

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.1883 of 2018

ORDER:

The unsuccessful plaintiffs filed this Civil Revision Petition, under Article 227 of the Constitution of India, assailing the orders, dated 06.03.2018, of the learned VI Additional District Judge, Markapur, made in OS.No.9 of 2017 whereby, the learned Additional District Judge directed the plaintiffs to deposit the balance of sale consideration on or before 28.03.2018.

2. I have heard the submissions of Sri P.R. Prasad, learned counsel representing Sri N. Sriram Murthy, learned counsel for the petitioners-plaintiffs, and of Sri Aravala Sreenivasa Rao, learned counsel for the respondent-defendant. I have perused the material record.

3. At the outset, it is to be noted that, on 06.03.2018, the trial Court having framed the issues and while adjourning the trial of the suit to 26.04.2018 ordered as follows: - **'The plaintiffs shall deposit the balance sale consideration before the court on or before 28.3.2018.'** As noted, the said direction is now under challenge.

4. Learned counsel for the petitioners-plaintiffs stated as follows: - **'The suit is filed for specific performance of a contract of sale, dated 04.04.2014, in respect of Ac.39.75 cents of land agreed to be sold for a total consideration of Rs.1,30,38,000/-. The plaintiffs paid, in all Rs.18,00,000/-, towards advance and part of sale consideration. The balance of sale consideration is payable by 30.09.2014. However, the consideration is agreed to be paid at the rate of Rs.3,28,000/- per acre on ascertainment of the actual extent available for sale.**

Therefore, the defendant is under an obligation to have the land measured by a qualified mandal surveyor and obtain a NOC from the Endowment Department as Velugonda Project Canal is passing through the land. The defendant obtained NOC. Notices were exchanged. There was no assurance by the defendant with regard to conduct of survey. Eventually, the plaintiffs filed the suit for specific performance, *inter alia*, stating various grounds and also stating that the defendant is intentionally avoiding executing a regular registered sale deed with an oblique motive to gain illegally and unlawfully at the expense of the plaintiffs though the plaintiffs are always ready and willing to perform their part of the contract. The defendant filed a written statement resisting the suit. On 06.03.2018 the trial Court, having framed the issues and while adjourning the trial of the suit to 26.04.2018, directed the plaintiffs to deposit balance sale consideration on or before 26.04.2018. The trial Court ought not to have given such a direction under facts and in law.'

4.1 Learned counsel, having placed reliance on certain precedents and clause (c) of Section 16 of the Specific Relief Act, 1963 and the explanation appended thereto, further contended as follows: 'The trial Court ought to have seen that there is no obligation under law to deposit the balance of sale consideration into Court in order to show readiness and willingness on the part of the plaintiffs. It is not essential for the plaintiffs to tender to the defendant or to deposit into Court any money except when directed by the Court after hearing both parties. The plaintiffs are only required to aver performance of or readiness and willingness to perform the contract according to its true construction. The direction to deposit the balance sale consideration without an application from either of the parties or without an opportunity of hearing

to both parties and without assigning any valid reasons is unsustainable. The order/direction which was merely issued after framing of the issues in the suit is unsustainable under facts and in law and is, therefore, liable to be set aside.’

5. Per contra, learned counsel for the defendant contended as follows: -

‘The plaintiffs ought to have deposited the balance of sale consideration at the time of institution of the suit to show their readiness and willingness. Their failure to do so and their further conduct in assailing the direction given by the trial Court by filing this revision would show that they have no capacity to pay the balance of sale consideration and that they are never ready and willing to perform their part of the contract. Non tendering of the amount under the contract of sale and not depositing the amount into court despite a direction by the trial Court would certainly lead to an inference that the plaintiffs have neither the capacity to pay the balance sale consideration nor are ready and willing to perform their part of the contract. The trial Court which framed the issues after going through the pleadings was of the view that the instant case is a fit case to direct the plaintiffs to deposit the balance of sale consideration; and, therefore, issued a direction accordingly on the date the issues are framed. Hence, the trial Court need not be faulted. The plaintiffs’ revision is devoid of merit and is liable to be dismissed.’

6. In reply, learned counsel for the plaintiffs submitted as follows: - ‘This is not a case where the defendant is willing to execute the registered sale deed and the trial Court is inclined to grant a decree directing the defendant to execute the registered sale deed immediately on the deposit of the balance of sale consideration as directed by the trial Court. Therefore if the huge balance of sale consideration is deposited, it will be lying idle in the court deposit. In the

event it is deposited in a fixed deposit also it would not fetch the market rate of interest. ’

7. In the backdrop of facts and contentions, it is necessary to first refer to Section 16 of the Act, which reads as under:

16. Personal bars to relief.—Specific performance of a contract cannot be enforced in favour of a person—

- (a) who would not be entitled to recover compensation for its breach; or
- (b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or
- (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c),—(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court; (ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

No doubt, having regard to the facts and circumstances of a given case, the trial Court in its discretion may direct the plaintiff to deposit the balance of sale consideration. It is also true that in a suit for specific performance of a contract, the plaintiff has an obligation to aver and prove that he has either performed or has always been ready and willing to perform the essential terms of the contract, which are to be performed by him, other than the terms, the performance of which has been prevented or waived by the defendant. It is also to true that as per Clause ‘c’ of Section 16 of the Act, where a contract involves the payment of money it is not essential for the plaintiff to actually tender to the defendant or deposit in Court any money except when so directed by the Court; but, the plaintiff must aver performance of or readiness and willingness to perform the contract according to its true construction. Even in

cases where the trial Court was to exercise the discretion in the matter of directing the plaintiff to deposit the balance of sale consideration, it has to give an opportunity of hearing to both sides and then pass a reasoned order. The trial Court, having regard to the terms of the contract of sale, is also required to examine as to whether the sale consideration payable in respect of the property agreed to be sold is a fixed sum or whether the same has to be determined after measuring the property agreed to be sold and after arriving at the actual extent of the same. In the latter case, the consideration payable and the balance sale consideration payable are dependent upon the extent of the land that would be determined only after conducting survey of the land agreed to be sold under the contract of sale. Therefore, in certain cases, there may be a necessity of localising and measuring the land for ascertaining actual extent agreed upon to be sold and purchased under the contract of sale. Consequently, the answer to the question - whether a direction can be given to the plaintiffs to deposit the balance of sale consideration into Court? - depends upon the facts and circumstances of the case. Further, before giving a direction of the present nature, the trial Court is required to take a considered decision and pass a reasoned order after affording an opportunity of hearing to both sides. In the case on hand, it is also the contention of the plaintiffs that as per one of the terms of the contract of sale it is the obligation of the defendant, who is the executant, to have the property measured and the extent ascertained for the purpose of ascertaining the sale consideration as per the rate agreed to between the parties and that as per the said recital in the contract of sale the survey and measurement of the said property is a principal requisite for not only ascertaining the balance of sale consideration & registration of the sale deed but also for arriving at the extent of the land agreed to be sold and its

consideration. In the instant case, a bald direction is given by the trial Court without affording an opportunity of hearing to both parties that too without assigning any reasons in support of the said direction. It is trite to observe that the need to give reasons has been held to arise out of the need to minimise chances of arbitrariness and induce clarity. Giving reasons, apart from being an essential feature of the principles of natural justice, ensures transparency and fairness, in the decision making process. Reasons are indicative of application of mind and giving reasons is also essential when the order is amenable to further avenues of challenge. Viewed thus, this Court finds that without going into the merits of the matter, the order impugned can be set aside and the revision can be disposed of with appropriate directions.

8. Accordingly and in the result, without going into the merits of the matter, the Civil Revision Petition is allowed and the direction impugned, which was issued without assigning any reasons in support of the said direction and without affording an opportunity of hearing to the parties to the *lis*, is set aside leaving it open to the trial Court to consider the matter afresh and in accord with law at an appropriate stage of the trial, if the trial Court desires so to do, having regard to the facts and circumstances of the case.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

30.07.2018

Vjl