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

\+ CS(OS) 2130/2006

% ***Judgment reserved on 3rd June, 2016***
Judgment delivered on: 8th July, 2016

SHRI ANIL KAPOOR ..... Plaintiff
Through : Mr.Sanjiv Bahl and Mr.Eklavya Bahl, Advs.

versus

SHRI VED PRAKASH SEHGAL AND OTHERS AC+ ..... Defendants
Through : Mr.Dayan Krishnan, Sr. Adv. with Mr.D. Verma, Advs. for defendants no.1, 2 and 4.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

<u>G.S. SISTANI</u>, J

1. Plaintiff has filed the present suit for specific performance of a Receipt-cum-Agreement dated 26.7.2000(hereinafter referred to as 'Agreement'). In the alternate, the plaintiff seeks recovery of damages to the tune of Rs.1.55 crores, the amount of sale consideration, which was fixed vide Agreement dated 26.7.2000. It may be noticed that prior to the filing of the suit, the seller, late Sh.K.C. Sehgal, died on 30.1.2002. Legal heirs of late Sh.K.C. Sehgal have been arrayed as defendants.
2. As per the plaint, the facts, which have led to the filing of the present suit, are that the defendants are the co-owners of the property bearing no.R-80, Greater Kailash, Part-I, New Delhi, built on a plot of land measuring 310 sq. yards. At the relevant time, the property was owned by late Sh.K.C. Sehgal and upon his death the property devolved upon his legal heirs.

During his life time, on 26.7.2000 Sh.K.C. Sehgal entered into an Agreement with the plaintiff for sale of suit property, for which he received a sum of Rs.2.00 lakhs as part payment in the following manner:

(i) Rs.10,000/- by cash; and

(ii) Rs.1.90 lakhs by means of a cheque bearing no.404261 dated 26.7.2000, drawn on Central Bank of India, Greater Kailash, Part-II, New Delhi.

3. The abovestated cheque was encashed by late Sh.K.C. Sehgal. In the Agreement, it was represented that the property is free from all encumbrances, liens, charges, etc. It was agreed that the balance sale consideration would be paid by the plaintiff to late Sh.K.C. Sehgal at the time of execution and registration of sale deed in favour of the plaintiff by late Sh.K.C. Sehgal before the office of the concerned Sub-Registrar, Delhi, and at the time of handing over of actual, vacant peaceful and physical possession.

4. It is the case of the plaintiff that it was agreed that Late Sh.K.C. Sehgal would obtain all the requisite permissions for sale of the suit property in favour of the plaintiff and would inform the purchaser about the same. It is also the case of the plaintiff that Sh.K.C. Sehgal did not obtain the income tax clearance and also failed to inform the plaintiff the date for completing the deal despite repeated requests by the plaintiff from time to time. The plaintiff issued a legal notice to Late Sh.K.C. Sehgal on 3.11.2000 calling upon him to complete the entire deal and perform his part of the contract. A reply was received by the plaintiff on 21.11.2000 wherein late Sh.K.C. Sehgal informed the plaintiff that the plaintiff was to pay 25% of the total sale consideration and only thereafter Sh.K.C. Sehgal was to apply for

income tax clearance. In the reply it was further stated that the Agreement was to be completed by 9.9.2000 and also the plaintiff should contact Sh.K.C. Sehgal and settle the disputes.

5. It is further the case of the plaintiff that after the death of Sh.K.C. Sehgal, who died on 30.1.2002, his legal heirs (defendants herein) were contacted and called upon to complete the transaction but they kept on promising to complete the transaction shortly as per the wishes of their father, however, they delayed the matter on one pretext or the other. The plaintiff issued another notice to the defendants on 11.11.2003 but since no response to the same was received, present suit has been filed.

6. The stand taken by the defendants in the written statement is that the present suit is blatantly barred by limitation as in response to the legal notice dated 3.11.2000 issued by the plaintiff, Late Sh.K.C. Sehgal had made it clear that the Agreement was to be completed by 9.9.2000 and further the plaintiff did not sign a proper agreement. As per the defendants, the period of limitation would commence from 3.11.2000 when reply to the legal notice was issued. Thus, the suit is hopelessly barred by time. It is also the case of the defendants that as per the own understanding of the plaintiff the entire transaction was to be completed by 31.12.2000, leaving no room for doubt that the suit is barred by time.

7. On the pleadings of the parties, the following issues were framed on 3.12.2007:

> "*1. Whether the present suit is within limitation?*
>
> *2. Whether the present suit has not been correctly valued for the purpose of Court fee and if so, to what effect? OPD*
>
> *3. Whether this suit is bad for non-joinder of necessary and proper parties as alleged in Para 5 o the preliminary objections of written statement of defendants no.1, 2 and 4? OPD*

4. Whether the plaintiff is entitled to a decree of specific performance of agreement to sell dated 26.7.2000 in respect of the suit property? OPP

5. In case the above issue No.4 is decided in the negative then whether the plaintiff is entitled in the alternative to a decree of Rs.1,55,00,000/- as prayed for in the plaint?

6. Relief."

8. It may also be noticed that while the plaintiff has filed affidavit by way of evidence, no evidence has been led by the defendants.
9. Although the receipt-cum-agreement bears no date but it is alleged to be dated 26.7.2000. The first legal notice was issued by the plaintiff to late Sh.K.C. Sehgal during his life time on 3.11.2000. Sh.K.C. Sehgal died on 30.1.2002. The present suit has been instituted against his legal heirs.
10. A reading of the receipt-cum-agreement (Exhibit P1) would show that a sum of Rs.10,000/- was paid to late Sh.K.C. Sehgal in cash while a sum of Rs.1.90 lakhs was paid by means of a cheque dated 26.7.2000. No date was fixed for completion of the transaction. In the concluding part of the receipt-cum-agreement it has been mentioned that the plot measuring 300 sq. yards is free from all encumbrances and the balance amount of Rs.1.53 Crores was to be paid at the time of possession and registration of the sale deed in favour of the purchaser after the seller had obtained all the requisite clearances.
11. It may also be noticed that initially receipt-cum-agreement (Exhibit P1) was entered into between the plaintiff and late Sh.K.C. Sehgal.
12. Mr.Dayan Krishnan, learned senior counsel appearing on behalf of defendants no.1, 2 and 4, submits that should the court decide issue no.1 against the plaintiff, he would not press issues no.2 and 3.

13. **Issue no.1:**

"*1. Whether the present suit is within limitation?*"

14. In support of his submission that the present suit is within limitation, Mr.Behl learned counsel for the plaintiff has relied upon Article 54 of the Limitation Act, which reads as under:

	"*Description of suit*	Period of limitation	Time from which period begins to run
	*	*	*
54.	*For specific performance of a contract.*	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused."

15. Learned counsel for the plaintiff submits that the present suit has been instituted within the period of limitation. Counsel submits that a reading of the agreement, in question, which has been styled as Receipt-cum-Agreement (Exhibit P1), would make it abundantly clear that after the payment of Rs.2.00 lakhs made to Sh.K.C. Sehgal (deceased father of the present defendants) the onus shifted on Sh.K.C. Sehgal to register the sale deed in favour of the purchaser after he, being the seller, had obtained all the requisite permissions. It is contended that the requisite permissions included the income tax clearance as Chapter XX(c) of the Income Tax Act was applicable to the properties in the year 2000. It is further submitted that since late Sh.K.C. Sehgal did not comply with his part of the Agreement the plaintiff was forced to issue a legal notice to Sh.K.C. Sehgal on 3.11.2000 (Exhibit PW-1/2). In this notice, Sh.K.C. Sehgal was categorically informed that he was required to obtain income tax clearance for

registration of the sale deed and hand over possession. Sh.K.C. Sehgal was also informed that he did not complete the formalities for completion of contract and, thus, the plaintiff was entitled to specific enforcement of the contract. The plaintiff also reiterated that he has been ready and willing to complete the transaction. Sh.K.C. Sehgal was also called upon to deliver possession, receive the balance sale consideration, execute the sale deed after obtaining clearance under Section 34A of the Income Tax Act within fifteen days failing which a suit for specific performance would be filed.

16. It has been strongly argued by learned counsel for the plaintiff before this Court that in response to the legal notice dated 21.11.2000 (Exhibit PW-1/5), Sh.K.C. Sehgal did not cancel the agreement, nor he disputed the arrangement arrived at. Sh.K.C. Sehgal merely informed the plaintiff that the parties should settle the disputes, which had arisen on account of mistrust by sitting together. The plaintiff was also advised not to rush to Court. Counsel further submits that thereafter there were repeated discussions and negotiations but Sh.K.C. Sehgal during his lifetime and after his death with his legal heirs failed to complete his part of the transaction.

17. Counsel further submits that the first part of Article 54 of the Limitation Act would apply in case a date had been fixed by which the sale transaction had to be completed and in the absence of any date in the Agreement the period of limitation would start after refusal on the part of the seller as in the present case.

18. Reliance is placed by counsel for the plaintiff on ***Arun Nirula (Deceased) Through Lr's v. K.N. Jain and Ors.***, reported at 2013 (138) DRJ 520, more particularly paras 10 to 14, in support of his argument that the agreement did not fix any categorical date for the completion of transaction and, thus, the first part of Article 54 of the Limitation Act would not apply. Paras 10

to 14 reads as under:

> "*10. The first question which thus arises is whether the Agreement to Sell of which specific performance was claimed and which is in writing, fixed a date for performance, inasmuch as if the same fixes such a date, the period of limitation would be three years from such date.*
>
> *11. Both counsels agree that the relevant clause in this respect of the Agreement to Sell, in which the respondent No.1 is described as the first party and the appellant as the second party, is Clause 6 and which is as under:*
>
>> *"6. That the first party shall apply for sale permission from the office of the lessor as well as the competent authority under provision of the Urban Land (Ceiling & Regulation) of 1976 and fulfil all the formalities for the completion of the sale deed in favour of the Second Party or his nominee(s) and shall execute a proper sale deed of the above mentioned property along with the lease hold rights of the land underneath in favour of the second party or their nominee(s) and shall get the same regd. in the office of the Sub-registrar, Delhi after getting such sale permission etc. within 90 days from the date of receipt of such permission and fulfilling all the formalities."*
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> *12. The counsel for the respondent No.4 has argued that the agreement fixes a date for performance by fixing a time period of 90 days from the date of receipt of permissions and fulfilling all formalities.*
>
> *13. I have however enquired from him as to whether any time was fixed for obtaining such permissions.*
>
> *14. Neither is there any provision in the Agreement to Sell in this regard nor is any answer forth coming from the counsel for the respondent No.4. I am of the view that merely because the Agreement provides for a time within which, after receipt of permissions, the Sale Deed will be executed, does not make the Agreement to Sell fall in the first category provided in Article 54 i.e. Agreements which fix a date of performance. Once the*

Agreement does not fix a date for obtaining the permission, mere fixing of time for execution of Sale Deed after the permissions are obtained would not amount to fixing a time for completing the sale inasmuch as in such cases there is no identifiable date by which the agreement is to be performed. For an Agreement to Sell to fall in the first category in Article 54, either the agreement should fix a calendar date for performance or the date fixed should be ascertainable with an event certain to happen. However, in the subject Agreement, the commencement of the period of 90 days fixed for performance i.e. for execution of Sale Deed, was dependent on receipt of permissions required and formalities to be completed and for receipt/fulfilment of which, no time was fixed. Thus, merely because the agreement fixes a period of 90 days, from receipt of permissions/completion of formalities, for execution of Sale Deed, would not make the agreement fall in the category where date for performance is fixed. Reliance in this regard can be placed on Tosh Apartments Pvt. Ltd. Vs. Pradeep Kumar Khanna 54 (1994) DLT 318. Thus, the Agreement in hand has to be held to be falling in the second category i.e. where no date for performance is fixed and in which case the limitation of three years commences from the date when the plaintiff has notice that performance is refused."

19. Counsel for the plaintiff also relies on ***Rattan Lal (Since deceased) through his Legal Representatives v. S.N. Bhalla & Anr.***, reported at AIR 2012 Supreme Court 3094, in support of his argument that the income tax clearance is to be obtained by the seller and it is the liability of the seller to obtain income tax clearance and the purchaser has no role to play for the same. It is, thus, submitted by Mr.Behl that it is only when the seller refused to complete the transaction and execute a sale deed in favour of the plaintiff would the period of limitation commence.

20. Mr.Bahl, learned counsel for the plaintiff, has laboured hard to show that the plaintiff was all along ready and willing to pay the balance sale consideration but Sh.K.C. Sehgal during his life time and after his death his legal heirs were delaying execution of the sale deed.

21. Per contra, Mr.Krishnan, learned senior counsel appearing on behalf of

defendants no.1, 2 and 4, submits that the present suit is hopelessly barred by limitation and is liable to be dismissed on this ground alone. It is further submitted that the plaintiff has sought specific performance of a document titled as receipt-cum-agreement dated 26.7.2000, which was executed by the father of the defendants on 26.7.2000, while the present suit was filed in the month of November, 2006, after a gap of more than six years that is between the execution of the receipt-cum-agreement and the filing of the suit.

22. Learned senior counsel for the defendants has relied upon ***V.M. Salgaocar and Bros. V. Board of Trustees of Port of Mormugao And Anr.***, *reported at* 2005 (4) SCC 613, more particularly paras 20 and 21, in support of his submission that having regard to the mandate of Section 3 of the Limitation Act, it is the duty of the Court to dismiss any suit instituted after the prescribed period of limitation. Paras 20 and 21 read as under:

> "*20. The mandate of Section 3 of Limitation Act is that it is the duty of the Court to dismiss any suit instituted after the prescribed period of limitation irrespective of the fact that limitation has not been set up as a defence. If a suit is ex-facie barred by the Law of Limitation, a Court has no choice but to dismiss the same even if the defendant intentionally has not raised the plea of limitation.*
>
> *21. This Court in Manindra Land & Building Corporation Ltd. Vs. Bhutnath Banerjee and others reported in AIR 1964 SC 1336 held (para 9):-*
>
>> *"Section 3 of the Limitation Act enjoins a Court to dismiss any suit instituted, appeal preferred and application made, after the period of limitation prescribed therefor by Schedule I irrespective of the fact whether the opponent had set up the plea of limitation or not. It is the duty of the Court not to proceed with the application if it is made beyond the period of limitation prescribed. The Court had no choice and if in construing the necessary provision of the Limitation Act or in determining which provision of the Limitation Act applies,*

> *the subordinate Court comes to an erroneous decision, it is open to the Court in revision to interfere with that conclusion as that conclusion led the Court to assume or not to assume the jurisdiction to proceed with the determination of that matter.*"

23. It is further submitted by Mr.Krishnan that according to Article 54 of the Limitation Act, 1963, period of limitation for filing a suit for specific performance is 3 years from "*the date fixed for the performance or, if no such date is fixed, when the Plaintiff has notice that performance is refused*".
24. Mr.Krishnan further submits that in the present case, the plaintiff had got issued a legal notice dated 03.11.2000 (Exhibit PW-1/2), through his advocate, to Late Sri K.C. Sehgal (deceased father of Defendant Nos. 1, 2 & 4) requiring him to complete the formalities within 15 days of receipt thereof. A copy of the said legal notice dated 03.11.2000 has been Exhibit as PW-1/2. It is further submitted that the said legal notice dated 03.11.2000 was replied to by the advocate of Late Sri K.C. Sehgal vide his letter dated 21.11.2000, a copy of which has been exhibited as PW-1/5. In the said Reply letter dated 21.11.2000, it was specifically stated that the sale was to be completed by 09.09.2000 but the same was breached because the Plaintiff had failed to comply with the agreed pre-conditions. Admittedly, no reply or denial was issued by the Plaintiff to the said letter dated 21.11.2000 addressed by the advocate of late Sri K.C. Sehgal to the Plaintiff's Advocate. This fact has also been admitted by the Plaintiff in his cross-examination dated 09.11.2010. In his cross-examination of the same date, when put to para 5 of Ex. P2, the Plaintiff (PW1) also admitted that "*Sri K.C. Sehgal has not withdrawn his contention that the last date of performance was 09.09.2000.*" Thus, it is established that the time agreed

for performance of the contract expired on 09.09.2000, however, the Plaintiff failed and neglected to file the Suit within the statutory limitation of 3 years thereof.

25. Learned senior counsel for defendants no.1, 2 and 4 submits that the case, sought to be set up by the Plaintiff, is that despite issuance of the letter marked as Ex.P2, Sri K.C. Sehgal had agreed to conclude the sale but he failed to do so despite extending assurances and promises to that effect. Thus, in paragraph 21 of the plaint, pertaining to the alleged cause of action, it is stated by the Plaintiff that the cause of action "*...further arose when inspite of assurances and promises, late Sri K.C. Sehgal failed to complete the deal within the time agreed*".

26. In his cross-examination dated 19.04.2011, it is admitted by the Plaintiff (PW1) that the said phrase "time agreed" in paragraph 21 of the Plaint refers to 31.12.2000, and he further stated that "*It is correct that it implies therefrom that Mr. K.C. Sehgal was in breach as on 31.12.2000*". In other words, the Plaintiff's own case in his cross-examination is that the sale was liable to be completed latest by 31.12.2000, but was not so completed since Mr. K.C. Sehgal breached his obligations to complete the sale by that date.

27. Mr.Krishnan contends that *ex facie* the present Suit was not filed by the Plaintiff even within the statutory limitation of 3 years from the said date of 31.12.2000. Thus, even accepting the Plaintiff's case at its highest and assuming without conceding the same to be true, the period of limitation for filing the present Suit expired on 31.12.2003 and the present Suit is therefore barred by limitation.

28. It is further contended by Mr.Krishnan that it has been admitted by the plaintiff (PW1) in his cross-examination that no acknowledgment in writing was issued by Shri K.C. Sehgal during his lifetime or by his legal heirs (being the Defendants) prior to his death on 30.01.2002. Thus, in his cross-

examination dated 29.01.2011, the plaintiff (PW1) stated that no minutes of any alleged meeting between the Plaintiff and Late Sri K.C. Sehgal were ever recorded, and further that "*Sri K.C. Sehgal had never issued any communication in writing to the effect of his willingness to proceed with the agreement*". Further, though the plaintiff claims in his plaint, as also in his affidavit of evidence that the defendants (being the legal heirs of Late Shri K.C. Sehgal) gave further assurances of fulfilling the obligations under the alleged Agreement to Sell, any such meeting is denied by the defendants and it is admitted by the plaintiff (PW1) in his cross-examination dated 29.01.2011 qua his alleged meetings with the defendants that "*Nothing was given to me in writing*". The plaintiff has further stated that "*I did not call upon them ever in writing for completing the deal in terms of their assurances, claimed by me to have been given by them*". Admittedly, therefore, the plaintiff has no acknowledgment in writing from the Defendants within the meaning of section 18 of the Limitation Act, 1963.

29. It has further been stated by learned senior counsel appearing on behalf of defendants no.1, 2 and 4 that the same principles would apply even if the alternative relief of compensation prayed for in the present suit was to be considered, since the limitation for filing a "Suit for compensation for the breach of any contract" prescribed in Article 55 of the Limitation Act is the same as the limitation for filing a "Suit for Specific Performance of a contract" prescribed in Article 54 thereof, viz. 3 years.

30. In support of the submission that the present suit is barred by limitation, learned senior counsel for defendants no.1, 2 and 4 has relied upon the case of ***Ahmadsahab Abdul Mulla (2)* v. *Bibijan & Ors.***, reported at (2009) 5 SCC 462, more particularly Para 2, 6 and 9-11, which read as under:

> *"2. The relevant question is: whether the use of the expression "date" used in Article 54 of the Schedule to Limitation Act, 1963 (in*

short the "Act") is suggestive of a specific date in the calendar?

6. Article 54 of the Schedule to the Act reads as follows:

	"Description of suit	*Period of limitation*	*Time from which period begins to run*
	*	*	*
54.	*For specific performance of a contract.*	*Three years*	*The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused."*

9. According to Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edition 2005, the word `date' means as follows:

> *"Date. (As a noun) The point of time at which a transaction or event takes place; time given or specified; time in some way ascertained and fixed; in a deed, that part of the deed or writing which expresses the day of the month and year in which it was made, (2 Bl. Commn. 304; Tomlin). In Bement v. Trenton Locomotive, etc., Mfg. Co., 32 NLJ 513 (515), it is said : `The primary signification of the word date, is not time in the abstract, nor time taken absolutely but, as its derivation plainly indicates, time given or specified time in some way ascertained and fixed; this is the sense in which the word is commonly used. When we speak of the date of a deed, we do not mean the time when it was actually executed but the time of its execution, as given or stated in the deed itself.*
>
> *"Where a deed bears no date, or an impossible date, and in the deed reference is made to the `date', that word must be construed `delivery'; but if the deed bears a sensible date, the word `date', occurring in the deed, means the day of the date, and not that of the delivery" (Elph. 123, citing Styles v. Wardle, 4 B&C 908;*
>
> *"Date", though sometimes used as the shortened form of "day of the date", is not its synonym; but mean the particular time on which an instrument is given, executed, or*

delivered (Howard's Case, 1 Raym. Ld 480; Armitt v. Breame, 2 Raym Ld 1076; Pewtress v Annan, 9 Dowl 828, at pp. 834, 835).

"The word `date' is much more commonly descriptive of a day than of any smaller division of time" (per Simpson v. Marshall, 37 SLR 316).

"Date" means day, so that where a cover note providing for temporary insurance of a motor car expires "15 days after date of commencement" it runs for the full 15 days after the day on which it was to commence (Cartwright v. Mac Cormack; Trafalgar Insurance Co. (Third Party), (1963) 1 WLR 18)."

10. `Fixed' in essence means having final or crystallized form or character not subject to change or fluctuation.

11. The inevitable conclusion is that the expression `date fixed for the performance' is a crystallized notion. This is clear from the fact that the second part "time from which period begins to run" refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on `when the plaintiff has notice that performance is refused'. Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances."

31. Reliance has also been placed on ***Sunil Arora* v. *V.K. Vadhera*,** CS (OS) No. 1506 of 2014, more particularly para 18, which reads as under:

"18. In the case of ***Satya Prakash Gupta and Anr. V. Vikas Gupta and Ors.***, in R.F.A.(OS) No.23/2010 dated 24.11.2011, a Division Bench of this Court in para 13 has held as under:

"13. Rules of Limitation are meant to see that parties do not resort to dilatory tactics but to seek their remedy promptly. It is a policy of Limitation Acts that those who sleep upon their claims should not be assisted by the Courts and equal policy behind those acts, in that there shall be an end of litigation and protection shall be offered against stale demands. It is well settled that question of limitation can be raised at any time in the course of proceedings. Court can dismiss the suit on the ground of limitation even if the defence has not raised that plea, where on the face of the pleadings, the Court comes to the conclusion that the suit is barred by limitation."

32. Before the rival submissions of learned counsel for the parties can be considered, it would be useful to reproduce the Receipt Cum Agreement, sought to be relied upon by the plaintiff:

> " ***RECEIPT CUM AGREEMENT***
>
> *Received a sum of Rs.2,00,000/- (Rupees Two Lacs only) by way of :*
>
> *Cash of Rs.10,000/-.*
> *Cheque of Rs.1,90,000/- bearing No.404261 dtd. 26/7/00 drawn on Central Bank of India, GK-II, New Delhi.*
>
> *From Anil Kapoor s/o Late Sh.Inder Sain Kapoor r/o C-25, Defence Colony, New Delhi – 110024 as Part Payment towards the sale of my entire building No.R-80, Greater Kailash I, New Delhi along with land underneath which has been agreed at Rs.155,00,000/- (Rupees One Crore Fifty Five Lacs).*
>
> *The plot measures 300 sq. yds. and is free from all encumberances. The balance of Rs.153,00,000/- is to be paid at the time of possession and registration of the Sale Deed in favour of the Purchaser after the Seller has obtained all the requisite permissions.*"

33. There is no element of doubt upon reading of the receipt-cum-agreement that no date was fixed for completing the transaction. Hence the first part of Article 54 of the Limitation Act would not apply. The short point, which arises for consideration is when did the defendants decline performance.

34. Admittedly, the plaintiff issued a legal notice to late Sh.K.C. Sehgal on

3.11.2000 (Exhibit PW-1/2). In the said legal notice, reference to the receipt-cum-agreement was made, The payments made were also referred to. As per para 3 of the said legal notice dated 3.11.2000 (Exhibit PW-1/2), Sh.K.C. Sehgal was required to obtain income tax clearance and was also required to inform the plaintiff for registration of the sale deed and handing over of possession. By the said legal notice, it was regretted that Sh.K.C. Sehgal did not complete the formalities for completion of the contract and, thus, the plaintiff was entitled to specific enforcement of the contract. The plaintiff also expressed his readiness and willingness to complete the transaction. In the concluding para of the said legal notice, Sh.K.C. Sehgal was called upon to deliver possession of the property, receive the balance consideration and complete the transaction by execution of sale deed after obtaining clearance under Section 34-A of the Income Tax Act within fifteen days, failing which a suit for specific performance of the contract would be instituted at his cost.

35. In reply (Exhibit PW-1/5) to this legal notice, late Sh.K.C. Sehgal on 21.11.2000, while admitting execution of receipt-cum- agreement informed the plaintiff that the plaintiff had promised to send a copy of the agreement, which had not been done. Late Sh.K.C. Sehgal also informed the plaintiff that the main terms and conditions of the agreement to sell were not settled. The plaintiff was informed by late Sh.K.C. Sehgal that the plaintiff was to pay 25% of the sale consideration and only then Late Sh.K.C. Sehgal was to apply for income tax clearance, which the plaintiff failed to pay despite repeated demands having been made. Late Sh.K.C. Sehgal expressed that he was always prepared to comply with the terms of agreement to sell but the plaintiff had committed breach by not paying 25% of the sale consideration, which was a precondition, before applying for income tax clearance. It was also alleged in Exhibit PW-1/5 that the amount was not

being paid because the price of properties in Delhi had gone down. Late Sh.K.C. Sehgal also informed the plaintiff that the sale was to be completed by 9.9.2000 but the plaintiff failed to get the sale deed executed because of the breach mentioned. Late Sh.K.C. Sehgal also alleged that the amounts were not being paid by the plaintiff on account of shortage of funds. In the concluding part of the reply, the plaintiff was called upon by late Sh.K.C. Sehgal to settle the disputes, which may have arisen due to mistrust. Late Sh.K.C. Sehgal also called upon the plaintiff to send a copy of the agreement to sell to settle the dispute by sitting together.

36. It has been submitted by Mr. Bahl, learned counsel for the plaintiff that on receipt of the legal notice dated 3.11.2000 (Exhibit PW-1/2) and in response to the legal notice dated 21.11.2000 (Exhibit PW-1/5), late Sh.K.C. Sehgal accepted the execution of a receipt-cum-agreement. Late Sh.K.C. Sehgal also accepted that he was to apply for the income tax clearance but there is no reference that in fact he did apply for income tax clearance and, thus, it was late Sh.K.C. Sehgal, who was in breach of the agreement to sell.

37. On 11.11.2003 another notice was sent by the plaintiff to the legal heirs of late Sh.K.C. Sehgal. In this legal notice, the legal heirs were informed that their deceased father had entered into an agreement with the plaintiff on 26.7.2000. The legal heirs were also informed that late Sh.K.C. Sehgal was required to obtain income tax clearance and inform the date of registration of sale deed and hand over of the possession, which he failed to do despite repeated demands and reminders. On the demise of late Sh.K.C. Sehgal, legal heirs were requested to complete the transaction, which they had been promising to do but they never came forward. Fifteen days' time was also granted to complete the transaction, failing which the plaintiff would file a suit for specific performance. It may be noted that even in this legal notice

only a casual statement has been made that on the demise of late Sh.K.C. Sehgal his legal heirs were to complete the transaction, which they had been promising to do but they have not come forward.

38. The legal notice is devoid of any particular so is the plaint, which was filed on 3.11.2006, with regard to the date and time when any meetings had taken place with the legal heirs of the deceased or with Sh. K.C. Sehgal. It may also be noted that issuing of the legal notice dated 11.11.2003 has been denied by the legal heirs of deceased Sh. K.C. Sehgal.

39. The above submission of Mr.Behl, learned counsel for the plaintiff, is without any force for the reason that late Sh.K.C. Sehgal no doubt admitted the execution of receipt-cum-agreement but he did not agree to obtain the Income Tax permission. In fact, he informed the plaintiff through his counsel that a formal agreement, containing main terms and conditions had not been sent to him, which fact also seems evident upon reading of the receipt cum agreement, which has been extracted hereinabove. Late Sh.K.C. Sehgal also informed the plaintiff that the plaintiff had agreed to pay 25% of the sale consideration, which the plaintiff did not do.

40. It may also be noticed that after the legal notice (Exhibit PW-1/2) was replied to by late Sh.K.C. Sehgal on 21.11.2000 there was an absolute silence on the part of the plaintiff, which is evident from the fact that neither any document has been placed on record nor any evidence of an independent witness has been led by the plaintiff to show that any discussion took place between the plaintiff and late Sh.K.C. Sehgal. It may further be noticed that not only did late Sh.K.C. Sehgal inform the plaintiff that he had failed to pay 25% of the sale consideration but he also informed him that apparently either he did not have the money or on account of price of properties going down, the plaintiff did not want to conclude the sale transaction. Late Sh.K.C. Sehgal also offered to resolve the matter and

called upon the plaintiff to send a copy of the agreement to sell to him.

41. There is nothing on record to show that a copy of the agreement to sell was forwarded by the plaintiff to late Sh.K.C. Sehgal or the plaintiff, in any way, controverted the allegations made by Sh.K.C. Sehgal in the reply to the legal notice dated 3.11.2000 with regard to paying of 25% of the sale consideration prior to late Sh.K.C. Sehgal making an application to the Income Tax Department. On the contrary, the plaintiff in his legal notice dated 03.11.2000 had made it clear that in case Income Tax clearance was not obtained a suit for specific performance would be filed within 15 days.

42. At this stage, it would be useful to refer to the cross-examination of the plaintiff (PW-1). Relevant portions of the testimony of PW-1 read as under:

> "*Legal notice dated 21.11.2000-Ex.P2 was never withdrawn by the deceased Shri K.C. Sehgal. The demand of 25% of the total sale consideration was not withdrawn. (Vol. no question of withdrawal had arisen as no such demand was raised).*
>
> *Q. Whether the demand of 25% of the total sale consideration was ever withdrawn by Shri K.C. Sehgal?*
>
> *Ans. He did not demand 25% of the sale consideration, as such, there was no question of any withdrawal.*
>
> *(Witness is put to Ex.P2) It is correct that as per Ex.P2 the demand was raised by Shri K.C. Sehgal. (Vol. through the counsel). He did not withdraw the demand in writing. (Vol. he had proposed to complete the deal itself as per the original agreement).*
>
> *(Witness is put to Para 5 of Ex.P2). Shri KC Sehgal has not withdrawn his contention that the last date of performance was 09.09.2000. It is correct that he has not withdrawn the allegation to the effect that I had breached the agreement Ex.P1, in writing. It is correct that vide legal notice-Ex.PW-1/2, 15 days time was given by me to Sh.K.C. Sehgal for completion of the transaction. It is correct that the stand taken by Shri KC Sehgal in his legal notice was to the effect that ITCC would only be obtained after 25% of the*

sale consideration is paid to him. (Vol. it was not agreed between us).

Q. Why did you fix 15 days time by means of legal notice-Ex.PW1/2, as you yourself claimed that no time was fixed for performance?

Ans. As the defendant was not coming forward and was not complying with his part of the obligations, the period of 15 days was given by the counsel for compliance of the contractual obligations.

It is incorrect to suggest that 15 days period was given to Shri K.C. Sehgal for the reason that I had myself been maintaining that the last date of performance was 09.09.2000 or that it was already expired by then. Although it is correct that by means of Ex.PW1/2, Shri KC Sehgal was called upon to comply with his part of the obligations within 15 days and that in the event of failure, it was also mentioned that I would seek specific performance of the contract, however, it is incorrect to suggest that the same was based on the fact that the last date of performance was already over by 09.09.2000 or that Shri KC Sehgal had breached the agreement. (Vol. although the breach was committed, my understanding of sending the notice was that I was willing for complying with my part of the obligations).

Q. According to you whether Shri KC Sehgal had committed breach of the agreement by 03.11.2000?

Ans. As a matter of fact, he did not deny for completing the transaction but was dilly-dallying.

Q. According to you whether Shri KC Sehgal had complied with his part of the obligations by 03.11.2000?

Ans. No.

Q. Were you satisfied or otherwise convinced with his conduct and response in relation to the agreement or its performance, by 03.11.2000?

Ans. I was not satisfied with his conduct prior to 03.11.2000.

(Vol. at the same time, he was not denying to fulfil his part of the obligations).

Q. Did Mr.Sehgal complete his part of the obligations and formalities under the agreement by 03.11.2000?

Ans. No.

After the issuance of reply Ex.P2, nothing was recorded in writing as between us (Vol. we had number of meetings wherein assurances were given).

Q. Did you comply with the demand raised by Shri KC Sehgal by means of Ex.P2?

Ans. I did not pay 25% of the total sale consideration as claimed in Ex.P2. (Vol. as there was no such understanding or agreement to that effect).

Q. Since you claim that there was no such understanding or agreement and as Mr.KC Sehgal had been demanding 25% of the total sales consideration before proceeding further, there was a difference of opinion. Was this difference of opinion or dispute resolved in writing after November, 2000?

Ans. There was no resolution in this respect.

Q. Why did you not file a suit for specific performance of Ex.P1 after receipt of the reply Ex.P2 dated 21.11.2000 from the counsel of Mr. KC Sehgal?

Ans. I did not file the suit after receiving Ex.P2 as by means of the said reply they had called upon me for resolving the dispute and subsequently there had been a number of meetings wherein he had agreed for completion of the transaction.

The minutes of meeting were not recorded. Shri KC Sehgal had never issued any communication in writing to the effect of his willingness to proceed with the agreement. Shri KC Sehgal died some time in June/July, 2002. I cannot say whether the date of his death was 30.01.2002. I did not issue any communication in writing to Shri KC Sehgal between November, 2002 till January, *2002 or June/July, 20002. (Vol. we were having verbal communications). I did not write to him about his oral assurances any time. (Vol. since no need was felt by me in view of the fact that he was agreeable to proceed with the original agreement). It is incorrect to suggest that there was no oral communications or assurances by Shri KC Sehgal as claimed by me, it is for this simple reason that there had been no communication from my side, in writing with regard thereto. I did not write to his legal heirs after coming to know about his death. (Vol. I had met them personally). It was some time in November/December, 2002, that I met Mr.Ved, Mrs. Puri and Mrs. Anita Sehgal, for the first time, after the demise of Shri KC Sehgal. (Col. One of the LRs Shri Vijay was not available at that time). As per my information, Shri KC Sehgal had left four LRs whose names are Shri Ved Sehgal, Mrs. Anita Sehgal, Mrs. Puri and Mr. Vijay Sehgal. I had met them at the property in question – R-80, Greater Kailash, Par-I.*

Q. What was the outcome of meeting with LRs of Shri KC Sehgal?

Ans. They told me that they would be contacting the fourth partner Shri Vijay Sehgal and would go ahead with the deal.

Nothing was given to me in writing. It is incorrect to suggest that since there was no such assurances or representations ever given by the LRs, it is for this reason that there had been no writing. I did not call upon them ever in writing for completing the deal in terms of their assurances, claimed by me to have been given by them. …………"

43. It would also be useful to refer to the cross-examination of the plaintiff (PW-1) held on 19.4.2011. Relevant portion reads as under:

"………..

(Witness is put to portion A to A1 on page 11 of the plaint).

I have seen the portion A to A1. The same is based on my personal knowledge.

Q: What do you mean by the phrase 'time agreed' as appears in portion A to A1 on page 11 of the plaint"

Ans: It was 31.12.2000.

It is correct that it implies therefrom that Mr.K.C. Sehgal was in breach as on 31.12.2000."

44. During cross-examination held on 5.12.2012, the plaintiff (PW-1) has admitted that he was aware that one of the sons of late Sh.K.C. Sehgal, namely, Virender Sehgal, had pre-deceased late Sh.K.C. Sehgal, leaving behind his wife and two daughters. The plaintiff has also testified that he was not sure as to whether the daughters of late Sh.Virender Sehgal have been impleaded in the present suit or not but he volunteered to say that the wife of Sh.Virender Sehgal had been impleaded as defendant no.3.
45. During cross-examination, the plaintiff (PW-1) has admitted that the demand of payment of 25% of the total sale consideration by the plaintiff, as raised by late Sh.K.C. Sehgal in response to the legal notice vide his communication dated 21.11.2000, was not withdrawn. In effect, he was not willing to go ahead with the transaction or obtaining Income Tax clearance till 25% of sale consideration was paid to him.
46. On a question being asked that as per Exhibit P-2 a demand was raised by late Sh.K.C. Sehgal, the witnesses had answered that late Sh.K.C. Sehgal did not withdraw the demand in writing. The plaintiff volunteered to say that late Sh.K.C. Sehgal had proposed to complete the deal itself as per the original agreement.
47. During cross-examination, the plaintiff clarified that this demand was not withdrawn by Sh.K.C. Sehgal in writing. The plaintiff has also admitted as correct that vide legal notice dated 3.11.2000 (Exhibit PW-1/2) fifteen

days' time was granted by the plaintiff to Sh.K.C. Sehgal for completion of transaction.

48. On careful reading of the cross-examination of the plaintiff (PW-1), it is abundantly clear that by legal notice dated 3.11.2000 (Exhibit PW-1/2) fifteen days' time was granted by the plaintiff to late Sh.K.C. Sehgal to complete the transaction but late Sh.K.C. Sehgal in his reply dated 21.11.2000 (Exhibit PW-1/5) called upon the plaintiff to pay 25% of the sale consideration and forward a copy of the draft agreement. Late Sh.K.C. Sehgal did not withdraw his demands and there was absolute silence on the part of the plaintiff till the plaintiff issued a legal notice again to the legal heirs of late Sh.K.C. Sehgal, who died in the meanwhile on 30.1.2002. There is no evidence on record that after 21.11.2000 the plaintiff made any effort to either have the matter amicably resolved and did not forward a draft agreement to late Sh.K.C. Sehgal except for the averments made that the meetings took place after November, 2000, and even after the demise of late Sh.K.C. Sehgal, however, there is no evidence on record to support the same.

49. As per the own understanding of the plaintiff, late Sh.K.C. Sehgal was in breach of the agreement as on 31.12.2000. The plaintiff has instituted the present suit on 3.11.20006.

50. There is force in the submission made by Mr.Krishnan that in reply letter dated 21.11.2000 it was specifically stated by Sh. K.C. Sehgal that the sale was to be completed by 09.09.2000 but the same was breached because the plaintiff had failed to comply with the agreed pre-conditions. Admittedly, no reply or denial was issued by the plaintiff to the said letter dated 21.11.2000 addressed by the advocate of late Shri K.C. Sehgal to the Plaintiff's Advocate. This fact has also been admitted by the Plaintiff in his cross-examination dated 09.11.2010. In his cross-examination of the same

date, when put to para 5 of Ex. P2, the Plaintiff (PW1) also admitted that "*Sri K.C. Sehgal has not withdrawn his contention that the last date of performance was 09.09.2000.*" Thus, it stands established that the time agreed for performance of the contract expired on 09.09.2000, however, the Plaintiff failed and neglected to file the Suit within the statutory period of limitation of 3 years.

51. There is also force in the submission made by Mr.Dayan Krishnan that according to the plaintiff the phrase "time agreed" in paragraph 21 of the Plaint refers to 31.12.2000, and he further stated that "*It is correct that it implies therefrom that Mr. K.C. Sehgal was in breach as on 31.12.2000*". In other words, the Plaintiff's own case in his cross-examination is that the sale was liable to be completed latest by 31.12.2000, but was not so completed since Mr. K.C. Sehgal breached his obligations to complete the sale by that date.

52. It may also be noticed that a preliminary objection was raised by the defendants in their written statement that the present suit was barred by limitation. No replication to the written statement was filed.

53. While, it is a rather attractive argument that late Sh.K.C. Sehgal did not refuse the performance and in fact admitted that he had entered into a transaction with the plaintiff but this argument is without any force for the reason that as per the own understanding of the plaintiff late Sh.K.C. Sehgal was dilly-dallying and was not completing the transaction, which he was in breach as on 31.12.2000, in which case the period of limitation would begin from 31.12.2000 itself.

54. The stand of the plaintiff that he was holding negotiations with late Sh.K.C. Sehgal during his life time and after the death of late Sh.K.C. Sehgal with his legal heirs, is also without any force and there is no evidence to prove any meeting with either late Sh.K.C. Sehgal or his legal heirs. The plaintiff

has admitted during his cross-examination dated 24.08.2001 that "*I am not a real estate agent. I am a builder by profession. As a part of my business, I undertake construction/fresh construction at site after acquiring the sites*". Keeping in view the business background, it is not expected that after meetings no minutes would be signed.

55. There is also no explanation as to why the plaintiff did not safeguard his interest from 21.11.2000 to 30.1.2002 when late Sh.K.C. Sehgal expired and even after the death of Late Sh.K.C. Sehgal the plaintiff claims to have issued a legal notice to his legal heirs on 11.11.2003 (which the legal heirs denied having received).

56. For the reasons aforesaid, issue no.1 is decided against the plaintiff.

57. As far as issue nos.2 and 3 are concerned, they have not been pressed by learned senior counsel for defendants no.1, 2 and 4.

58. Issue nos.4 and 5 read as under:

> "4. *Whether the plaintiff is entitled to a decree of specific performance of agreement to sell dated 26.7.2000 in respect of the suit property? OPP*
>
> *5. In case the above issue no.4 is decided in the negative then whether the plaintiff is entitled in the alternative to a decree of Rs.1,55,00,000/- as prayed for in the plaint?*"

59. In view of the fact that issue no.1, regarding limitation, is decided against the plaintiff, issue nos.4 and 5 are also decided against the plaintiff.

60. The present suit is accordingly dismissed as being barred by limitation.

G.S.SISTANI, J.

JULY 8th, 2016

msr