IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

****

C.C.C.A. No.323 of 2007

Between:
Mohammed Abdul Azeem
and another. .... Appellants

And

M/s. South India Prime Tannery Pvt. Ltd.,
Rep. by its Managing Director, H.Abdul Lateef. .... Respondent

DATE OF JUDGMENT PRONOUNCED: **16.02.2016**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers may be allowed to see the judgments? Yes / No

2. Whether the copies of judgment may be marked to Law Reporters / Journals? Yes / No

3. Whether His Lordship wish to see the fair copy of the Judgment? Yes / No

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! Counsel for Appellants : Sri P. Shiv Kumar

^ Counsel for Respondent : Sri M.S.K. Prasad Sr. Counsel

for Sri E.V.V.S.Ravi Kumar

< Gist:

> Head Note:

? Cases referred:

1) AIR 1993 SC 1742 = (1993) 1 SCC 519
2) (1997) 3 SCC 1
3) (2011) 12 SCC 18
4) (2009) 17 SCC 27
5) AIR 2008 SC 143
6) (2011) 11 SCC 524
7) (2013) 15 SCC 27
8) (1996) 5 SCC 589
9) AIR (1957) AP 307
10) AIR 1967 SC 868 (1)
11) AIR 1977 SC 1005
12) (2004) 8 SCC 689
13) AIR 2001 SC 2920 = (2001) 1 SCC 134

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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JUDGMENT:

Aggrieved by the Judgment and Decree dated 01.10.2007 in O.S.No.104 of 2003 passed by the learned XII Additional Chief Judge (FTC), City Civil Court, at Hyderabad, granting specific performance decree in favour plaintiff in respect of suit schedule property i.e, undivided half share in premises bearing Municipal No.1-5-6/A (new), 1-5-6(old) admeasuring 516 sq.yards out of 1032 sq.yards situated at Bakaram, Musheerabad, Hyderabad, the defendants preferred the instant appeal.

2) The first defendant is the father and 2nd defendant is the son of 1st defendant. The Plaintiff's case in brief is that the defendants 1 and 2 along with other sharers—Sri Mohd. Abdul Mannan and his son—Sri Mohd. Meraj had entered into an agreement of sale of the premises bearing Municipal No.1-5-6/A(new), 1-5-6(old) admeasuring 1032 sq.yards situated at Bakaram, Musheerabad, Hyderabad, with the plaintiff on 25.02.2000 for Rs.49,53,600/- at the rate of Rs.4800/- per sq.yard and on the same day, the plaintiff paid Rs.5,00,000/- i.e, Rs.2,50,000/- to defendants 1 and 2 and Rs.2,50,000/- to Sri M.A.Mannan and to his son—Sri Mohd. Meraj. Plaintiff was always ready and willing to perform his part of contract. It was settled mutually at the time of

agreement that defendants and other sharers would get the tenant evicted and would deliver vacant possession. Since the amount was more than Rs.20,00,000/-, as per the provisions of Income Tax Act, the defendants have to get clearance from I.T Department and defendants undertook to obtain the clearance certificate and intimate the same to plaintiff to get the sale deed registered. Plaintiff has been reminding and defendants and other sharers to receive the balance sale amount and to execute the sale deed. The other sharers Sri M.A.Mannan and Sri M.Meraj have executed sale deed by receiving their share amount on 29.11.2001 vide document No.3469/2001. Thereafter, plaintiff again reminded defendants to execute the sale deed and also got issued legal notice on 01.02.2003 etc. Hence, the suit for specific performance of contract of agreement.

3) The defendants filed common written statement admitting that they are the lawful owners and half shares and entered into an agreement of sale and also received an amount of Rs.2,50,000/-. They contended that plaintiff's company agreed to pay balance sale consideration within two months but it was never ready with it. There is no mention in the agreement about the eviction of the tenant. Plaintiff never reminded the defendants. Plaintiff did not come forward within the stipulated time. The defendants informed to plaintiff that sale agreement was cancelled and the same was accepted by plaintiff. Defendants had no

knowledge about the sale deed dt.21.11.2001 executed by other shareholders. The suit is filed at the end of three years period hence barred by limitation. Suit is not maintainable and there is no cause of action.

4) Basing on the above pleadings, the trial Court framed following issues:

1) *Whether the suit is barred by limitation?*
2) *Whether the plaintiff is entitled for specific performance of the contract as prayed for?*
3) *To what relief?*

The following additional issues were framed:

1) *Whether there is delay in filing the suit, if so whether plaintiff is entitled for relief of specific performance?*
2) *Whether Ex.A.1 is admissible in evidence as per the Stamp Act and Registration Act?*
3) *Whether time is essence of contract?*

5) During trial, PW.1 was examined and Exs.A.1 to A.9 were marked on behalf of plaintiff. DW.1 was examined and Exs.B.1 to B.4 were marked on behalf of defendants.

6) The trial Court after appreciation of oral and documentary evidence, decreed the suit with costs for relief of specific performance of suit agreement of sale subject to the condition that plaintiff shall deposit the balance of sale consideration into court within two months from the date of judgment and thereafter, defendants shall execute regular sale deed within two months, failing which plaintiff is at liberty to get the sale deed registered through process of

Court.

Hence, the present appeal by the defendants.

7) The parties in the appeal are referred as they were arrayed in O.S.No.104 of 2003 before the trial Court.

8) Heard the arguments of Sri P.Shiv Kumar, learned counsel for appellants/defendants and Sri M.S.K.Prasad, learned senior counsel appearing for Sri E.V.V.S.Ravi Kumar, learned counsel for respondent/plaintiff. Both the parties have filed their written arguments.

9 a) Impugning the judgment, the first contention of the appellants/defendants is that in this case time is the essence of the contract inasmuch as it is stipulated in Ex.A1—agreement that vendors due to various reasons were in need of money and entered into sale agreement and hence it was stipulated that time for registration of sale deed and for payment of balance sale consideration is two months from the date of agreement but the plaintiff miserably failed to honour the essential condition of the contract by paying the amount in spite of repeated reminders of the defendants and thereby, the defendants were constrained to cancel the agreement. Learned counsel argued that there is no doubt there is stipulation in Ex.A1 that the vendors/defendants had to effect the physical measurements of the suit property within the aforesaid stipulated time of two months and the defendant No.1 (DW1) in his cross-examination has clearly stated that the measurements were taken place within 10 or

15 days after the agreement and after arriving at the correct measurements, he informed to the plaintiff orally through telephone. Learned counsel vehemently argued that the evidence of DW1 would manifestly show that defendants performed their part of the obligation. The aforesaid evidence of DW1 was not disputed by the plaintiff and hence it must be accepted as proved. Having failed to pay the amount within two months, the plaintiff filed the suit at the fag end of three years with false and untenable allegations as if the defendants having agreed to evict the tenants from the suit premises and obtain Income Tax Clearance Certificate under Section 230A of Income Tax Act, failed to fulfil the conditions and hence the plaintiff could not seek for registration of property in time. He argued that the aforesaid alleged conditions were not at all stipulated in Ex.A1 and the allegations were levelled by the plaintiff only to cover up his laches. He concluded that time is essence of the contract in this case and since the plaintiff failed to perform its part within time, it does not deserve the equitable relief of specific performance. In this context he relied upon the following decisions:

1) ***Smt. Chand Rani (dead) by LRs vs. Smt. Kamal Rani (dead) by LRs***[1]

2) ***K.S.Vidyanadam and others vs. Vairavan***[2]

3) ***Saradamani Kandappan vs. S. Raja Lakshmi and others***[3]

b) Secondly, learned counsel argued that plaintiff failed to prove its ready and willingness to pay the balance sale consideration within the stipulated time and it belatedly filed Exs.A8 and A9. The amounts covered by Exs.A8 and A9 were issued by the bank towards working capital of the plaintiff—Company and those amounts cannot be used to purchase the suit property and therefore, the plaintiff—Company had no capacity at the relevant time to purchase the suit property and it was not ready and willing to perform its part and hence disentitled to the relief. He placed reliance on the decisions reported in ***Azhar Sultana v. B.Rajamani***[4] and ***Sita Ram v. Radhey Shyam***[5].

c) Thirdly, he argued that the plaintiff is not authorized to file the suit as he is not the Managing Director of the Company and the Board of Directors have not passed any resolution authorizing him to file the suit. He relied upon the decision of the Apex Court reported in ***State Bank of Travancore vs. Kingston Computers India Private Limited***[6].

d) Fourthly, it is contended that since the defendants cancelled the suit agreement, the plaintiff under law has to seek for declaration that such cancellation is bad in law apart from seeking specific performance of contract. As the plaintiff has not sought for such declaratory relief, the suit is not maintainable. He relied upon the decision of the Apex Court reported in ***I.S.Sikandar (dead) by LRs vs. K.Subramani and others***[7].

e) Finally, he argued that the plaintiff has not come to the Court with clean hands and therefore, it does not deserve equitable relief of specific performance. In this context, he placed reliance on the decision of the Apex Court in ***Lourdu Mari David and others vs. Louis Chinnaya Arogiaswamy and others***[8]. He thus prayed to allow the appeal and set aside the decree.

10a) Per contra, while supporting the judgment, learned senior counsel Sri M.S.K.Prasad firstly argued that time is not the essence of the contract in respect of immovable properties and so also in the present case. Giving reasons, he submitted that two months time is prescribed only for registration but not for payment of balance of sale consideration because sale consideration has to be ascertained after arriving at the extent of the land on physical measurements and defendants failed to get measure the suit property before filing suit. Therefore, time cannot be treated as essence of the contract. He further argued that even assuming though not admitting that the stipulation of two months is also meant for payment of balance amount, still the time stipulation cannot be treated as essence of the contract because the parties by their conduct have not treated the said period as essence of the contract. DW1 (defendant No.1) admitted in his cross-examination that he did not give any notice to the plaintiff informing about the physical measurements and eviction of tenant and requested the plaintiff to pay the balance amount to execute the sale deed. Therefore, time cannot be treated as essence of the contract. In this context, he relied upon the following decisions:

1) ***Nannapaneni Subayya Chowdary and another vs. Garikapati Veeraya and another***[9]

2) ***Gomathinayagam Pillai and others vs. Palaniswami Nadar***[10]

3) ***Govind Prasad Chaturvedi vs. Hari Dutt Shastri and another***[11]

4) ***Smt.Chand Rani (Dead) by L.Rs vs. Smt.Kamal Rani (Dead) by L.Rs*** *(1 supra)*

5) ***Swarnam Ramachandran (Smt) and another vs. Aravacode Chakungal Jayapalan***[12]

b) Secondly, with regard to ready and willingness of the plaintiff, learned counsel argued that plaintiff took a categorical plea that it was always ready and willing to pay the amount and in proof thereof it produced Exs.A8 and A9 showing sufficient balance in its account during the relevant time. Further, in November, 2001 plaintiff paid the balance sale consideration to the other half sharers and promptly obtained Ex.A7—registered sale deed from them. The plaintiff also deposited the balance amount to the credit of the suit in terms of the judgment within two months in November, 2007. Therefore, all these, he argued, would amply show the ready and willingness of the plaintiff.

c) Thirdly, he argued that the contention of the defendants that suit is not maintainable without a declaratory relief is far-fetching for the reason such a plea was not taken in their written statement. In fact, the defendants did not issue any notice cancelling the suit agreement and hence the plaintiff need not obtain such a declaratory relief and the cited decision has no relevancy.

d) Fourthly, he contended that PW1 is the Managing Director of the plaintiff—Company and he produced copy of Memorandum and Articles of Association and therefore, he is authorized to file the suit. He thus prayed to dismiss the appeal.

11) In the light of above rival arguments, the points for determination in this appeal are:

1) Whether time is essence of the contract in this case?

2) If Point No.1 is held in negative, whether the plaintiff was ready and willing to obtain registered sale deed within reasonable time?

3) Whether the suit is not maintainable without a prayer for declaratory relief?

4) To what relief?

12) **POINT No.1**: It is imperative to study the law on the subject '*time is essence of the contract*'. For our study, contracts can be divided into two categories:

1) Contracts which do not stipulate any time for performance of the terms.

2) The contracts which stipulate such time.

a) The first category of contracts are covered by Sec.46 of Indian Contract Act, 1872, which reads thus:

> ***"Section 46 - Time for performance of promise, where no application is to be made and no time is specified***
>
> *Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.*
>
> *Explanation.—The question "what is a reasonable time" is, in each particular case, a question of fact."*

b) In ***Veerayee Ammal v. Seemi Ammal***[13] the Apex Court tried to explain the word '*reasonable*" than giving its definition. It observed thus:

> *"Para 14: The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means as soon as circumstances permit. In Law Lexicon it is defined to mean "A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or*

required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

So, Section 46 of Indian Contract Act envisages that where no time is stipulated for performance of a promise, the promisor has to perform the engagement (i.e., promise) within a reasonable time and what is a reasonable time in an each particular case, is a question of fact to be determined with reference to the facts and circumstances of that case.

c) The Second category of contracts are covered by Section 55 of Indian Contract Act, 1872, which reads thus:

> ***"Section 55 - Effect of failure to perform at fixed time, in contract in which time is essential:***
>
> *When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.*
>
> ***Effect of such failure when time is not essential***—*If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.*
>
> ***Effect of acceptance of performance at time other than that agreed upon***—*If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than agreed, the promisee cannot claim compensation for*

any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.”

From the above, it is clear that where a party promises to do certain thing at a specified time and fails to perform the promise before that time, the contract becomes voidable at the option of the promisee, **if the intention of the parties was that time should be the essence of the contract**. But if, it is not the intention of the parties that time should be the essence of the contract, the contract does not become voidable by such failure but the promisee is entitled to damages for loss caused to him by such failure. Section 55 delineates that mere non-performance of the promise by the promisor within the stipulated time will not automatically empower the promisee to avoid the contract unless it is established that by making such time stipulation, the parties indeed intended that the time was the essence of the contract. The intention of the parties can be determined by the express condition mentioned in the contract itself or by necessary implication through the facts and evidence in a given case. It should be noted that Section 55 has not made any distinction between immovable and movable properties for the purpose of holding time as either essence or not essence of the contract. However in India, basing on the British equity principles, it has been held that so far as immovable property is concerned, there is no presumption that time is essence of the contract.

13) Let us peruse the important case law in this regard including the judgments cited by both parties.

i) In ***Nannapaneni Subayya Chowdary***'s case (9 supra) it was observed thus:

> *"<u>Para 97</u>: xx xx xx xx*
>
> *The effect of the passages quoted above is that in a contract of sale of immovable property time will not be regarded as of the essence unless it is shown that the parties intended that their right should depend upon the observance of time as the essence of the contract."*

ii) In ***Gomathinayagam Pillai***'s case (10 supra) a Full Bench of Apex Court observed that fixation of the period within which the contract is to be performed does not make the stipulation as to the time is the essence of the contract nor default clause in contract by itself evidences the intention to make the time as essence. Time is of essence if the parties intend to be so and such intention may be evidenced either by express stipulation or by circumstances which are sufficiently strong to disbelieve ordinary presumption that in contract for sale of land, stipulation as to time is not of essence. It was further observed that if time is not of essence originally, it can be made of essence even subsequently by serving notice on other party.

iii) In ***Govind Prasad Chaturvedi***'s case (11 supra), relying upon the ***Gomathinayagam Pillai***'s case (10 supra), the Apex Court observed thus:

> *"It is settled law that the fixation of the period within which the contract has to be performed does not make the stipulation as to time the essence of the contract.*

When a contract relates to sale of immovable property it will normally be presumed that the time is not the essence of the contract. The intention to treat time as the essence of the contract may be evidenced by circumstances which should be sufficiently strong to displace the normal presumption that in a contract of sale of land stipulation as to time is not the essence of the contract."

iv) In ***Smt.Chand Rani***'s case (1 supra), Constitutional Bench of Apex Court after referring several decisions, held thus:

"Para 25: From an analysis of the above case law it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the Court may infer that it is to be performed in a reasonable time if the conditions are:

1. *from the express terms of the contract;*
2. *from the nature of the property; and*
3. *from the surrounding circumstances, for example: the object of making the contract."*

v) In ***Swarnam Ramachandran***'s case (12 supra), the Supreme Court observed thus:

"Para 10: The key issue which is to be decided in this civil appeal is: whether time was the essence for payment of Rs.75,000/- on or before 30.9.1981 and whether the said term was breached. This question does not depend only upon express stipulation made by the parties, but it also depends upon the intention of the parties. Notwithstanding that a specific date was mentioned in the agreement, one has not only to look at the letter but also at the substance of the contract. Whether time is of essence is a question of fact and the real test is intention of the parties. It depends upon facts

and circumstances of each case.

*<u>Para 11</u>: According to **Pollock & Mulla's Indian Contract & Specific Relief Acts** - [(2001) 12^{th} Edition page 1086], the intention can be ascertained from:*

i) the express words used in the contract;

ii) the nature of the property which forms the subject matter of the contract;

iii) the nature of the contract; and

iv) the surrounding circumstances.

Having observed above, the Apex Court held that the onus to plead and prove time is essence of the contract would be on the person alleging so.

vi) In ***K.S.Vidyanadam***'s case (2 supra), the observations of Apex Court can be summed up as follows:

i) The Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

ii) The Courts will apply greater scrutiny and strictness when considering whether the purchaser was 'ready and willing' to perform his part of the contract.

iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. Courts will also 'frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been *delivered in part performance, where equity shifts in favour of the purchaser."*

14) So an analysis would show that in the above cases it was consistently held that in contracts relating to immovable properties, there was no presumption that time is essence of the contract. A mere stipulation of a specific time for performing a particular term with penal provision will not make the time as essence of the contract unless it is established by the party who pleads time is essence. The intention of the parties to make the time is essence can be gathered by an express stipulation in the contract or from the facts and surrounding circumstances.

a) Be that it may, we need to peruse another important decision of Apex Court cited by the appellant reported in ***Saradamani Kandappan***'s case (3 supra). In this decision, the general principle that the time is not the essence of the contract in respect of immovable properties is not disturbed, but it was observed that the said principle needs to be revisited. It was observed thus:

> *"<u>Para 42</u>: Therefore there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the current position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices. We do not propose to undertake that exercise in this case, nor referring the matter to larger Bench as we have held on facts in this case that time is the essence of the contract, even with reference to the principles in* ***Chand Rani*** *and other cases."*

15) With the law on hand as above, we have to scrutinize

whether in the instant case the parties intended to treat the time as essence of the contract or not. The controversial condition employed in Ex.A.1—agreement runs as follows:

> *"And the balance amount of sale consideration shall be paid by the Vendee to the Vendors after physical measurements at the rate of Rs.4,800/- per Square Yard at the time of registration of Sale Deed and the time for registration of Sale Deed is 2 months from the date of this Agreement of Sale"*

a) From the above term and also the earlier mentioning "and whereas the vendors due to various reasons and being in need of money have offered to sell the said house", the defendants would contend that they were in dire need of money and therefore only they entered into sale agreement and fixed the stipulation of 2 months for payment of balance amount and hence, the said time stipulation shall be construed as the essence of the contract. On the other hand, the contention of the plaintiff is that the 2 months time stipulation is only for effecting registration and not for payment of the balance amount as it depends upon the measurement of the suit property and upon such measurement and arrival of the exact extent, the plaintiff was to pay @ Rs.4800/- per sq.yard and since the defendants did not get the suit property measured within the stipulated time or thereafter, the time cannot be treated as essence of the contract. As a reply, the plea of defendants is that they got measured the suit property within 10 days after Ex.A.1 and informed to plaintiff also. In this back drop, the point is whether time can be held as essence of the contract.

b) From the above term what could be understood is that at first the defendants have to get the physical measurements of the suit property and inform its correct extent and thereafter the plaintiff has to pay @ Rs.4800/- per sq.yard and the said amount has to be paid at the time of registration of sale deed and registration has to take place within 2 months from the date of agreement. In other words, the balance amount shall be payable within 2 months at the time of registration. So before making the claim that the time is the essence of the contract, the defendants must establish that they got the physical measurements of the suit property within the 2 months period. In the cross-examination, DW.1 (D.1) claimed that the physical measurements took place 10 or 15 days after Ex.A.1—agreement and after arriving the correct measurements, he has not informed the plaintiff about it by a notice but he orally informed through telephone. This fact was not challenged by plaintiff through a rebuttal suggestion. Further, in Ex.A.2 and in the plaint it has not made any averment that it could not get ready for registration because of the failure of the defendants to effect the physical measurements of the suit property. He made different allegations against defendants which will be considered later. So at the outset, the defendants claim that they got physical measurements of the suit property has to be accepted. Then, it is for plaintiff to pay the balance amount and obtain registered sale deed within 2 months but it did not do so. The contention of the plaintiff was that it was always ready with the money and willing to obtain sale deed but the defendants did not evict the tenant and obtain the Income Tax Clearance Certificate. On the other hand, the defendants would contend that those pleas are untenable because they were not stipulated in Ex.A1 and it was only a ruse to cover the laches of the plaintiff. Before deciding the veracity of the respective contentions, first of all it must be scrutinized whether the two months time stipulation is the essence of the contract and failure of which disentitles the plaintiff to obtain sale deed. After a thorough scrutiny of the facts and evidence, I am of the considered view that time is not the essence of contract in the instant case. The reasons are as follows:

> i) The law is that a mere stipulation that the promisor shall perform a particular term of the contract within a particular time *per se* will not make the time as essence of the contract unless the intention of the parties was to make the time as essence of the contract. In this case there is no express stipulation in Ex.A.1 to the effect that time is essence of the contract.
>
> ii) In Ex.A.1 it is no doubt mentioned that the vendors due to various reasons were in need of money and hence they have offered to sell the suit property. However, in the absence of the pleading and evidence of the defendants as to what were the pressing needs and how they were put in hardship due to the failure of the plaintiff, the aforesaid mentioning would not serve a better purpose than an empty rhetoric. In ***Saradamani***

Kandappan's case (3 supra), the Apex court in Para-28 observed that the time stipulation will be considered to be essence of the contract whether such intention is evident from the express terms or the circumstances necessitating the sale, set out in the agreement. If the vendor discloses in the agreement reasons for entering into contract for example—need to repay a particular loan before a particular date, or to meet the urgent time bound need like medical, educational expenses of the family member or the like, then time will be held to be the essence of the contract. Needless to say, the defendants did not adduce any evidence about the pressing needs which goaded them to enter into the contract. Even in the contract except mentioning that they were '*in need of money*', they did not specifically mention that they were in '*urgent*' need of money.

iii) If the defendants were in pressing need for money and plaintiff failed to pay the balance amount within the stipulated time, their natural tendency would be to give notice to the plaintiff either calling him to pay the amount and obtain sale deed or cancelling the agreement. They did not do so but leisurely gave reply to the plaintiff's notice long after. This conduct of the defendants manifests that they were not serious about the terms of the contract.

iv) The other co-sharers have obtained their share of amount long after the stipulated period of 2 months and executed Ex.A7—sale deed. It implies they too did not consider the time as essence of the contract. Though defendants pleaded ignorance of the said sale deed, the same cannot be believed in view of the close relationship between the parties. Even after Ex.A.7, the defendants did not issue any notice to plaintiff, cancelling the agreement. It also infers that parties have not treated the 2 months stipulation of time as essence of the contract.

So, time cannot be considered as essence of the contract in this case as contended by the appellants/defendants. This point is answered accordingly.

16) **POINT No.2**: As the point No.1 is held negative, it has now to be seen whether the plaintiff was ready and willing to obtain registered sale deed within reasonable time or it was guilty of negligence and total inaction disentitling for specific performance.

a) The submission of learned counsel for respondent/plaintiff is that plaintiff was ready and willing to perform its part and in fact plaintiff—Company was having sufficient amount in its account vide Exs.A8 and A9 and it promptly obtained Ex.A7—sale deed from the other co-sharers and the delay was only on the part of defendants as they have not evicted the tenant and obtained Income Tax Clearance Certificate. It was contended that the suit was filed within time and even if the suit was filed at the fag end of the limitation, the said delay cannot be a ground to reject the specific performance as obviously the delay was on account of defendants and they were not in any way prejudiced by the act of the plaintiff.

b) In oppugnation, the contention of defendants is that except paying the advance amount at the time of Ex.A1, the plaintiff did not show its ready and willingness thereafter and it only issued notice at the fag end of three years and the conditions of vacating tenant and obtaining Income Tax

Clearance Certificate were not stipulated in Ex.A1 and hence cannot be raised to justify the wanton delay on the part of plaintiff.

17) When time is held not essence of the contract as in the present case, it must be performed within a reasonable time which is the law. What is reasonable time has been explained in ***Veerayee Ammal***'s case (13 supra) as per which, reasonable time includes such length of time as may fairly and promptly and reasonably be allowed or required having regard to the nature of the act and attending circumstances. It should be noted at this juncture that in ***K.S.Vidyanadam***'s case (2 supra) it was observed that even in the cases of time is not essence of the contract and suit can be filed within three years as provided in Article 54 of Limitation Act, still it should be performed within reasonable time having regard to the terms of the contract and nature of the property. Further, in the two decisions —***Azhar Sultana*** (4 supra) and ***Sita Ram*** (5 supra) cited by appellants/defendants, the Apex Court held that under Section 16 (c) of Specific Relief Act, 1963 the burden will be on the plaintiff to show his continuous readiness and willingness to be entitled for specific performance and he must also show his blemishless conduct in this regard.

In the light of above law, the respective contentions of the parties have to be scrutinized.

18 a) Ex.A1—agreement was entered on 25.02.2000;

Ex.A2—notice was issued on 01.02.2003 and suit was filed on 24.02.2003. This chronology of facts will apparently show as if delay was on the part of plaintiff and it did not act within the reasonable time. However, if the relevant facts and circumstances are scrutinized, the mist of delay will be cleared.

b) After obtaining agreement the plaintiff did not keep silent but promptly obtained sale deed vide Ex.A7 from the other co-sharers on 29.11.2001, in respect of their 50% share. It shows the plaintiff was ready and willing to perform its part of contract. Further, Ex.A8 shows that the State Bank of India renewed the working capital facility to the plaintiff basing on its net worth. It should be noted that working capital will be calculated basing on Company's current assets minus its current liabilities. Ex.A9—statement of bank account of the plaintiff shows a balance of Rs.2,05,54,451.33 ps. as on 12.04.2000. Added to it, the plaintiff's submission is that it deposited the balance sale amount to the credit of the suit within two months after decree in November, 2007 which is not disputed. From all these, the ready and willingness of the plaintiff can be inferred.

c) Delay is concerned, plaintiff's claim is that the defendants did not evict the tenants and they did not obtain Income Tax Clearance Certificate. It is true that these aspects are not specifically stipulated in Ex.A1. However, their importance cannot be ignored in view of condition Nos.2 and 4 in Ex.A1. As per condition No.2, the vendors agreed to sell the property free from all encumbrances, charges, prior sale, gift, will, mortgage, lien, litigations and court attachments etc. In that view of the matter, it appears the plaintiff sought for Income Tax Clearance Certificate from the defendants. Under Section 230A of Income Tax Act where conveyance of a property worth more than Rs.5 lakhs is effected, the registering officer shall not register the document unless the Assessing Officer certifies that the vendor paid the required taxes including the income tax. This section says that registration of the document does not affects recovery of any existing liability under any of the tax recovery Acts. So, the importance of this certificate cannot be ignored because even if the property was registered by chance without production of said certificate, the tax collecting authorities will have right to recover taxes by exercising lien over the said property. So, to avoid any future encumbrance over the property in terms of condition No.2, the plaintiff must have demanded the certificate. Of course, Section 230A which was in vogue by the date of agreement, was omitted by Finance Act 2001 with effect from 01.06.2001. So till 01.06.200l the plaintiff could demand defendants to produce Income Tax Clearance Certificate. Then, as per condition No.4, the vendors agreed to deliver peaceful physical and vacant possession of suit property at the time of registration of sale deed. In that context, the eviction of the tenant from the suit house is also a relevant fact. In the cross-examination, DW1 claimed as if the tenant was vacated after Ex.A1 but he admitted that he did not give any notice to the plaintiff stating the said fact. This claim appears to be false because in Ex.A7—sale deed, the plaintiff obtained only symbolic possession of the property from the other co-sharers and the tenant was attorned. So, at the outset, the causes attributed by the plaintiff for delay in obtaining sale deed cannot be said to be totally out of context in view of aforesaid stipulations in Ex.A1. So when the entire facts and conduct of the parties is taken into consideration the plaintiff cannot be blamed for delay. On the other hand, plaintiff was ready and willing to obtain sale deed within the reasonable time.

d) Defendants also contended that suit is not maintainable at the instance of plaintiff as it did not obtain any authorization from the Board of Directors of the Company. This contention cannot be countenanced for the reason that the plaintiff entered into Ex.A1 transaction as Managing Director of the plaintiff's Company and it also filed the suit in the same capacity which is not disputed. Further, the judgment shows that before trial Court it produced copy of Memorandum and Articles of Association of plaintiff's Company. This point is answered accordingly.

19) **POINT No.3**: The contention of defendants is that suit

without a declaratory relief that cancellation of the agreement is bad in law is not maintainable. On facts and evidence this contention is untenable and consequently the decision cited by the appellants in ***I.S.Sikandar***'s case (7 supra) can be distinguished on facts. In that case the defendant sent legal notice on 28.03.1985 to the plaintiff extending time to the plaintiff to pay sale consideration on or before 10.04.1985 with a warning that his failure to comply with the same, sale agreement dated 25.12.1983 would be terminated. The plaintiff did not perform his part of the contract within the extended period of legal notice. In those circumstances, the Apex Court treated the contract was not existing by the date of filing the suit for specific performance and held suit is not maintainable without a prayer for declaratory relief. In the instant case, facts were quite different. The defendants did not issue any notice to the plaintiff cancelling the suit agreement for its alleged breach. They kept silent and issued Ex.A5—reply notice wherein they claimed as if they orally informed the plaintiff that suit agreement cancelled. There is no basis for such claim. Hence, the said plea cannot be accepted. Further, the defendants did not take any plea in the written statement regarding non-maintainability of the suit for want of declaratory relief. Hence, they cannot raise this question now. This point is answered accordingly.

20) **POINT No.4**: In the result, in view of the above findings, this appeal filed by the appellants/defendants is

dismissed by confirming the decree and judgment of the trial Court in O.S.No.104 of 2003. The defendants are directed to execute a regular registered sale deed in favour of plaintiff within two (2) months from the date of this judgment, failing which the plaintiff will be at liberty to get the sale deed executed and registered through process of Court. No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 16.02.2016

Scs/Murthy

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[1] AIR 1993 SC 1742 = (1993) 1 SCC 519
[2] (1997) 3 SCC 1
[3] (2011) 12 SCC 18
[4] (2009) 17 SCC 27
[5] AIR 2008 SC 143
[6] (2011) 11 SCC 524
[7] (2013) 15 SCC 27
[8] (1996) 5 SCC 589
[9] AIR (1957) AP 307
[10] AIR 1967 SC 868 (1)
[11] AIR 1977 SC 1005
[12] (2004) 8 SCC 689
[13] AIR 2001 SC 2920 = (2001) 1 SCC 134