

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

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**RSA-3753-2011 (O&M)
Date of Decision: 28.09.2017**

Jasvir Kaur

...Appellant

Versus

Darshan Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Munish Gupta, Advocate
for the appellant.

Mr. Mayank Mathur, Advocate,
for the respondent.

RAJBIR SEHRAWAT, J. (Oral)

This appeal has been filed by the plaintiff against the judgment and decree passed by the Lower Appellate Court, whereby the judgment and decree passed by the trial Court, granting the relief of specific performance in his favour, was modified and decree was passed to return the earnest money along with interest.

The facts of the case, in brief, are that on 26.11.1999 the defendant entered into an agreement to sell the land measuring 25 kanals to the plaintiff. The details of this land are given in the head note of the plaint. The total sale consideration for the suit land was ₹ 6.25 lacs and earnest money of Rs. 3 lacs was paid. The target date for execution of the sale deed was fixed as 27.05.2000. However, as it transpires from the record, the target date was extended subsequently four times and in the interregnum another amount of Rs. 55,000/- was paid on 11.07.2000. But, the defendant/respondent herein tried to opt out of the contract and did not

execute the sale deed. Resultantly, plaintiff-appellant herein had to file the suit for specific performance.

After parties led their evidence and hearing the parties, the trial Court decreed the suit in favour of the present appellant and issued a direction to the defendant/respondent herein to execute the sale deed in favour of the plaintiff within a period of two months. It is stated by learned counsel for the appellant that in pursuance to the judgment and decree, the plaintiff had deposited the balance sale consideration before the court.

However, against the judgment and decree passed by the trial Court, respondent herein preferred an appeal before the Lower Appellate Court. The Lower Appellate Court partly accepted the appeal by modifying the judgment and decree and restricted the relief to the refund the earnest money along with interest. While modifying the decree of the trial Court, the Lower Appellate Court recorded a finding that both the parties herein are guilty of mis-conduct, both of them have not brought the correct facts before the Court. It has been observed and recorded by the Lower Appellate Court that the documents Ex. P13 and Ex. P14, Ex. DW4/A to Ex. DW4/E which had bearing on the issues were not disclosed in the pleadings by either of the parties. However, the Lower Appellate Court upheld the finding of the trial Court regarding the validity of the agreement in favour of the plaintiff/appellant herein but restricted the relief to the return of the earnest money by giving reasons, firstly, that the entries regarding the previous transaction between the parties, as has come in evidence, were not disclosed by the plaintiff and the second reason given by the Court is that due to non-redemption of the mortgage by the vendor-defendant, the plaintiff would have been put to hardship, if the execution of sale deed was

ordered.

While arguing the case, learned counsel for the appellant has submitted that once the existence and validity of the agreement itself is contested by the defendant then he is estopped from taking shelter under Section 20 of the Specific Relief Act. It is his contention that Section 20 of the Act can only be applied if a person comes to the Court and admits the execution of the agreement and then shows to the Court the factors for bringing the case within the scope of Section 20 of the Act.

Second argument raised by learned counsel for the appellant is that entries which have been taken into consideration by the Lower Appellate Court were not pleaded by the defendant/respondent herein in his pleadings. Therefore, according to the counsel for the appellant, any evidence qua those entries could not have been taken into consideration by the Lower Appellate Court.

The third argument raised by the counsel for the appellant is that even if these documents are presumed then also case of the respondent/defendant does not fall under Section 20 of the Specific Relief Act.

Lastly, the counsel has argued that the Court has observed that it would be the hardship for the plaintiff in this case and therefore, the specific performance cannot be ordered. It is his contention that hardship to the plaintiff can not be a ground to decline relief to the plaintiff. This is a contradiction itself.

On the contrary, counsel for the respondent/respondent has pleaded that it has come in evidence that at the time of entering into an agreement the wife of the defendant was seriously ill and she also expired

in continuation of that illness only. It is his submission that he has brought on record the evidence to show the illness of his wife by examining the witnesses i.e. DW5 and DW6.

Learned counsel has further argued that the evidence which has come on record, even if not preceded by the necessary pleadings, categorically shows that there had been transaction between the parties earlier also regarding some land, including the part of the land which is purported to be sold through the present agreement to sell.

It is his further submission that there is nothing on record that any action was taken by the plaintiff/appellant herein in pursuance to those agreements. Therefore, it is his contention that this time also, although the agreement is held as entered into but it was intended not to be acted upon, the same having been entered into under distressing circumstances, which compelled the respondent to enter into this agreement, just to arrange some money due to the illness of his wife.

Having heard learned counsel for the parties and perused the record, this Court is of the considered opinion that the conclusion arrived at by the Lower Appellate Court regarding non-grant of specific performance of the agreement does not suffer from any illegality. However the reason given by the Lower Appellate Court for this deserve to be clarified.

Hardship for the plaintiff in case a decree of specific performer is passed, as has been recorded by the Lower Appellate Court, is no ground for invoking Section 20 of the Specific Performance Act. Secondly, even the fact that both the parties might not have pleaded the correct facts in their pleadings, may not be a ground for invoking Section 20 of the Act, in favour of one of the parties.

However, the case of the defendant/respondent herein is otherwise covered by the scope of Section 20 of the Act. The provision of Section 20 of the Specific Relief Act is produced herein below:-

20. Discretion as to decreeing specific performance

(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1 : Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2: The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff, subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.

Considering the scope of the Section 20 of the Act with reference to the facts and evidence of the present case, it is quite clear that the conduct of the appellant/plaintiff and the circumstances of the defendant/respondent herein, cummulatively shows that the appellant herein

was in an advantageous position over the respondent/defendant.

It has come in evidence by way of documents Ex. P14 and the documents Ex. DW4/A to Ex. DW4/E that there had been similar kind of transactions/agreements between the parties earlier also, one being regarding part of the present property as well. However, the plaintiff/appellant herein had never resorted to seek the specific performance of those agreements, despite the fact that the earnest money amounting Rs. 2 lacs was alleged as advanced in those transactions also. Although, the extent of the veracity of those transactions may not be the subject matter of the present proceedings, the same not being a fact in issue in the suit, however, that definitely leads to an inference that, the possibility of the present agreement also being executed for not being enforced between the parties, cannot be ruled out. This is coupled by the fact that respondent herein had proved on record that his wife was ill and also the fact that she expired in the year 2001 itself. Therefore, it is quite possible that the money might have been obtained by the defendant for the purpose of treatment of his wife and for that purpose only the agreement in question might have been entered into between the parties. Although, this is only an inference and not a proved fact, however, it definitely reflects the conduct of the plaintiff and the circumstances of the defendant at the time of execution of the agreement; leading to situation where the plaintiff is in an advantageous position over the defendant.

The next contention of the learned counsel for the appellant is that the documents Ex. P14 and Ex. DW4/A to Ex. DW4/E are beyond the pleadings and therefore, the same cannot be taken into consideration by the Court, also deserves to be rejected. It has to be kept in mind that Section 20

of the Act is not giving any right to the defendant to avoid the specific-performance of an agreement. The provision of the Section 20 of the Act is meant only for the guidance of the Court in exercise of its judicial discretion. Therefore, since it is not relating to right of the plaintiff or the defendant, hence, the strict rules of pleadings would not be applicable qua the documents which are referred by the defendant only to show the conduct and circumstances of the parties at the time of entering into the agreement. The court can very well take into consideration any document, which has been proved on record, to frame its opinion for the purpose of the exercise of the discretion as contemplated under Section 20 of the Act, irrespective of the fact whether those documents have been pleaded in the pleadings of the parties or not.

The next contention of the learned counsel for the appellant that once the defendant chooses to contest the validity of the agreement and fails in that effort then Court cannot exercise its discretion in his favour under the Section 20 of the Act, is also without any merit. The scheme of the Act and also the provision of Section 20 of the Act makes it clear that scope of Section 20 of the Act starts only after a plaintiff has succeeded in proving the existence of valid agreement, which otherwise is not voidable at the instance of the defendant/vendor. The purpose of Section 20 itself is to visualize the situation where although agreement is proved between the parties, still it may not be appropriate to grant specific performance of agreement, keeping in view the factors mentioned in Section 20 of the Act. Hence, this arguments of the learned counsel is also rejected. Mere fact that the defendant-vendor contested the validity of agreement but plaintiff succeeded in proving the validity of agreement, is no ground to

exclude the applicability of Section 20 of the Act.

At this stage, learned counsel for the appellant prays that since the appellant has been fighting the litigation for a long time and the respondent has enjoyed the money paid by the plaintiff and also the property, therefore, she should be granted some compensation on that account. Learned counsel has placed reliance upon the judgment of the Hon'ble Supreme Court rendered in 2007 (1) C.C. Cases 121 (S.C.) titled as **Jai narain Parasrampuriah (dead) & Ors. Vs. Pushpa Devi Saraf & Ors.**

In that case Rs. 50 lacs was awarded as compensation. Thus, prayer is that appellant in this case also be granted the same amount of compensation. However, this Court finds itself unable to agree with the contention of the learned counsel. When the Court is denying the specific performance on the ground that the situation of the defendant at the time of entering into agreement was disadvantageous to the defendant, on account of illness of the wife, then to burden him with such a heavy and punitive compensation would again be defeating the application of Section 20 of the Act. The granting of such high amount of compensation might even surpass a specific performance itself in terms of money. Otherwise also Section 21 (5) of the Act prescribes that unless the compensation is specifically claimed. Court shall resist from granting the relief of compensation. In the present case there is no such prayer/claim by plaintiff in the plaint.

It is further argued by learned counsel for the appellant that since in the written statement itself the defendant had pleaded that the amount taken was intended to be a loan @ 1.56 per month, therefore, it is his submission that the appellant should be awarded the interest on the amount paid by her at this rate. However, this contention also cannot be

accepted for the simple reason that this is only a pleading taken in the written statement clubbed with the pleading that the amount received by defendant was only Rs. 40,000/-. It is not even the case of the plaintiff/appellant herein that the amount paid was only Rs. 40,000/-. Therefore, only one part of the pleading cannot be made a ground for awarding the interest on an amount, which is not admitted into the pleadings. The rate of interest mentioned above was not part of the agreement between the parties.

However, since the appellant has been contesting the case for a long time and this is also a fact that on record that earnest money was paid to the defendant, therefore, the plaintiff/appellant herein deserves to be granted atleast the interest on that amount at a reasonable rate.

Confronted with this aspect the, learned counsel for the respondent agreed that the interest may be awarded in favour of the appellant @ 9% P.A. on the entire amount paid to the respondent/defendant and also the amount deposited with the Court in pursuance to the decree.

This Court finds this to be reasonable interest for the long duration for which the money was paid by the appellant. Therefore, it is ordered that the amount paid by the appellant to the respondent and also the amount deposited with Court shall carry interest @ 9% P.A. from the date of payment/deposited till it is actually returned by the defendant .

No other argument was raised.

In view of the above, the present appeal is partly allowed in the above terms by modifying the decree qua grant of interest only, as mentioned above. Rest of the judgment and decree passed by the Lower Appellate Court are upheld.

September 28, 2017

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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No