the intention to defeat the claim of Jagjit Singh Oberoi. The readiness and willingness of Jagjit Singh Oberoi to pay the balance sale consideration is evidenced by the fact that as directed by the first order passed in the suit, on August 08, 2008, he deposited a further sum of ₹50,00,000/- (Rupees Fifty Lacs only) which has been kept in a fixed deposit. The record of the suit would show that the second defendant i.e. Abnesh Kaur delayed in filing the written statement and her daughter did not file any written statement.

26. There is no evidence of prices in the area increasing. That apart, there is no law that mere increase in the value of the property should be a ground to direct the prospective purchaser to pay more money to the seller. This was the view taken in paragraph 28 of the decision in Satya Jain's case (supra). Of course, a Court can take into account default by either party occasioned by a protracted litigation while exercising its equitable jurisdiction. The protracted litigation being the result of docket explosions in Court. In the instant case the suit instituted in the year 2008 has been disposed of in the year 2014 and the record of the suit would show that apart from the normal time which would have consumed in the litigation it is the defendant No.2 who has prolonged the litigation.

27. We allow the appeal and set aside the impugned decree dated December 24, 2014 in so far it directs the appellant to pay a further sum of ₹1,00,000,00 (Rupees One Crore only) to the defendant. The suit filed by the appellant is decreed as prayed for.

28. Noting that pursuant to the agreement to sell the appellant had paid ₹10,00,000/- (Rupees Ten Lacs only) as part sale consideration and was to pay the balance sum of ₹1,21,00,000/- (Rupees One Crore and Twenty One Lacs only); further noting that pursuant to an interim order passed in the suit the appellant has deposited a sum of ₹50,00,000/- (Rupees Fifty Lacs only) in this Court which has been kept in a fixed deposit on which interest has accrued, we decree that the appellant would be entitled to a refund of ₹50,00,000/- (Rupees Fifty Lacs only) deposited by him in this Court together with such interest which has accrued thereon and that the appellant shall deposit in the name of the Registrar General of this Court ₹1,21,00,000/- (Rupees One Crore Twenty One Lacs only) within 8 weeks

from today, which sum would be paid over to the defendants in terms of the impugned decree on simultaneous execution of the sale-deed for which stamp duty shall be borne by the appellant as also registration charges. Should the defendants not come forward to execute the sale-deed the Registrar General shall nominate an officer to execute the sale-deed.

29. The appellant shall be entitled to costs in the appeal.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 09, 2015

mamta