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

+ **Date of Decision: 06.11.2015**

% **RSA 376/2014 and C.M. No.19864/2014**

DEEPAK RESORTS & HOTELS PVT LTD Appellant

Through: Mr. Ravi Gupta, Senior Advocate
along with Mr. V.P. Rana, Mr. Sachin
Jain, Mr. Ajay Gulati & Ms. Bhoomija
Verma, Advocates.

versus

M/S ALAKNANDA PROPERTIES PVT LTD
& ORS Respondents

Through: Mr. Deepak Khosla, Advocate for
respondent No.1.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeal is directed against the judgment and decree dated 17.03.2008 passed in RCA No.84/2005 by the First Appellate Court, namely the Additional District Judge, Delhi, whereby the said appeal preferred by the respondent No.1/ plaintiff has been allowed and the suit of the respondent No.1/ plaintiff seeking a decree of specific performance has been decreed. The respondent No.1/ plaintiff had filed the said first appeal to assail the judgment and decree passed by the Trial Court, namely the

learned Civil Judge, Delhi in Suit No.763/2002, whereby the said suit had been dismissed.

2. The respondent No.1/ plaintiff had filed the said suit for specific performance, impleading respondents No.2, 3 & 4 herein as the defendants in the suit, on the premise of an agreement to sell executed by defendant No.1/ Smt. Parmeshwari – the recorded Bhumidhar of 1/8th share of the land comprising in Khasra Nos. 1018(1-00), 1072(1-00), 1073(1-00), 1079 (0-06), 1064 min (0-13), 1065 min (0- 13), 1155 min (0-6), 1161 min (0-10), 1163 (1-2), 1166 min (0-4), 23/15 min (2-08), 24/11 (5-14), 43/24 min (1-2), 25 min (4-18) in all measuring 20 bighas 16 biswas situated in the revenue estate of Village Kapashera, Tehsil Mehrauli, New Delhi.

3. The plaintiff claimed that vide agreement to sell dated 16.12.1991, defendant No.1 had agreed to sell her share of the aforesaid land for a total consideration of Rs.1,43,541.66 and had received the entire sale consideration by cheque under acknowledgement. Defendant No.1 had also executed a General Power of Attorney (GPA) and a registered Will in respect of her share in the aforesaid land in favour of Smt. Anjali Sehgal. She had also sworn an affidavit acknowledging delivery of possession of the suit property to the plaintiff. The plaintiff stated that in terms of the said agreement, defendant No.1 was obliged to obtain necessary permission under the Delhi Land (Restrictions on Transfer) Act, 1972 and thereafter intimate the plaintiff for completion of the transaction with the execution of the sale deed. The plaintiff claimed that on various occasions it inquired from defendant No.1 whether she had obtained the No Objection Certificate (NOC) and the defendant kept assuring that the permission was under

process, and when the same is received, the plaintiff shall be informed. The plaintiff stated that it was always been ready & willing to help defendant No.1 to obtain the permission and perform its part of the contract. In the middle of April 1996, the plaintiff approached defendant No.1 and enquired about the aforesaid permission. However, defendant No.1 gave an evasive reply and, therefore, the plaintiff felt that she was trying to back out from the agreement. On 24.04.1996, a representative of the plaintiff again visited and enquired from the defendant with regard to the permission, and on this occasion, the defendant stated that she was not interested in transferring the land to the plaintiff. Consequently, the plaintiff filed the said suit.

4. Defendant No.1 filed her written statement and revealed that during the pendency of the suit, she had transferred the suit property to defendants No.2 & 3. Consequently, they were impleaded as party defendants in the suit. In her written statement, defendant No.1 raised, *inter alia*, the objection that the suit was barred by time. She claimed that she was an illiterate person and her thumb impression was taken on the documents without disclosing the true nature of documents to her. She also claimed that the agreement in question was procured by Smt. Anjali Sehgal by using fraudulent means against the defendant. She denied that the amount of Rs.1,43,541.66 received by her through cheque was the full sale consideration. She submitted that Rs.1,00,000/- was to be paid at the time of execution of the sale deed. She further stated that Smt. Anjali Sehgal was holding the Power of Attorney, which enabled her to obtain the NOC and complete the sale transaction. However, she did not do so because she was aware that the agreement to sell had been obtained by her by using

fraudulent means. She denied that the plaintiff enquired about the obtainment of the permission, as aforesaid. She denied that the plaintiff had been ready & willing to perform its part of the contract. Defendants No.2 & 3, despite impleadment, did not file their written statement.

5. The Trial Court framed, *inter alia*, the issue: whether the suit is barred by limitation. Another issue framed was: whether the plaintiff is entitled to specific performance of the agreement to sell dated 16.12.2001, as prayed for. The plaintiff examined Smt. Anjali Sehgal as PW-1. Defendants No.2 & 3 examined Smt. Ramesh Kumari as DW-1 and Sh. Hitesh Bhardwaj as DW-2. However, since they had not filed their written statement, the said evidence was not read. Defendant No.1 was proceeded ex-parte.

6. The Trial Court decided all issues in favour of the plaintiff, except issue No.6, i.e. whether the plaintiff is entitled to specific performance of the agreement to sell dated 16.12.2001. On the said issue, the Trial Court returned the finding that since Defendant No.1 had executed and registered a GPA (Ex.PW-1/5), clause 5 whereof authorized Ms. Anjali Sehgal to obtain NOC from the Tehsildar (Notification), or any other authority; and clause 7 authorised her to execute the sale deed and present the same to the competent registration authority, the plaintiff could have easily obtained the NOC through its director Smt. Anjali Sehgal and also execute the sale deed in favour of the plaintiff on the basis of the registered GPA. However, the plaintiff chose not to do so and waited for five long years for defendant No.1 to obtain the NOC and execute the sale deed. The Trial Court held that the plaintiff had itself been negligent in performing its duty of protecting its own interest. The Trial Court found the conduct of the plaintiff to be not

above board as the plaintiff was held to be guilty of negligence, disentitling it to seek the discretionary relief of specific performance. Consequently, the suit was dismissed.

7. The first appeal preferred by the respondent/ plaintiff, however, succeeded. The First Appellate Court reversed the finding of the Trial Court on issue No.6. The First Appellate Court held that the Trial Court had failed to take into consideration the aspect that it was the definite case of the plaintiff that the plaintiff had signed the requisite forms for the purpose of obtaining the NOC under the Delhi Land (Restrictions on Transfer) Act, 1972 which were handed over to defendant No.1. It was not the case of defendant No.1 that the same were handed back to the plaintiff. Moreover, defendant No.1 had executed the sale deed in favour of the defendants No.2 & 3, which means, that defendant No.1 would have obtained prior permission for execution of the sale deed. This constitutes refusal by defendant No.1 to perform her obligations. Defendant No.1 had claimed that a further amount of Rs.1,00,000/- was promised to be paid at the time of execution of the sale deed, but no evidence had been led by her in this regard. This shows that she had not executed the sale deed by obtaining permission, as she was expecting something over & above the consideration under the agreement. Merely because the GPA had been executed in favour of Smt. Anjali Sehgal, the same would not come in the way of passing of a decree for specific performance. Reference was made to ***Kuldeep Singh Suri Vs. Surender Singh***, 1999 RLR 20, where the relief of specific performance was granted, even though GPA had been executed in favour of the agreement purchaser.

8. The First Appellate Court also held that it could not be said that the plaintiff was not ready & willing to perform her part of the agreement. There was nothing remaining to be done on the part of the plaintiff. Since defendant No.1 had not obtained permission and did not execute the sale deed, the finding on issue No.6 was reversed.

9. The submission of Mr. Gupta, learned senior counsel for the appellant is that when the agreement was entered into between the respondents No.1 & 2, consolidation proceedings were in progress. He submits that Section 30 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 prohibited transfer of the land which was under consolidation. Consequently, the agreement itself was hit by Section 30 of the said Act. Mr. Gupta submits that it was not certain – when the agreement was entered into between the plaintiff and defendant No.1, whether the same parcel of land would eventually fall to the share of defendant No.1 post-consolidation. Thus, the claim made by the plaintiff that she had been put in possession, was incorrect. Mr. Gupta submits that the plaintiff had not specifically sought the relief of possession, in the suit even though the plaintiff was not placed in possession of the suit property under the agreement to sell. Merely seeking the relief of specific performance is, therefore, not sufficient. Mr. Gupta has also placed reliance on the judgment of this Court in *Ms. Adarsh Kaur Gill Vs. Sh. Mawasi & Others*, 187 (2012) DLT 41. He submits that the decree obtained by the respondent/ plaintiff, in any event, cannot be executed since the relief of possession has not been sought by the respondent/ plaintiff.

10. Mr. Gupta places reliance on *Chet Ram Vashist Vs. Ram Chander*

Goel, AIR 2000 (Del) 96, wherein this Court has taken the view that in respect of the agreement to sell where time of performance is not specified, the same is construed in a reasonable manner. He submits that in the factual background of the present case, the period of five years between the date of the agreement and the filing of the suit could not be construed as reasonable.

11. He also places reliance on *Subhash Chander Kathuria Vs. Umed Singh & Another*, AIR 2006 Delhi 94, to submit that the suit was barred by limitation.

12. On the other hand, the submission of Mr. Khosla, learned counsel for the respondent No.1/ plaintiff is that there is no merit in the present second appeal as it does not raise any substantial question of law for consideration of this Court.

13. Mr. Khosla submits that the entire consideration had been paid by the plaintiff to defendant No.1 at the time of execution of the agreement to sell, and there was no outstanding obligation of the plaintiff, as it was the obligation of defendant No.1 to obtain the NOC from the competent authority before execution of the sale deed. He has specifically drawn the attention of the Court to clauses 7, 9 and 10 of the agreement to sell (Ex.DW-1/3), which read as follows:

“7. THAT if requisite in law or if otherwise required by any statutory authority, then it shall be the duty of the First Party to obtain in the name of the First Party the required Wealth Tax, Estate Duty, Income Tax Clearance Certificates and also the required ‘NO OBJECTION CERTIFICATE’ from the prescribed authority under the Delhi Land (Restriction on Transfer) Act of 1972, however the First Party shall intimate

the Second Party by Registered Post about the receipt of these sanctions, permissions and certificate.

x x x x x x x x x

9. *THAT the land, which is sought to be purchased, is situated in village Kapashera, and consolidation proceedings have started in the said village. The First Party has agreed to transfer the land mentioned hereinabove, however in case during the consolidation proceedings some different land is allotted in lieu of the land hereby agreed to be sold, then this agreement shall be construed for the newly allotted land. Similarly if the area in the consolidation proceedings increases or decreases then this agreement shall be effective for the increase or decreased area as the case may be.*

10. *THAT the actual physical possession of the said land has been delivered by the First Party to the Second Party at the spot and the Second Party shall be entitled to level, develop and improve the same and can also raise any type of construction ad may be permissible under the law, and also be entitled to install any tubewell, boring, and to get electric light/ power connections in its name."*

14. Mr. Khosla submits that merely because the GPA had been executed in favour of Smt. Anjali Sehgal, it did not take away the obligation of defendant No.1 to obtain the requisite NOC from the competent authority and to execute & register the sale deed in favour of the plaintiff.

15. Having heard learned counsel, perused the judgments of the Courts below and the decisions relied upon by the appellant, this Court is of the view that there is no merit in this second appeal and the impugned judgment & decree does not call for interference as no substantial question of law arises for consideration of this Court.

16. A perusal of clause 7 of the agreement to sell (Ex.DW-1/3) shows that the specific obligation to obtain the requisite NOC was cast upon defendant No.1, who was the first party under the agreement. It was for the first party, namely defendant No.1 to obtain the NOC and intimate the same to the second party, i.e. the plaintiff. The fact that defendant No.1 had appointed Smt. Anjali Sehgal as her attorney, enabling her to act on her behalf for the purpose of obtainment of the NOC and for execution & registration of the sale deed, it did not liberate defendant No.1 of her primary obligation to obtain the NOC and thereafter execute the sale deed in favour of the plaintiff. An attorney is merely an agent of the principal who, in this case, was defendant No.1. The attorney was not bound or obligated to act on the basis of the GPA executed in her favour. The same was executed merely to enable the attorney to act on behalf of the principal, i.e. defendant No.1. Pertinently, the agreement to sell (Ex.DW-1/3) does not liberate defendant No.1 to personally apply for and obtain the NOC and thereafter execute and register the sale deed in favour of the plaintiff. If the intention of the parties was that only the attorney Smt. Anjali Sehgal would act on the basis of the GPA executed in her favour by defendant No.1, nothing prevented the parties from incorporating in the agreement to sell (Ex.DW-1/3), an appropriate clause to say that the NOC shall be applied for and obtained in the name of defendant No.1 by the attorney of defendant No.1 and thereafter the sale deed shall be executed and got registered also through the attorney of defendant No.1. Since there was no legal obligation on the attorney to act on the basis of the GPA and to apply for and obtain the NOC and thereafter execute and register the sale deed, the mere execution of the said GPA in favour of Smt. Anjali Sehgal could not have liberated defendant No.1 of her

obligation to take the said steps. At the same time, it did not place the plaintiff in any disadvantageous position, as Smt. Anjali Sehgal chose not to act on the basis of the GPA to apply for and obtain the NOC and thereafter proceed to execute and register a sale deed in favour of the plaintiff.

17. The submission of Mr. Gupta premised on Section 30 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 is misplaced. The said provision merely states that after a notification under Section 14(1) of the said Act has been issued (which sets the consolidation proceedings into motion) and during the pendency of the consolidation proceedings, no landowner or tenant having a right of occupancy upon whom the scheme will be binding, shall have power without the sanction of the Consolidation Officer, to transfer or otherwise deal with any portion of his original holding or other tenancy so as to affect the rights of any other land-owner or tenant having a right of occupancy therein under the scheme of consolidation. Section 30 does not, *per se*, prohibit the transfer of the land under consolidation during the pendency of the consolidation proceedings. It merely states that such transfer shall not bind or affect the right of any other land owner or tenant having a right of occupancy in the land under consolidation. The parties were conscious of the fact that the land in question was under consolidation and, consequently, provided in clause 9 of the agreement to sell (Ex.DW-1/3) that the said agreement shall relate to that parcel of land which came to be allotted ultimately in lieu of the land to which the agreement related.

18. The submission of Mr. Gupta that the plaintiff did not seek the relief of possession at any stage of the suit, also has no merit. Section 22 of the

Specific Relief Act, *inter alia*, provides that any person suing for specific performance of a contract for transfer of immovable property may, in appropriate case, ask for possession of the property in addition to such performance. Section 22(2) provides that no relief under clause (a) or clause (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed. The proviso to Section 22(2) is relevant and the same reads:

“provided where the plaintiff had not claimed any such relief in the plaint, the Court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief”.

19. Firstly, the agreement to sell (Ex.DW-1/3) itself recites in clause 10 that the actual physical possession of the said land has been delivered by the first party, i.e. defendant No.1 to the second party, i.e. the plaintiff at the spot, and that the second party shall be entitled to level, develop and improve the same and can also raise any type of construction as may be permissible under the law and shall be entitled to install any tubewell, boring and to get electric light/ power connections in its name. Thus, the plaintiff was placed in possession when the agreement to sell (Ex.DW-1/3) was executed. In any event, even if it were to be assumed that the plaintiff was not placed in actual physical possession of the suit land when the said agreement to sell was executed, the symbolic possession certainly stood transferred to the plaintiff.

20. The decision relied upon by Mr. Gupta in the case of ***Ms. Adarsh Kaur Gill*** (supra), in fact, supports the case of respondent No.1 and not that of the appellant. In this case, while seeking execution of the decree for

specific performance, the decree holder, at the execution stage, without prejudice, sought amendment of the plaint to include a specific prayer for possession by way of abundant caution, which had earlier not been sought. The judgment debtor opposed the execution by claiming that the decree holder had not sought the relief of possession in the plaint and that the same was being sought after a long gap of 20 years and that the amendment sought by the decree holder in the execution proceedings could not be allowed. This Court rejected these objections of the judgment debtor in the following words:

“21. Admittedly, in the present case, when the suit for specific performance was filed in the year 1988, no relief for possession asked for. A decree for specific performance of the agreement was passed against the judgment debtors on 15.11.1991. The sale deed was registered on 22.11.1991 in favour of the decree holder.

22. It is settled law that an Executing Court cannot go behind the decree nor can it question its legality or correctness. But, there is one exception to this rule that where the decree sought to be executed is nullity for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceedings. In the present case, there is no such position to the effect that the decree was passed for lack of inherent jurisdiction.

23. It is also well established law that it may not always be necessary for the plaintiff to specifically claim possession over the property. The relief of possession is inherent in the relief for specific performance of the contract of sale.

24. The proviso to sub section (2) provides for amendment of the plaint on such terms, as may, for including a claim for such relief at “Any stage of the proceedings.” The word “proceedings” in Section 22 includes execution proceedings,

meaning thereby, any stage in litigation which can have various stages. Thus, the Court executing the decree is competent to deliver the possession. On 01.03.1964, the Specific Relief Act of 1963 came into force and the Act was amended by enacting Section 22 which makes it mandate for the plaintiff to ask for the relief of possession in suit for specific performance. In fact, the said provision was enacted in order to avoid multiplicity of proceedings so that the party may claim a decree for possession in a suit for specific performance. However, despite of that the proviso to Section 22 provides power to a court to allow the amendment of plaint "at any stage of the proceedings" on such term as may be just for including a claim for possession where the plaintiff did not claim such relief in its original plaint.

25. This Court in the case of M/s. Ex-service-men Enterprises (P) Ltd. vs. Sumey Singh, reported in AIR 1976 Delhi 56 while relying upon the judgment of the Allahabad High Court in Rameshwar Nath vs. U.P. Union Bank, reported in AIR 1956 All 586, has held as under:-

".....the word "proceeding" is a very comprehensive term meaning generally a prescribed course of action for enforcing a legal right and the expression "at any stage" in its literal and actual meaning means without limitation either in frequency or duration or length of time."

26. Now the question before this Court is as to whether the decree-holder asked to amend the plaint or the decree already granted in favour of decree-holder would imply the decree of delivery of possession also in view of fact that it would flow from the relief relating to execution of sale deed. In the present case, admittedly the sale deed has already executed in favour of the decree-holder after passing the decree.

27. The similar question has arisen in various cases which are referred as under :

(a) AIR 1987 Rajasthan 117 by Sh. K.S. Lodha, J., in the case of

Hemchand vs. Karilal, the relevant paras of which read as under:-

"5. Now coming to the other limb, it may again be at once stated that the contention is ill founded in as much as there cannot be any reason or justification for the plaintiff asking for an amendment of the plaint when the relief of possession had already been prayed for and as stated above must be deemed to have been impliedly granted when the decree for specific performance of the contract has been passed. The matter stands concluded by their Lordships decision in the aforesaid case of Babu Lal. It is pertinent to note that before the provisions of Section 22 of the Specific Relief Act as amended in 1963 came into force the settled view was that a decree for specific performance of the contract implied a relief for possession also. Their Lordships of the Supreme Court have referred to all the cases which have taken this view and then they have referred to the amended Section 22 of the Specific Relief Act in 1963. Their Lordships observed that "Section 22 enacts a rule of pleading. The Legislature thought it will be useful to introduce a rule that in order to avoid multiplicity of proceedings the plaintiff may claim a decree for possession in a suit for specific performance, even though strictly speaking, the right to possession accrues only when suit for specific performance is decreed. The legislature has now made a statutory provision enabling the plaintiff to ask for possession in the suit for specific performance and empowering the Court to provide in the decree itself that upon payment by the plaintiff of the consideration money within the given time, the defendant should execute the deed and put the plaintiff in possession." Their Lordships further observed "the expression in Sub-

section (1) of Section 22 'in an appropriate case' is very significant. The plaintiff may ask for the relief of possession or partition or separate possession 'in an appropriate case' and it has been pointed out that even after the introduction of Section 22 of the Specific Relief Act in 1963, the plaintiff in a suit for specific performance of the contract need not always ask for the relief for possession because ordinarily such relief would be implied. It is only in appropriate cases that is cases in which ordinarily possession may not follow from the mere decree for specific performance of the contract e.g. where third party has intervened the plaintiff has to ask for the relief of possession and if not asked, the decree will not grant him possession. Their Lordships further observed "in a case where exclusive possession is with the contracting party, a decree for specific performance of the contract of sale simpliciter without specifically providing for delivery of possession, may give complete relief to the decree-holder. In order to satisfy the decree against him completely he is bound not only to execute the sale-deed but also to put the property in possession of the decree holder. This is in consonance with the provisions of Section 55(1) of the T. P. Act which provides that the seller is bound to give, on being so required, the buyer or such person as he directs, such possession of the property as its nature admits. "Then their Lordships referred to the other kind of cases in which a relief for possession cannot be effectively granted to the decree-holder without specifically claiming relief for possession, namely, where the property agreed to be conveyed is jointly held by the defendant with other persons. In such a case the plaintiff has to pray for partition of the property and possession over the share of the defendant, and it has been

observed that it is in such cases that a relief for possession must be specifically pleaded. Again it is observed "the contention on behalf of the petitioner is that the relief for possession must be claimed in a suit for specific performance of a contract in all cases. This argument ignores the significance of the words 'in an appropriate case'. The expression only indicates that it is not always incumbent on the plaintiff to claim possession or partition or separate possession in a suit for specific performance of a contract for the transfer of the immovable property. That has to be done where the circumstances demanding the relief for specific performance of the contract of sale embraced within its ambit not only the execution of the sale deed but also possession over the property conveyed under the sale deed. It may not always be necessary for the plaintiff to specifically claim possession over the property with the relief for specific performance of the contract of sale. It is, therefore, abundantly clear that ordinarily the relief for specific performance of a contract implies the relief for possession of the immovable property also and in such a case the plaintiff need not even ask for the decree for possession and as soon as a decree for specific performance of the contract is passed the plaintiff would be entitled to ask for possession in execution of such a decree. In the present case also the facts do not at all indicate that the possession would not follow the relief of specific performance of the contract. No third party has intervened. The property is in possession of the contracting party and, therefore, the decree for specific performance of the contract would also ensure for possession of the property in execution of that decree. 6. So far as the question of amendment of the plaint in the peculiar circumstance of this case is concerned, it will only

be a futile exercise. As already pointed above the plaintiff had claimed for possession and when the decree for specific performance of the contract has already been passed the mere fact that it specifically did not grant the relief for possession the plaintiff should again amend the plaint. There is no occasion for the plaintiff to amend the plaint when the relief had already been asked for and has impliedly been granted as slated above. I have already pointed above that the explanation 5 to Section 11 would not apply in such a case as the Hon'ble Supreme Court has already clearly indicated in the aforesaid authority, in such a suit the decree for specific performance clearly implies a decree for possession also that is the relief of possession is inherent in the relief of specific performance of the contract of the sale.”

(b) AIR 2007 Andhra Pradesh 35 by Sh. P.S. Narayana, J., in the case of Smt. Suluguru Vijaya & Ors. vs. Pulumati Manjula, the relevant paras of which read as under:-

“9.In S.S. Rajabathar v. N.A. Sayeed, AIR 1974 Madras 289 it was held that where a suit for specific performance of a contract of sale had been decreed, the executing Court while executing the decree, can direct delivery of possession in the absence of a specific direction to that effect in the decree. The view expressed in Brij Mohan Matulal v. Mt. Chandrabhagabai, AIR 1948 Nag 406 was dissented from. In Mahender Nath Gupta v. Moti Ram Rattan Chand and Anr., AIR 1975 Delhi 155, the learned Judge of the Delhi High Court while dealing with the suit for specific performance of contract of sale which was filed before the commencement of the Specific Relief Act, 1963, and decree made after the commencement of the said Act, relief of delivery of possession neither claimed in the plaint nor granted in the decree and

whether executing Court can grant delivery of possession, after referring to AIR 1967 SC 1541, AIR 1954 Allahabad 643, AIR 1952 Calcutta 362, AIR 1950 Allahabad 415, held in the affirmative mainly on the ground that Section 22 of the Specific Relief Act, 1963, indicates a rule of pleading. In Lotu Bandu Sonavane v. Pundalik Nimba Koli, AIR 1985 Bombay 412. Section 22(1) and Section 22(2) Proviso of the Specific Relief Act, 1963 had been dealt with. The expression "in an appropriate case" in Section 22(1) and "at any stage of the proceeding" in proviso to Section 22(2) it was held that decree directing specific performance of agreement of sale against defendant in possession of property specific prayer for delivery of possession is not necessary. In Hemchand v. Karilal, AIR 1987 Rajasthan 117, it was held that in a suit for specific performance, property in possession of contracting party and no third party had intervened, relief of possession would be implied in decree for specific performance and need not be specifically asked for and the question of amendment of plaint does not arise. Reliance also was placed on a decision in V. Narasimha Chary v. P. Radha Bai and Ors., 1999 (5) ALT 499. 10. In the light of the statutory duties and obligations cast on the seller by virtue of Section 55 of the Transfer of Property Act, 1882, and also in the light of the scope and ambit of Section 22 of the Specific Relief Act, 1963, this Court is of the considered opinion that when there is no dispute or controversy that the judgment debtors-defendants are in possession of the property, the mere fact that such specific prayer was not made, the same cannot be taken advantage of principally for the reason the decree for execution of sale deed would imply the decree of delivery of possession too inasmuch as these are

the obligations which would flow from the relief relating to execution of the sale deed. Hence, this omission cannot be taken advantage of. It is pertinent to note that it is nobody's case that any third party rights had intervened. When that being so, this Court is of the considered opinion that the impugned order does not suffer from any illegality, whatsoever."

(c) The Supreme Court in the case of Babu Lal vs. Hazari Lal Kishori Lal, reported in (1982) 1 SCC 525 made the following observations:

"Specific Relief Act, 1963 (47 of 1963) – Section 22 – In appropriate cases of specific performance of contract of sale of immovable property, held, court competent to order delivery of possession of the property, even if not specifically asked for, by allowing suitable amendment in the plaint Order for delivery of possession without corresponding amendment in the plaint would be a mere omission, not fatal to the relief of possession, especially when the order made in furtherance of cause of justice and in view of applicability of Section 28(3) Expressions "in an appropriate case" in Section 22(1) and "at any stage of the proceeding" in proviso to Section 22(2). It may not always be necessary for the plaintiff to specifically claim possession over the property, the relief of possession being inherent in the relief for specific performance of the contract of sale. In a case where exclusive possession is with the contracting party, a decree for specific performance of the contract of sale simplicitor, without specifically providing for delivery of possession, may give complete relief to the decree-holder in order to satisfy the decree to put the property in possession of the decree-holder. This is in consonance with the provisions of Section 55(1) of the Transfer of

Property Act. 21. If once we accept the legal position that neither a contract for sale nor a decree passed on that basis for specific performance of the contract gives any right or title to the decree-holder and the right and the title passes to him only on the execution of the deed of sale either by the judgment-debtor himself or by the court itself in case he fails to execute the sale deed, it is idle to contend that a valuable right had accrued to the petitioner merely because a decree has been passed for the specific performance of the contract. The limitation would start against the decree-holders only after they had obtained a sale in respect of the disputed property. It is, therefore, difficult to accept that a valuable right had accrued to the judgment-debtor by lapse of time. Section 22 has been enacted only for the purpose of avoiding multiplicity of proceedings which the law courts always abhor.

23. There has been a protracted litigation and it has dragged on practically for about 13 years and it will be really a travesty of justice to ask the decree-holder to file a separate suit for possession. The objection of the petitioner is hyper-technical. The Executing Court has every jurisdiction to allow the amendment. The only difficulty is that instead of granting a relief of possession the High Court should have allowed an amendment in the plaint. The mere omission of the High Court to allow an amendment in the plaint is not so fatal as to deprive the decree-holder of the benefits of the decree when Section 55 of the Transfer of Property Act authorizes the transferee to get possession in pursuance of a sale deed.”

28. After having considered the abovementioned judgments, it is very clear that the grant of relief for delivery of possession is just a formality and even though, no specific prayer is made in

the plaint and even the decree is silent about the delivery of possession, the Executing Court is empowered and bound to grant such relief. If I go through the judgments referred above, it is not even necessary to amend the plaint, as it is the admitted position in the present case that the sale deed in terms of the decree has already been executed in favour of the decree-holder and there is no involvement of the third party regarding the possession. This fact has not been controverted by the judgment-debtors in the pleadings also as status quo orders passed by this Court till the disposal of the appeal. Thus, it is clear that the possession was with the judgment-debtors. Therefore, the facts of the cases directly apply to the facts and circumstances of the present case. However, since the objection is raised by the judgment debtors and the decree-holder has also sought amendment of the plaint for including the relief for possession of the property in question, coupled with the fact that a conflicting view has been taken by the Courts in some of the cases and the proviso to sub-section (2) of Section 22 of the Specific Relief Act, 1963 allows the plaintiff who has not claimed any such relief provided by Clauses (a) or (b) of sub-section (1) of Section 22 to amend the plaint for including a claim for recovery of possession. The amendment, under these circumstances, can be allowed at any stage of proceedings including the execution proceedings.

29. Under these circumstances, the prayer made by the decree-holder for amendment of the plaint has to be granted, even though such amendment was not necessary. Ordered accordingly and consequent thereto, the decree is also amended.

30. Under Order VII, Rule 7 of CPC, it is provided that it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extent as if it had been asked for. It is settled law that relief to be provided by the court is to be based on the pleadings of the plaintiff.

31. This Court is of the considered view that the relief of

possession is ancillary and it springs out and is comprised in the relief to that for the specific performance of the contract to sell.

32. In view of the reasons stated earlier, there is no impediment for the Court to grant the relief claimed in the execution proceedings. The judgment-debtors are, however, entitled to receive the balance sale consideration which has been deposited by the decree-holder with this Court. As it is now incumbent upon the judgment-debtors to put the decree-holder in possession of the suit property in view of the amendment in the plaint and the decree which include the relief of possession also.”

21. Thus, there is no merit in this submission of Mr. Gupta.

22. The submission of Mr. Gupta that the suit was filed belatedly and was barred by limitation or laches, also has no force. The agreement to sell (Ex.DW-1/3) did not provide the time limit within which defendant No.1 was obliged to apply for and obtain NOC, and thereafter execute & register the sale deed in favour of the plaintiff. So far as the plaintiff is concerned, it had performed all its obligations under the agreement and the ball was entirely in the court of defendant No.1. Admittedly, consolidation proceedings were in progress when the agreement to sell (Ex.DW-1/3) was entered into. It is not clear as to when the same came to an end qua the suit property. In any event, before the same had come to an end qua the suit property, the parties may have found it difficult to proceed in the matter.

23. Under Article 54 of the Schedule to the Limitation Act, the period of three years within which the relief of specific performance could be claimed, is to be calculated from the date specified in the agreement for the performance, or in the absence of any such stipulation, within three years of

the date when the performance was refused.

24. In the present case, the positive case of the plaintiff was that the performance was refused by defendant No.1 for the first time in April 1996. Till then, accordingly to the plaintiff, defendant No.1 kept assuring the plaintiff that the NOC was under process and the plaintiff shall be informed as and when the same is received. Defendant No.1 did not contest this assertion, as she was proceeded ex-parte in the suit. Consequently, the cause of action for filing the suit arose in favour of the plaintiff in April 1996. The suit was instituted by the plaintiff, as noticed above, on 10.05.1996 without any delay whatsoever.

25. Reliance placed by Mr. Gupta on ***Chet Ram Vashist*** (supra) is of no avail in the facts of the present case. In this case, the suit had been filed after a long gap of 12 years from the date of payment of the last & final installment on 06.02.1966. The agreement to sell itself was dated 21.02.1960. Pertinently, the plaintiff had served a notice on the defendant complaining of the property not being transferred under the agreement, on 31.05.1966. Despite the said notice, the suit was not filed till 1978. This Court construed the terms of the agreement, and in particular, clause (C) thereof, which obliged the owner to transfer the plot in favour of the purchaser or his/her nominee, if any named by him/ her, on receipt of total value of the plot. This Court observed in relation to clause (C):

“The use of the aforesaid expression would clearly indicate that it was intended by the parties that immediately on payment of the fourth and final instalment which comprises the total value of the plot, the defendant would transfer the plot in favour of the purchaser or his nominee”.

26. However, in the present case, not only there is no fixed date for execution and registration of the sale deed in favour of the plaintiff by defendant No.1, the same was dependent upon obtainment of NOC by defendant No.1 from the Tehsildar (Notification) under the Delhi Land (Restrictions on Transfer) Act, 1972. In contrast with the factual position recorded in ***Chet Ram Vashist*** (supra) – wherein the plaintiff/ agreement purchaser was put off by the defendant/ agreement seller since 1966, when he approached the defendant for completion of the transaction with execution of the sale deed, in the present case, the said refusal came only in April 1996, as noted hereinabove.

27. The decision in ***Subhash Chander Kathuria*** (supra) relied upon by Mr. Gupta is not applicable in the facts of the present case at all. In this case, the agreement to sell was entered into on 27.07.1988 whereunder out of a total consideration of Rs.20,92,656, only a sum of Rs.2 Lakhs was given as earnest money. The suit was filed on 16.02.1999, i.e. nearly 11 years after the execution of the agreement. The plaintiff had claimed that the defendant did not obtain the NOC and inform the plaintiff. On 13.09.1996, the defendant allegedly requested the plaintiff to give an additional amount of Rs.20,000/- for getting the NOC and Income-Tax Certificate. The plaintiff claimed that cause of action arose on 13.09.1996, and on that premise, filed the suit. Under the agreement itself, the sale deed had to be executed within three months of the intimation being given with regard to the obtainment of the requisite permission. It is in this background that the Court held that the suit was barred by limitation. The factual matrix of the present case being materially different from that dealt with in

Subhash Chander Kathuria (supra), the said decision has no application in the facts of the present case.

28. For all the aforesaid reasons, in my view, there is no merit in the present appeal. The same is, accordingly, dismissed leaving the parties to bear their respective costs.

VIPIN SANGHI, J.

NOVEMBER 06, 2015

B.S. Rohella