

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

* * * *

C.C.C.A. NO.94 OF 2002

Between:

Suresh Chukkapalli ... Appellant

and

Dr.S.Ali Abbas Hussain and others ... Respondents

DATE OF JUDGMENT PRONOUNCEMENT: 28th AUGUST, 2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

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1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
 2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
 3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

T.AMARNATH GOUD, J

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! Counsel for Appellant

: Sri Vivek Jain and
Sri B.Vijaysen Reddy

^ Counsel for respondent No.1

: Sri Sunil B.Ganu

^ Counsel for respondent No.2

: Smt. Manjiri S.Ganu

^ Counsel for respondent No.3

: Sri V.Manohar Rao

CASES REFERRED: --

1. AIR 2003 Delhi 15 (D.B.)
2. (1969) 2 SCC 539
3. AIR 2002 AP 369
4. 2002 (4) ALT 448 (D.B.)
5. (1990) 4 SCC 147
6. (2016) 1 SCC 762
7. AIR 1946 PC 97
8. AIR 1968 SC 1028
9. (2002) 9 SCC 582
10. AIR 2014 (CAL) 92 (F.B.)
11. ILR (2012) V DELHI 703
12. (2010) 8 SCC 1

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J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

By judgment and decree dated 28.11.2001, the learned I Senior Civil Judge, City Civil Court, Hyderabad, dismissed O.S.No.547 of 1996 on his file. Aggrieved thereby, Suresh Chukkapalli, the plaintiff therein, is in appeal.

O.S.No.547 of 1996 was instituted seeking specific performance of an oral development agreement entered into by and between the plaintiff and Dr.Ali Abbas Hussain, a medical practitioner, the defendant, in relation to the suit schedule property owned by the defendant and for delivery of vacant physical possession thereof to the plaintiff for development in accordance with the stipulations agreed upon between them. He also sought a direction to the defendant to execute and register a power of attorney in his favour, *inter alia*, authorising him to deal with 40% of the built up area after such development.

The property bearing Municipal No.6-3-883/A&B, admeasuring 2560 square yards, situated at Somajiguda junction, Punjagutta, Hyderabad, is the suit schedule property.

The plaint averments read as under:

The plaintiff is engaged in the business of acquisition, development and sale of immovable property, comprising flats, commercial and other units. He is a Director of Front Line Constructions Limited which is engaged in the business of civil construction and development by erecting multi-storeyed buildings and selling them either as a whole or in units. The modus operandi of the plaintiff and the company is to acquire immovable properties worthy of development from their owners with the stipulation that

the same would be developed by investing their own funds and in consideration of the owners entrusting their properties, certain percentage of the constructed area would be given to them and the balance area would be retained/owned by the plaintiff or the company, as the case may be.

The case of the plaintiff is that the defendant approached him through one Mohd. Masiuddin Farooqui (P.W.5) representing that he owned the suit schedule property and that he desired the old building standing thereon should be demolished so that a building with modern taste, in line with the present market demand, should be constructed. The plaintiff visited the suit schedule property thereupon and having evaluated its commercial potential, he proposed that it was best suited for a commercial building and that as the area fell in a residential zone, he informed the defendant that change of land use would have to be obtained from the Government. He also pointed out to the defendant that a considerable part of the land would be affected in road-widening and relaxation in respect of statutory setbacks would have to be obtained to avail the total floor space index. The defendant agreed to his suggestions and thereafter, the parties concluded the contract. The terms and conditions of the development of the suit schedule property deliberated upon and concluded between the parties, set out in para 5, read as under:

‘(i) The Plaintiff shall draw up petitions, plans and other documents at his own cost and expense , necessary for seeking Change of Land use as also for relaxation of Mandatory Open Spaces and coverage and shall follow up the matter with various Statutory Authorities and the Government.

(ii) That upon receipt of the change of land and also the relaxations of open Spaces, the parties shall apply to the Appropriate Authority under Chapter XX C of Income tax Act, 1961 and obtain NO Objection as laid down under the said Act. Simultaneously therewith , the Plaintiff shall get the Municipal Plans drawn and submit the same for approval by paying requisite fees.

(iii) The Defendant shall sign all such petitions and plans as may be required by the Plaintiff. The Plaintiff shall pay for and bear all charges, fees payable under any Regulation to the Government or otherwise without seeking any reimbursement thereof from the Defendant.

(iv) The Defendant shall within a period of 30 days from the date of receipt of No Objection from the Appropriate Authority hand over physical vacant possession of the Suit schedule Property to the Plaintiff to enable him to develop the property.

(v) That at the time of handing over of Possession of the Suit Schedule Property the Plaintiff shall pay a sum of Rs.40,000,00/- [Rupees Forty Lacs Only] as Interest free Refundable Deposit to the Defendant.

(vi) The construction shall be completed with in period of [24] months from the date of handing over of Possession of the Suit Schedule Property to the Plaintiff.

(vii) The Plaintiff shall invest his own monies and construct a commercial building utilising the maximum permissible constructed area after obtaining necessary permissions from the Corporation.

(viii) That out of total constructed area, the Defendant shall own and possess 60% [Sixty Percent] of the built up [including the circulation areas] and the balance of 40 % of the constructed areas shall be the ownership of the Plaintiff. The Defendant shall execute and register Power of Attorney authorising the Plaintiff to deal with the undivided share of Land as also the constructed areas falling to his share and also pertaining to construction of building.

(ix) The Interest Free Security Deposit shall be refunded to the Plaintiff simultaneously with the areas falling to the share of the Defendant are ready for occupation.'

The plaintiff retained M.N.Rao (P.W.3), a renowned architect, and got the plans drawn up in consultation with the defendant. He engaged another expert architect, Upal Ghosh (P.W.8), to give his opinion on the plans drawn up by M.N.Rao (P.W.3). Having accepted the assignment, Upal Ghosh (P.W.8) came to Hyderabad on 06.06.1995, visited the suit schedule property and scrutinised the plans drawn up by M.N.Rao (P.W.3). The defendant accompanied the plaintiff to Hotel Golconda, Hyderabad, where Upal Ghosh (P.W.8) was staying and participated in the discussions. He appreciated the suggestions made by Upal Ghosh (P.W.8) on the plans drawn up by M.N.Rao (P.W.3). After conclusion of the contract, the plaintiff drew up a petition for change of land use and got the same signed by the defendant, after verification. The plaintiff then submitted the petition and followed up the matter with the Government of Andhra Pradesh. After considerable effort on his part, the Government was pleased to accede to the request for change of land use and issued G.O.Ms.No.84 dated 21.02.1995

(Ex.A4/Ex.B36) approving the change of use of the suit schedule property from residential to commercial. This change of land use was subject to payment of a sum of Rs.8,562/- towards development charges and a further sum of Rs.2,000/- towards processing fee, payable to Hyderabad Urban Development Authority (HUDA) so as to obtain the final order, as evidenced by the Government Memo bearing No.1231/11/94-2 dated 29.11.1994 (Ex.A3/Ex.B39). The plaintiff claimed that, as per the agreement, he paid the development charges and also the processing fees, *vide* Challan No.4 dated 16.12.1994 (Ex.A1/Ex.B1). The plaintiff was advised to approach the Government of Andhra Pradesh for getting the maximum floor space index by seeking relaxation of setback areas and he drew up applications and plans apart from corresponding with the Government and also the Municipal Corporation of Hyderabad. Upon his persuasion, the authorities accepted the claim for relaxation of the mandatory open areas and issued G.O.Rt.No.1410 dated 12.12.1995 (Ex.B43). The plaintiff spent huge amounts on payment of professional fees, drawing up of plans and other miscellaneous expenses. The defendant signed the applications, plans, etc., whenever the plaintiff required him to do so. The plaintiff stated that issuance of G.O.Rt.No.1410 dated 12.12.1995 (Ex.B43) brought the matter to the stage of drawing up of an agreement for seeking clearance from the Income-tax authorities under Chapter XX C of the Income-tax Act, 1961 but the defendant started avoiding him on one pretext or the other. He initially did not notice the change of behaviour on the part of the defendant as, in the course of interaction during this period, he had picked up friendship with the defendant. When the evasion on the part of the defendant became too obvious, he had to give a fresh look to the entire scenario and the fact which emerged was that the defendant was resiling from the agreement. While the

matter stood thus, he went to Guntur to see his parents and while he was there, he came to know through Minhaj Amjad (P.W.6), a friend, that the defendant was negotiating for disposal of the suit schedule property with some other parties. He immediately called the defendant on phone but in vain. He rushed to Hyderabad and made efforts to meet the defendant but to no avail. As the defendant was evading performing his part of the contract and resiling therefrom but he had performed and discharged his obligations and was willing and ready to perform further acts so as to discharge the remaining obligations, the plaintiff claimed entitlement to get the agreement enforced. He accordingly prayed for a decree of specific performance.

The written statement reads as follows:

The defendant denied that there was any agreement entered into between himself and the plaintiff for development of the suit schedule property. He asserted that the plaintiff did not approach the Court with clean hands and had not put forth the true and correct version. He denied knowledge of the plaintiff's experience in acquisition, development and sale of immovable properties or that he is a Director of Front Line Constructions Limited or whether the said company was also engaged in the business of civil construction. He denied the plaintiff's claim that he had approached the plaintiff through Mohd. Masiuddin Farooqui (P.W.5) or that he had desired that his old building in the suit schedule property should be demolished and a building with modern taste, in line with the present market demand, should be constructed. He denied that he ever offered the suit schedule property for development to the plaintiff. He further denied that the plaintiff visited the suit schedule property or evaluated its commercial potential. He denied the other claims put forth by the plaintiff in this regard including the terms of the alleged oral agreement set out in para 5 of the plaint. He admitted that the

Government of Andhra Pradesh was pleased to accede to the change of land use of the suit schedule property but denied that the plaintiff paid the necessary charges in this regard. He claimed that he himself paid the amount under the Challan (Ex.B1). He admitted that G.O.Rt.No.1410 dated 12.12.1995 (Ex.B43) was issued by the Government with regard to relaxation of norms but denied that the same was due to the follow-up by the plaintiff and that he spent huge amounts on professional fees, drawing up of the plans or other miscellaneous expenses. He stated that he had been planning to raise a complex on his property and for the said purpose, he filed an application before HUDA for knowing the zonal use of the land. Having received a reply to the effect that his property was situated in a residential zone as per the master plan, but as neighbouring properties had been converted into non-residential complexes, he knew that he had to apply for and obtain change of land use from the appropriate authority. He could not take immediate steps as he had to go abroad and was also tied up with his professional engagements. After some time, he resumed plans to develop the property. At that stage a family friend, Mir Nasir Ali Khan (P.W.7), happened to meet him and when the defendant revealed his plan, Mir Nasir Ali Khan (P.W.7) stated that he was also trying to get change of land use in respect of the property belonging to his uncles, which he proposed to develop, and promised to guide the defendant and help him on the strength of their friendship. When the application for obtaining change of land use was prepared, the defendant approved the same after correcting it and submitted it to the authorities. Much later, Mir Nasir Ali Khan (P.W.7) introduced the defendant to the plaintiff stating that he is an engineer by profession having a business in automobiles. The defendant asserted that there was never any discussion or agreement between the plaintiff and

himself for the development of the suit schedule property. He stated that he came to know later that Mir Nasir Ali Khan (P.W.7) and his brother along with the plaintiff and his brother formed a company called Front Line Constructions Limited. The defendant claimed that he actively pursued his application for obtaining the change of land use and submitted various documents and plans to the authorities. During his talks with Mir Nasir Ali Khan (P.W.7), he suggested that the defendant should utilise the services of M.N.Rao (P.W.3) for preparing the plans for submitting to the authorities in this regard. The defendant was informed by Mir Nasir Ali Khan (P.W.7) that M.N.Rao (P.W.3) was engaged for his other projects and it was in these circumstances that M.N.Rao (P.W.3) prepared the plans. The defendant submitted the plans to the Municipal Corporation of Hyderabad with an endorsement that it was for MCH use only. The defendant alleged that the plaintiff, with the collusion of Mir Nasir Ali Khan (P.W.7), obtained the plans from the concerned authorities. He stated that after follow-up with the Government, he was called upon to deposit Rs.10,562/- towards the fee for change of land use. The said amount was to be deposited and the Challan was to be produced before HUDA. Again, Mir Nasir Ali Khan (P.W.7) offered to have the amount deposited and gave the defendant the Challan. Accordingly, the defendant gave money to Mir Nasir Ali Khan (P.W.7) who sent it to the bank through his office employee. After receiving the Challan, the defendant submitted the same to HUDA with a covering letter through an employee of Mir Nasir Ali Khan (P.W.7). Thereafter, G.O.Ms.No.84 dated 21.02.1995 (Ex.A4/Ex.B36) was issued. The original of this G.O. was received by him through certificate of posting directly from HUDA. He stated that the plaintiff curiously obtained a duplicate copy of the Challan, which had to be retained by HUDA, and filed the same in the suit proceedings. He

further stated that he personally submitted the plans, using the services of M.N.Rao (P.W.3), in terms of the G.O. Thereupon, a report was submitted recommending relaxation of setbacks and the final G.O. (Ex.B43) was issued. He stated that he was in possession of the original G.O. He asserted that he had neither engaged the services of the plaintiff nor was an agreement entered into with him for the development of the suit schedule property. He claimed that the plaintiff obtained various documents pertaining to the property from the authorities for laying a false claim. He stated that after receipt of the second G.O., he also received a communication from the MCH calling upon him to submit the plans for the proposed construction and asserted that he had not done so till date. He stated that Mir Nasir Ali Khan (P.W.7) was aware that the defendant was contemplating to take up development of the suit schedule property on his own and on an occasion when his architect from Delhi was in city, the defendant accompanied him as desired. But for the same, the defendant stated that all the other allegations made relating to his meeting with Upal Ghosh (P.W.8) were incorrect and false. He stated that he met Upal Ghosh (P.W.8) for not more than ten minutes only on the suggestion made by Mir Nasir Ali Khan (P.W.7). He claimed that the said casual meeting was being misused by the plaintiff in collusion with Upal Ghosh (P.W.8) to suit their purpose. He stated that even prior to 1994, he had been intending to develop the suit schedule property and engaged the services of reputed architects, namely, A.A. Associates, for preparing plans. However, by then he had not obtained the permission for change of land use and it was only subsequently that he corresponded with HUDA to know the exact position with regard to the nature of the land use. He was informed in writing that the land was earmarked for residential purpose and that substantial part of his property would be affected in road-

widening. He stated that he was therefore well aware that he had to apply for change of land use and also seek relaxation regarding setbacks for obtaining maximum benefit of the floor space index. He denied that the plaintiff took necessary steps in this regard. He stated that he engaged the services of M.N.Rao (P.W.3) through the good offices of Mir Nasir Ali Khan (P.W.7) for preparing plans and even at that stage, he had furnished the plans prepared by A.A. Associates as the basis for preparing fresh plans. He claimed that he adequately remunerated M.N.Rao (P.W.3) for his services and asserted that the plaintiff managed to obtain some of the documents to lay a false claim. He emphatically denied that there was any agreement between himself and the plaintiff, much less a concluded contract, for development of the suit schedule property. Even assuming, without admitting, that the plaintiff had taken steps for obtaining exemptions as pleaded, the defendant stated that they were without his knowledge or consent and in any event, not because of any agreement. He pointed out that the manner in which the said agreement was stated to have been entered into was inconceivable. He stated that Mir Nasir Ali Khan (P.W.7) and Mohd. Masiuddin Farooqui (P.W.5), who were his family acquaintances, had joined hands with the plaintiff to knock away his valuable property. He alleged that Mir Nasir Ali Khan (P.W.7), Mohd. Masiuddin Farooqui (P.W.5) and the plaintiff, with the help of M.N.Rao (P.W.3) and Upal Ghosh (P.W.8), conspired together so as to file the present suit in collusion with each other. He alleged that the confidence reposed by him in Mir Nasir Ali Khan (P.W.7) had been misused so as to foist the present proceedings on the basis of documents which were retained by Mir Nasir Ali Khan (P.W.7) and his employees, while helping him. He pointed out that any development agreement had to contain basic terms as to the period of construction,

particulars as to the specific areas which would fall to the share of each of the parties concerned, with floor-wise particulars etc. The nature and specifications of the construction would also be mentioned, as the rates of deluxe construction and normal construction would vary. The alleged oral agreement put forth by the plaintiff therefore could not be treated as a concluded contract. He pointed out that prior to filing of the suit, the plaintiff had not even issued any notice to him and that the oral agreement propounded by the plaintiff lacked *bonafides* in every respect. He asserted that the suit was untenable as the terms and conditions, as set out in the alleged oral contract, were incapable of being enforced. He also alleged that the suit was undervalued. He accordingly prayed for dismissal of the suit with exemplary costs.

Upon consideration of the pleadings, the trial Court settled the following issues for trial:

1. Whether the oral agreement pleaded by plaintiff is true, valid and binding on defendant?
2. Whether plaintiff is entitled to the specific performance as prayed for?
3. Whether plaintiff is entitled to the directions prayed for regarding execution of GPA?
4. Whether the suit is undervalued?
5. To what relief?

The plaintiff examined himself as P.W.1 apart from 7 other witnesses. He marked Exs.A1 to A22 in evidence. The defendant examined himself as D.W.1 and another witness. He marked in evidence 44 documents. Six documents were marked in the 'C' series.

The trial Court adopted a rather novel approach as the suit agreement was allegedly an oral one and insisted on the chief examination of the witnesses being continuous so that they could not be tutored in keeping with the cross-examination of earlier witnesses. In consequence, P.W.1 was

examined in chief on 17.01.1997 and 21.01.1997. He was cross-examined on 25.02.1997. P.W.2 was examined in chief on 17.02.1997 and cross-examined on 03.03.1997. P.W.3 was examined in chief on 17.02.1997 and cross-examined on 04.03.1997. P.W.4 was examined in chief on 17.02.1997 and cross-examined on 04.03.1997. P.W.5 was examined in chief on 18.02.1997 and cross-examined on 03.03.1997. P.W.6 was examined in chief on 18.02.1997 and cross-examined on 03.03.1997. P.W.7 was examined in chief on 18.02.1997 and cross-examined on 25.02.1997 and 27.02.1997. P.W.8 was examined in chief on 27.02.1997 and cross-examined on the same day.

The plaintiff speaking as P.W.1 stated as follows in his chief examination: Mohd. Masiuddin Farooqui (P.W.5) introduced him to the defendant on 02.10.1994. He was not doing construction business individually but only on behalf of the company, Front Line Constructions Limited, which was floated in the year 1994. He met the defendant at his residence, the suit schedule property, and in the course of the meeting, the defendant expressed his desire to develop the property. As he liked the property, he expressed his willingness to take the property for development and they decided to finalise the terms and conditions in the next meeting. On 12.10.1994, they met again at the residence of the defendant and decided the terms for development. Front Line Constructions Limited was to be the developer and they decided that after obtaining all clearances, the application for obtaining permission from the Municipal Corporation would be filed and the permit fee would be paid by the developer. After obtaining the permission, they would go for permission from the Income-tax authorities from Bangalore. Within one month of receiving such permission, the defendant would hand over possession of the property and execute a General Power of Attorney to develop the same. The plaintiff had to pay

Rs.40,00,000/- towards an interest-free deposit to the defendant, which was refundable after delivery of possession of the developed property falling to the share of the defendant. 60% of the developed area was to be handed over to the defendant and 40% of the developed area was to be retained by the developer. The building had to be completed within 24 months from the date of obtaining the sanction and physical possession. He stated that after the terms and conditions were concluded, he drafted a representation to the Minister for Municipal Administration on 20.10.1994 seeking permission for change of land use and relaxation of setbacks. He obtained the signatures of the defendant after he made some corrections therein and submitted the same to the Minister on 23.10.1994. The officials of HUDA inspected the site in his presence and sent their remarks to the Government. He was also present when the officials of the Municipal Corporation of Hyderabad inspected the site. After receiving the remarks from both the authorities, the Government issued a draft variation proposal calling for objections. Thereafter, the G.O. was issued permitting change of land use on 21.02.1995. As development charges and processing fee had to be paid for conversion, he scribed the Challan on 16.12.1994 in the name and address of the defendant in his own hand writing and requested his Office Assistant, R.V.Ramana Murthy (P.W.2), to go to HUDA office to do the needful. After paying the amount, R.V.Ramana Murthy (P.W.2) submitted the same to HUDA under a covering letter. Thereafter, the Government issued the final G.O. He arranged meetings between the defendant on the one hand and M.N.Rao (P.W.3) and Upal Ghosh (P.W.8) on the other.

In his cross-examination, the plaintiff stated thus: He met the defendant for the first time on 02.10.1994 and for the second time on 12.10.1994. In the first meeting, P.W.5, the defendant and he were present

and during the second meeting only the defendant and he were present. By 12.10.1994, Front Line Constructions Limited was not in existence and he had not made up his mind as to whether he would individually take up the development or through which company. According to him, Front Line Constructions Limited came into existence in January, 1995 and he along with Mir Nasir Ali Khan (P.W.7) and his brother, Hussain Ali Khan, were the Directors of the said company. Mir Nasir Ali Khan (P.W.7) was the Managing Director of the company. For the first time in January, 1995, he discussed about the subject project with Mir Nasir Ali Khan (P.W.7) and his brother. He admitted that as on the date of his deposition, the company was doing two projects - one on Raj Bhavan Road, in respect of the property belonging to the uncles of Mir Nasir Ali Khan (P.W.7), and another property opposite the Secretariat at Saifabad belonging to Basheerunnisa Begum, Bahadur and others. Bahadur was also Mir Nasir Ali Khan (P.W.7)'s uncle. There were contracts in writing for construction of these buildings, containing details like the kind of flooring, kind of electrical installations, sanitary equipment, plastering, elevation and all particulars as to how the building was to be made. In relation to the Raj Bhavan Road property, the development contract also contained particulars as to flooring, electrical installations, sanitary fittings, plastering, etc. On 02.10.1994, when he first met with the defendant, the defendant and he agreed upon the contract but it was only agreed that he would take up the construction contract and except that, nothing was decided. On 12.10.1994, the terms as mentioned in para 5 of the plaint, were agreed upon. By 02.10.1994, he had not seen the title deeds of the property. In some cases, they obtained legal opinion and in some cases, they did not do so. If it is an open land, they obtained legal opinion and he did not obtain any legal opinion in respect of the suit schedule

property as he did not feel it necessary to verify the title. By the date of filing of the suit, he thought of developing the property through Front Line Constructions Limited. By 02.10.1994, he knew the number of floors that could be constructed but did not know the shape of the building. On 12.10.1994, they decided that the constructed area should be split vertically and the defendant should take 60%. Para 5 of the plaint did not mention the actual allocation of 60% area. He, personally, had Rs.40,00,000/- with him on 12.12.1995 and did not withdraw the same from his individual account but got it from other sources, i.e., by withdrawing it from Front Line Constructions Limited. This amount was withdrawn from the cash reserve of Front Line Constructions Limited, which is from sale receipts. He admitted that he had stated in his affidavit (Ex.C1) filed in support of I.A.No.1855 of 1996 filed in the suit that the amount was essentially meant for the purpose of his business and that he was losing interest on it. He further admitted that he had not mentioned that it was from the cash reserve. He drafted the representation for change of land use on 20.10.1994 and the defendant signed it on the same day. He alone was present when the defendant signed the representation and the defendant corrected the word 'we' in the opening of each paragraph of the representation as 'I'. As they were both doing the project, they prepared it by mentioning the word 'we' but the defendant made the change because he was signing it as the owner. He admitted that he did not feel it necessary to obtain a written contract even after the defendant changed the word 'we' in each paragraph to 'I'. He also admitted that he did not protest about the said change. He admitted that all the correspondence was sent to the defendant at his own address, i.e., the suit schedule property. He further admitted that he did not take any authority letter from the defendant during this process. He filled up Ex.A1/Ex.B1

Challan form first and then R.V.Ramana Murthy (P.W.2) filled the remaining part of the form. He stated that he knew Mohd. Masiuddin Farooqui (P.W.5) since the last five years and never did any business with him or had any financial transactions. He stated that he knew him as a co-member of Nizam Club. Mohd. Masiuddin Farooqui (P.W.5), the defendant and he met only once, i.e., on 02.10.1994. He stated that he met Mir Nasir Ali Khan (P.W.7) for the first time during 1991. He further stated that Mohd. Masiuddin Farooqui (P.W.5) and Mir Nasir Ali Khan (P.W.7) were related but he did not know the exact relationship. He claimed to have come into possession of Ex.A1 Challan and had retained the same with him. He admitted that Ex.A1 Challan was the duplicate and stated that the original Challan was with HUDA. He admitted that as per Ex.A1, the duplicate Challan, it was meant to be the copy for estate/planning/development office of the HUDA. He also admitted that Ex.B1 was the original Challan which was the remitter's copy and that it did not contain his handwriting anywhere. He admitted that it was in the handwriting of R.V.Ramana Murthy (P.W.2) and bore his signature. He stated that he introduced the defendant to Mir Nasir Ali Khan (P.W.7) prior to relaxation in respect of the land use and that they did not know each other before that. He admitted that in total, he had invested a sum of Rs.1,00,000/- towards the project in the suit schedule property but could not give the details. He denied the suggestion that he was introduced to the defendant by Mir Nasir Ali Khan (P.W.7) and not by Mohd. Masiuddin Farooqui (P.W.5). He also denied the suggestion that he came into the picture as he was already doing follow-up work with the Government for their other projects and as Mir Nasir Ali Khan (P.W.7) had also offered to do the necessary follow-up work for the defendant out of friendship. He stated that he went to Guntur sometime in January, 1996 but did not remember as

to when he came back. He stated that he met the defendant immediately after he came back from Guntur and it must have been in January, 1996. According to the plaintiff, he knew Minhaj Amjad (P.W.6) for the last 4 or 5 years as he was also a member of Nizam Club. He stated that he had no business transactions or financial transactions with him. He was also a builder and owner of complexes. He stated that he realised that the defendant was resiling from the contract even before his visit to Guntur. He stated that by mistake he mentioned in para 11 of the plaint that he had no meeting with the defendant after his return from Guntur. He claimed to have issued a legal notice to the defendant between January and April, 1996 before filing the suit. He admitted that the said notice was not filed into Court. He claimed that he himself posted the notice but did not remember the date of the posting. He stated that the defendant denied the contract on telephone on 19.04.1996. He said that the notice was sent by ordinary post and that he had a copy thereof. He claimed that 40% of the constructed area as per the oral development agreement would come to Rs.2.5 crores. He stated that he knew Upal Ghosh (P.W.8) since 1994 and that he was doing both their projects. He denied the suggestion that there was no discussion on 02.10.1994 for development of the suit schedule property and that no terms were agreed upon on 12.10.1994 as stated by him.

R.V.Ramana Murthy (P.W.2) is an employee of the plaintiff. He stated that he worked with him since 1993. He admitted that Ex.A1/Ex.B1 Challan bore his signature and that the plaintiff had asked him to make payment to HUDA thereunder. He further stated that the said Challan was filled half by the plaintiff and half by himself. After payment, two copies of the Challan were stated to have been retained by the bank and the other two copies were given to him. He stated that out of the two Challans given to him, one

was taken away by the office and the other Challan was given to him. According to him, Ex.A1 was the Challan copy given to him which he handed over to the plaintiff. He stated that the property mentioned in Ex.A1 Challan is the suit schedule property and that he knew that the plaintiff had taken it for development. In his cross-examination, P.W.1 stated that he did not attend to the work of Mir Nasir Ali Khan (P.W.7) though he was an employee of Front Line Constructions Limited and that he attended mainly to the work of the plaintiff. He admitted that in Ex.B1 Challan, the name of the defendant was in his handwriting. He also admitted that Ex.B1 Challan was the original and that Ex.A1 Challan was the copy to be retained by HUDA. He denied that Ex.A1 was not the Challan copy that was given to him after the payment was made. He stated that the plaintiff informed him about the development agreement with the defendant in 1994 and that is how he came to know of it. He denied that he was giving false evidence due to his employment with Front Line Constructions Limited.

M.N.Rao (P.W.3) stated that he was an architect in practice since 1978. He claimed that the plaintiff used to come to him since 1992 for consultation in relation to project work undertaken at that time. He stated that in 1995, the plaintiff engaged him to prepare a project work for conversion of the house property belonging to the defendant into a shopping complex. He stated that he visited the suit schedule property and inspected the same and then drew up plans. Ex.A7 was stated to be the plan prepared by him and it bore his signature. He claimed that he was appointed by the plaintiff and not by the defendant and that the defendant did not pay any amount to him. In his cross-examination, P.W.3 stated that he was not drawing plans for all the projects of Front Line Constructions Limited but only for some of its projects. He admitted having drawn plans for the Raj Bhavan

Road project and also the project near the Secretariat. He admitted that since 1992, he must have received approximately more than Rs.2,00,000/- from Front Line Constructions Limited, the plaintiff and Mir Nasir Ali Khan (P.W.7). He also admitted that he drew up plans for P.W.7 at Jubilee hills. He visited the suit schedule property 3 or 4 times and stated that it was a plain area with ups and downs but he could not say where there was a gradient as he visited the property more than two years ago. He further stated that there were trees in the suit schedule property but he could not give the number. He could not say whether trees were all around the property or on front side. He also could not say the names of the trees. He stated that he inspected the outside periphery of the house and did not go inside. He further stated that he did not observe any swimming pool in the suit schedule property. He claimed to have prepared only one plan in original on a tracing paper and Ex.A7 was the print prepared on the basis of the original. He admitted that Ex.B9 plan was prepared by him and bore his signature and seal but claimed that he never gave it to the defendant. He stated that he visited the suit schedule property for the first time towards the end of 1994 and again within an interval of 10 to 15 days. He claimed that he prepared Ex.A7 plan in February, 1995. He claimed to have met the defendant for the first time in November, 1994. He denied the suggestion that Mir Nasir Ali Khan (P.W.7) introduced him to the defendant. He stated that he could not say whether there was a dividing wall in the suit schedule property separating the house portion and the back portion. He denied the suggestion that the defendant paid him Rs.7,000/- for drawing the plan.

N.S.Bose (P.W.4) is an Executive Engineer in the Roads and Buildings Department of the State. He is also the brother-in-law of the plaintiff. He

was examined in the context of his attestation of certain documents brought to him by the plaintiff.

Mohd. Masiuddin Farooqui (P.W.5) admitted that he knew the defendant for the past 25 years. He also knew the plaintiff and claimed that the defendant approached him to introduce him to the plaintiff in September, 1994. He stated that in October 1994, he arranged a meeting between the plaintiff and the defendant. This meeting was arranged in connection with development of the defendant's property. The meeting was held at the residence of the defendant, i.e., the suit schedule property. In the meeting, the defendant agreed to give the property for development to the plaintiff and the plaintiff accepted. He was present at the time of the talks and came to know subsequently that the defendant resiled from the agreement. In his cross-examination, he admitted that the defendant was a close friend of his cousin and was also his wife's cousin. Mir Nasir Ali Khan (P.W.7) was his wife's nephew and he knew him since their marriage in 1968. He admitted that the defendant used to visit him on all important functions and festivals previously. Mir Nasir Ali Khan (P.W.7) also used to meet him on all important functions and festivals. He said that it may be true that the defendant and Mir Nasir Ali Khan (P.W.7) might also be meeting each other. He knew the plaintiff as they were club-mates. He stated that Akbar Ali Khan was his mother-in-law's uncle and Faizunnissa Begum was his aunty. He further stated that he knew Waseema and Isiaq, the children of Faizunnissa Begum. Upon being shown Ex.B3 photograph, he stated that the person on the extreme left therein was Zaffer Hussain Khan, the brother-in-law of Akbar Ali Khan, and that the family of the defendant and the family of Akbar Ali Khan were close as they knew each other since childhood. He stated that he did not attend the marriage of the defendant but he identified the defendant, his

brother Abid, the defendant's wife, Akbar Ali Khan, Faizunnissa and Isaiq's wife in Ex.B4 photograph. He said that he could not give the specific date when the defendant met him in September, 1994. He further stated that he did not talk to Mir Nasir Ali Khan (P.W.7) but talked to the plaintiff when the defendant met him. He claimed that though he knew the plaintiff only from 5 or 6 years, he introduced the defendant to the plaintiff as he knew that the plaintiff worked with Mir Nasir Ali Khan (P.W.7). The defendant asked him whether he could introduce him to the plaintiff for developing his property. The defendant requested him to introduce the plaintiff and Mir Nasir Ali Khan (P.W.7). He stated that after September 1994, he might have met Mir Nasir Ali Khan (P.W.7) but did not raise this subject with him at any time. When asked the specific question as to whether after he introduced the defendant to the plaintiff, the plaintiff immediately agreed to take the property for development, he said that at the instance of the defendant to develop his property, he arranged the meeting at the defendant's place and the plaintiff and the defendant agreed to develop the property and that the entire finance would be made by the plaintiff and they agreed to the normal ratio between the builder and the owner. It was also agreed that the entire liaison work would be the responsibility of the plaintiff. He admitted that he did not contact the defendant when he came to know that he was going back from his promise. He also admitted that the plaintiff did not request him to intervene in the matter to talk to the defendant about the contract. He admitted that Mir Nasir Ali Khan (P.W.7)'s grandmother was married to his wife's grandfather and that his wife was instrumental in arranging the marriage of Mir Nasir Ali Khan (P.W.7). He denied the suggestion that he did not introduce the defendant to the plaintiff and there was no meeting held

on 02.10.1994 and that he was deposing falsely at the instance of the plaintiff and Mir Nasir Ali Khan (P.W.7).

Minhaj Amjad (P.W.6) stated that he knew the plaintiff but did not know the defendant personally. He stated that he was a builder doing construction business. He stated that one broker by name, Irfan Khan, informed him that the suit schedule property was available for development and he told him that his friend, the plaintiff, had taken the said property for development but the broker informed him that it was still available for negotiations. He stated that he then contacted the plaintiff, who was at Guntur, on phone as he was not available at Hyderabad. In his cross-examination, he stated that he knew the plaintiff since 5 or 6 years as he was a friend of Mir Nasir Ali Khan (P.W.7) and also a member of Nizam Club. He stated that he was never introduced to the defendant. He stated that it was in March, 1996 that Irfan Khan informed him that the property at Somajiguda was available for development and he immediately rang up to the plaintiff who was not in Hyderabad. The plaintiff came back from Guntur and met him after 2 or 3 days. He denied that he was deposing falsely at the instance of the plaintiff and Mir Nasir Ali Khan (P.W.7).

Mir Nasir Ali Khan (P.W.7) stated that he was engaged in the business of construction and that he knew the plaintiff, as he was one of the Directors of his company, Front Line Constructions Limited. He admitted that he was the Managing Director of the said company. According to him, the plaintiff introduced him to the defendant in 1995. He further claimed that he accompanied the plaintiff and Upal Ghosh (P.W.8) to the house of the defendant to discuss about the development contract. He denied the suggestion that he had introduced the plaintiff to the defendant. He also denied the suggestion that he had agreed to render help to the defendant to

get the plans approved and in getting permissions. He denied the suggestion that he conspired with Upal Ghosh (P.W.8) and others to knock away the property of the defendant. He denied the suggestion that his family and the defendant's family were friends since a long time. He denied the suggestion that he had advised the defendant to utilise the services of M.N.Rao (P.W.3). He stated that he never met the defendant at Nizam Club. He denied the suggestion that he got the money paid in the Government treasury and delivered the Challan to the defendant. In his cross-examination, he stated that he met the defendant in January, 1995 when he came with the plaintiff to his house. He stated that he came to know about the project for the first time in January, 1995. He admitted that Badrunissa, also known as Faizunnissa Begum, was related to him but claimed that he did not know the exact relationship. He also knew Waseema, daughter of Faizunnissa Begum, and stated that he had been meeting them in family gatherings and such occasions. He said that he did not know whether Waseema was earlier staying in the defendant's family house. He identified Mir Akbar Ali Khan, his relation, in the photograph shown to him (Ex.B3) and admitted that the bridegroom in the photograph looked like the defendant. He also identified Faizunnissa Begum in the photograph shown to him (Ex.B4). In Ex.B.5, he identified Waseema and admitted that she was his cousin. He admitted that Ex.B7 cover bore his handwriting and that it was addressed to the defendant. He claimed that he did not remember what was sent by him in Ex.B7 cover. When asked as to what were the particulars of the discussion about the development contract when he accompanied the plaintiff and Upal Ghosh (P.W.8) to the defendant's home, he stated that he did not remember. He admitted that the properties developed so far through Front Line Constructions Limited were those of his relations. He further stated that

he never advised the plaintiff at any time in relation to the suit schedule property. He stated that the Front Line Constructions Limited had given Rs.40,00,000/- as a loan to the plaintiff but could not say whether it was out of its reserve fund. He stated that the plaintiff did not consult him before filing this suit and that he was not present when instructions were given for drafting of the plaint. He denied the suggestion that the defendant was known to him through a relation from his mother's side and that he was closely acquainted with him. He stated that his marriage was performed in 1993 but denied the suggestion that the wife of Mohd. Masiuddin Farooqui (P.W.5) was instrumental in arranging it. He stated that Mohd. Masiuddin Farooqui (P.W.5) knew the plaintiff for about 5 years. He stated that his mother was aged about 60 years but stated that he did not remember whether his mother had a heart attack and was taken to Apollo hospital where she was attended upon by Dr. Shailendra. He stated that he stayed next door to his mother and that his brother stayed with her. He stated that he did not remember whether his mother had a chest pain and in that connection, he requested the help of the defendant and Dr. Shailendra attended upon his mother at Apollo hospital, at the instance of the defendant. He stated that his mother was not a heart patient but did not remember whether she had any chest pain at any time. He stated that he did not remember whether he along with his wife, his brother, his wife and the defendant and his wife went to Orchid Restaurant to celebrate his marriage anniversary. He admitted that his association with Mohd. Masiuddin Farooqui (P.W.5) was more than the association between the plaintiff and Mohd. Masiuddin Farooqui (P.W.5). He said that he did not remember as to whether he met the defendant at the house of Mohd. Masiuddin Farooqui (P.W.5) at any time. He denied the suggestion that he had offered to help

the defendant when he came to know that the defendant was approaching the Government for land use conversion. He denied the suggestion that as the defendant reposed confidence in him as a family friend, he did not doubt his *bonafides* when his employees and associates did some of the follow-up work. He denied the suggestion that the defendant gave money to him and he got it deposited through his employee.

Upal Ghosh (P.W.8) stated that he was a private architect with his head office at New Delhi. He stated that he knew the plaintiff who was a good friend of his since three years. He stated that he knew the defendant through the plaintiff. He said that he was developing a few commercial complexes for the plaintiff and in June 1995, the plaintiff called him for a new project. He came to Hyderabad on 06.06.1995 and the plaintiff brought the defendant to his hotel and introduced him for a joint venture project at Somajiguda. He stated that he, the plaintiff along with Mir Nasir Ali Khan (P.W.7) went to the site where the defendant was waiting and they inspected it. In his cross-examination, he admitted that the plaintiff consulted him in respect of the project on Raj Bhavan Road and the project opposite the Secretariat. He admitted that for a project like this, normally a development agreement will be there in respect of the nature of construction, flooring, plastering, elevation, etc. between the developer and the owner. He further admitted that the third party affidavit filed by him (Ex.C2) was dictated to him by the plaintiff over the phone and he noted down the same and gave instructions to his office to prepare it. He then added that he got a call from the plaintiff who told him over phone to submit an affidavit regarding his involvement in the suit project and he got prepared the draft in his Delhi office and sent it to the plaintiff. He admitted that in his affidavit, he stated that he verified the contents of the site plan but did not

mention drawing up any sketch plan. He denied that he was deposing falsely due to the friendship with the plaintiff and that the defendant was introduced to him by Mir Nasir Ali Khan (P.W.7), while he was staying in Golconda Hotel, as a property owner who was interested in developing it.

Speaking as D.W.1, the defendant stated that he was the owner and possessor of the suit schedule property which was his only immovable property. He asserted that he never entered into any agreement, either oral or otherwise, in respect of the said property with the plaintiff. He pointed out that by Ex.B10 letter dated 16.07.1993, HUDA informed him that his land was situated in a residential zone and would be affected by the proposed road-widening. He stated that he knew Mir Nasir Ali Khan (P.W.7) since a long time as the uncles and aunts of Mir Nasir Ali Khan (P.W.7), Mr. & Mrs. Javed Kamal and Mr. & Mrs. Juned Adil, had been his neighbours since his childhood, i.e., 1960. He further stated that they used to meet each other quite often. Mir Nasir Ali Khan (P.W.7)'s parents used to visit his uncles and aunts quite frequently and on such occasions they used to come along with their children. He therefore stated that he knew Mir Nasir Ali Khan (P.W.7) since that time. He further stated that he knew the mother and grandmother of Mir Nasir Ali Khan (P.W.7), apart from the brothers of his grandmother. He said that he knew Akbar Ali Khan since his childhood as a respected member of the family. In Ex.B3 photograph taken at the time of his marriage, the defendant stated that Akbar Ali Khan and the brother of Mir Nasir Ali Khan (P.W.7)'s maternal grandfather are both seen. He also gave details of his acquaintance with various members of Mir Nasir Ali Khan (P.W.7)'s family. He stated that he knew Mohd. Masiuddin Farooqui (P.W.5) since his marriage and that P.W.5's wife was instrumental in arranging the marriage of Mir Nasir Ali Khan (P.W.7). He asserted that he was introduced

to the plaintiff by Mir Nasir Ali Khan (P.W.7) in December, 1994 or January, 1995. He stated that he was called to see P.W.7's mother in an emergency at her house as she was complaining of uneasiness in the chest. He stated that he referred her to Dr.Shailendra at Apollo hospital and Ex.B35 was the letter addressed by Dr. Shailendra Singh in that regard. He further stated that he had occasion to see Mir Nasir Ali Khan (P.W.7)'s son when he was admitted in New City Hospital at Secunderabad. He said that he told Mir Nasir Ali Khan (P.W.7) about his intention to develop the suit schedule property and he offered to help him in that regard. He spoke of the various steps taken by him even earlier and thereafter with the help of those introduced to him by Mir Nasir Ali Khan (P.W.7). He categorically denied receipt of any legal notice from the plaintiff and asserted that he never entered into any agreement with him. In his cross-examination, the defendant was put several questions in connection with his relations with Mir Nasir Ali Khan (P.W.7) and his family apart from his medical practice. He denied the suggestion that on 20.10.1994, the plaintiff prepared the application for submission to the Minister for change of land use. He added that he had not even met the plaintiff by then. He claimed that he prepared the application and then showed it to Mir Nasir Ali Khan (P.W.7) and he offered to get it typed. He then made corrections in that application. Though the cross-examination of the defendant continues at great length thereafter, the thrust thereof is directed at exhibiting his ignorance of construction activity and is not of much relevance to the suit claim.

Mir Taaqi Ali Khan (D.W.2), a cousin of the defendant, stated that he knew Mir Nasir Ali Khan (P.W.7) since his childhood. He stated that he also knew the father of P.W.7 apart from his grandfather and great-grandfather. He further stated that his maternal grandmother's sister was married to the

first cousin of Mir Nasir Ali Khan (P.W.7)'s great grandfather. He stated that the defendant and the aunts of P.W.7 had houses opposite each other at Somajiguda and that the relatives of P.W.7 and the defendant used to visit each other. He claimed to have seen them meeting and wishing each other in various social gatherings. He asserted that P.W.7 used to visit his aunts at Somajiguda. He said that he is a member of Nizam Club and he had seen Mir Nasir Ali Khan (P.W.7) and the defendant wishing and meeting each other in the Club. According to him, in September 1994, while he and the defendant were sitting in the house of the defendant and the defendant was telling him about his proposal to develop the property on his own, Mir Nasir Ali Khan (P.W.7) dropped in and during the course of the discussion, P.W.7 offered to help the defendant, if he required, to obtain conversion of the land use and to get sanction. There was no discussion about the development of the property by P.W.7, who knew that the defendant himself wanted to develop the property. Nothing useful was elicited in his cross-examination.

By the judgment under appeal, the trial Court, having considered the pleadings and the evidence, oral and documentary, held against the plaintiff on crucial issues. As regards Issue No.1, the trial Court held that the plaintiff failed to prove that there was any oral development agreement between him and the defendant and that it was true and valid. On Issue Nos.2 and 3, the trial Court held that as Issue No.1 was decided against the plaintiff and he had failed to prove the oral development agreement, he was not entitled for the relief of specific performance or for execution of a GPA in his favour. On Issue No.4, the trial Court found that there was no material to show that the suit was undervalued and rejected the contention of the defendant in that regard. In the result, the trial Court dismissed the suit with costs.

It appears that during the pendency of this appeal, the defendant orally gifted an extent of 144 square yards out of the suit schedule property to his daughter, Noor Fatima Hussain, on 05.07.2012. Subsequently, Noor Fatima Hussain and the defendant, signing as a confirming party, executed registered sale deed bearing Document No.1125/2013 dated 24.01.2013 in favour of Sandhya Hotels Private Limited, Hyderabad, as regards the said extent of 144 square yards. Thereupon, the plaintiff filed C.C.C.A.M.P.No.493 of 2013 in this appeal seeking to implead the defendant's daughter and the alienee. The implead petition was ordered by this Court on 08.02.2018 and Noor Fatima Hussain and Sandhya Hotels Private Limited, Hyderabad, are shown as respondents 2 and 3 in this appeal.

Heard Sri Vivek Jain, learned counsel representing Sri B.Vijaysen Reddy, learned counsel for the appellant-plaintiff, and Sri Sunil B.Ganu, learned counsel for the respondent-defendant. Smt. Manjiri S.Ganu, learned counsel, entered appearance for Noor Fatima Hussain, respondent 2, and Sri V.Manohar Rao, learned counsel, entered appearance for Sandhya Hotels Private Limited, respondent 3, but they did not choose to contest this appeal.

Contesting parties shall hereinafter be referred to as arrayed in the suit.

The points for determination that arise in this appeal are:

1. Whether the plaintiff adequately proved the oral development agreement dated 12.10.1994?
2. Whether the discrepancies in the oral evidence of the plaintiff's witnesses are fatal?
3. Whether the plaintiff, in any event, disentitled himself from seeking the equitable relief of specific performance owing to his own acts?
4. Whether the plaintiff is entitled to any relief?

Sri Vivek Jain, learned counsel, would contend that the plaintiff is entitled to specific performance notwithstanding the fact that the development agreement was an oral one in the light of the evidence, both

oral and documentary, adduced by him in proof thereof. He would point out that the involvement of the plaintiff at each stage is writ large and the defendant could not claim that the plaintiff merely helped him in that regard. He would assert that there was consensus *ad idem* between the parties at the meeting held on 12.10.1994 and therefore, the oral terms settled at such meeting would be binding. He would assert that the subsequent events clearly bore out that the said oral agreement was acted upon. He would point out that the defendant admitted the assistance rendered by the employees of the plaintiff and that was sufficient to show that, in furtherance of the oral agreement, such assistance was extended to him. He would assert that the oral agreement is adequately proved and that the trial Court erred in not accepting the same and decreeing specific performance.

Per contra, Sri Sunil B. Ganu, learned counsel, would point out that the admitted conduct of the plaintiff completely goes against character. Being an experienced builder and developer, the plaintiff admitted that he had not even undertaken due diligence by obtaining copies of the title deeds or seeking legal opinion in relation thereto. He also did not get any public notice issued through newspapers calling for objections. He would point out that the agreement was yet to be drawn up and as such, it could not be said that there was a concluded contract between the parties even if there were any discussions. He would point out that the nine clauses set out in para 5 of the plaint did not even mention that such an agreement would be drawn up, which goes against the plaint averments. He would further point out that the clauses set out in para 5 of the plaint do not even indicate as to how the owner's share was to be identified or the nature and quality of the construction that was to be made. No specifications were stipulated, which would go against the grain of an experienced builder entering into such an

agreement. He would place reliance on Section 14(3)(c) of the Specific Relief Act, 1963 (*for brevity*, 'the Act of 1963') and assert that even if believed, the oral agreement put forth by the plaintiff is not enforceable thereunder. Learned counsel would also point out the various discrepancies in the depositions of the plaintiff's witnesses. Having appeared before the trial Court, the learned counsel would point out that the trial Court insisted on the chief examination of the witnesses being continuous so that the witnesses could not thereafter be tutored and in the light of this procedure being adopted, discrepancies galore in the stories put forth by the plaintiff's witnesses clearly showed that the entire transaction, as claimed by the plaintiff, was concocted. Learned counsel would contend that Mir Nasir Ali Khan (P.W.7) was well known to the defendant and the extent to which P.W.7 went to support his partner, the plaintiff, is obvious from the fact that he stated on the one hand that he was close to his mother but went on to state that he did not even remember as to whether she had a heart attack. Learned counsel would therefore assert that P.W.7 was an interested witness who was bent upon protecting his relations with the plaintiff. He would further assert that the very fact that the plaintiff did not produce any pre-suit legal notice lent itself to an adverse inference being drawn against him. He would point out that Ex.B1 Challan produced by the defendant was admittedly the original one and that Ex.A1 duplicate Challan was produced by the plaintiff from the records of the HUDA to support his false claim. He would also point out that the admitted fact was that Mir Nasir Ali Khan (P.W.7) was closer to Mohd. Masiuddin Farooqui (P.W.5) than the plaintiff was to P.W.5, but the story put forth was that the defendant approached P.W.5 to introduce him to the plaintiff and P.W.7 but Mohd. Masiuddin Farooqui (P.W.5) chose to introduce him to the plaintiff despite knowing

P.W.7 better. Learned counsel would state that this version is patently improbable, if not unbelievable. Learned counsel would further assert that there is no proof of any consensus *ad idem* and that in the light of Section 16(c) read with Section 20 of the Act of 1963, the discretionary relief of specific performance could not be granted to the plaintiff, given his conduct. In this regard, reference is again made by the learned counsel to Ex.A1 Challan obtained from the HUDA file apart from the fact that the plaintiff claimed to have spent Rs.1,00,000/- but had no account in proof thereof. Learned counsel would also point out that much water has flown under the bridge and inform this Court that during the suit proceedings, an injunction was granted at the initial stage subject to deposit of the sum of Rs.40,00,000/- by the plaintiff but after dismissal of the suit, the plaintiff chose to withdraw the said amount. Learned counsel would point out that the property has already changed hands and that no cause is made out to decree specific performance at this late stage even if this Court is inclined to believe that there was an oral agreement at that point of time.

In his written synopsis of submissions, Sri Sunil B.Ganu, learned counsel, pointed out that a development agreement is a totally different transaction when compared to a sale, as the magnitude of investment would depend upon the nature of development, flooring, plastering, doors & windows, electrical fittings, sanitary ware, elevation and other facilities like swimming pool, club house, office room, which would be decided and looked into before conclusion of a contract of such nature. He further pointed out that absolute clarity would be required as to the nature of the construction in terms of the aforestated parameters and a development agreement would not be complete otherwise. Learned counsel asserted that the settled legal position with respect to oral contracts was that the burden would rest heavily

upon the plaintiff to prove the same and unless the terms of such an oral agreement are proved in well defined terms, the question of specific performance thereof would not arise.

In reply Sri Vivek Jain, learned counsel, would only point out that Section 14(3)(c) of the Act of 1963 does not bar a specific performance suit.

There can be no doubt that a suit for specific performance lies to enforce even an oral agreement. However, in such a situation, it is essential that the plaintiff should establish the necessary ingredients for seeking the equitable relief of specific performance. A heavy burden lies on the plaintiff to firstly prove that there was consensus *ad idem* between the parties and that the oral agreement was, in fact, concluded. Secondly, the plaintiff would also have to prove the vital terms of such an oral contract. As to whether or not such a concluded oral contract was there would be essentially a question of fact and the burden of proof in relation thereto would rest heavily upon the person who intends to get such an oral agreement specifically enforced through a Court of law. Therefore, even if an oral agreement is legally permissible and would be enforceable through a Court of law, the plaintiff would be required to prove such an oral agreement with certainty and unless and until all the conditions necessary to infer the existence thereof are made out, the Court would not enforce it.

It is equally well settled that grant of the equitable relief of specific performance would be wholly within the discretion of the Court and cannot be claimed as a matter of right. Before granting such a decree, the Court must be satisfied that (i) the contract is certain and unambiguous in its terms, (ii) the consideration has passed, (iii) the contract is fair and not vitiated by fraud etc., (iv) the contract does not offend a third party, (v) the contract does not impose any hard or unconscionable bargain, and (vi) the

contract is capable of execution. At the same time, it should not be lost sight of that such discretion must be exercised by the Court based on sound judicial principles and not arbitrarily. The fundamental condition, which must be proved beyond all reasonable doubt, is the existence of a valid and enforceable contract. If a valid and enforceable contract is not made out, the Court would not make a contract for the parties. (See *MERAHUL ENTERPRISES V/ s. VIJAYA SRI VASTAVA*¹). As long back as in the year 1969, in *OUSEPH VARGHESE V/ s. JOSEPH ALEY*², the Supreme Court observed that very rarely would a decree for specific performance be granted on the basis of an agreement supported solely by oral evidence.

In *YELAMATI VEERA VENKATA JAGANADHA GUPTA V/ s. VEJJU VENKATESWARA RAO*³, a learned Judge of this Court observed that where an oral agreement of sale is pleaded and the very existence of such an oral agreement is disputed by the other side, a heavy burden would lie upon the plaintiff to establish its existence as well as the conditions thereof with clinching and admissible evidence. It was further observed that the nature and extent of proof in this regard would vary from case to case and would depend upon the proximity or otherwise of the parties, nature of the transactions existing between them in the past, their conduct and the steps undertaken by the parties after the alleged agreement of sale, etc. The said judgment was confirmed in appeal in *YELAMATI VEERA VENKATA JAGANADHA GUPTA V/ s. VEJJU VENKATESWARA RAO*⁴.

In *BRIJ MOHAN V/ s. SUGRA BEGUM*⁵, the Supreme Court pointed out that there is no requirement of law that an agreement or contract of sale of immovable property should only be in writing but in a case where the

¹ AIR 2003 Delhi 15 (D.B.)

² (1969) 2 SCC 539

³ AIR 2002 AP 369

⁴ 2002 (4) ALT 448 (D.B.)

⁵ (1990) 4 SCC 147

plaintiffs come forward to seek a decree for specific performance of a contract of sale of immovable property on the basis of an oral agreement alone, a heavy burden would lie on them to prove that there was consensus *ad idem* between the parties for a concluded oral agreement for such sale. It would have to be established by the plaintiffs that vital and fundamental terms for the sale of the property were concluded between the parties orally and a written agreement, if any, to be executed subsequently would only be a formal agreement incorporating such terms which had already been settled and concluded in the oral agreement.

In K.NANJAPPA (DEAD) BY LEGAL REPRESENTATIVES V/ s. R.A.HAMEED @ AMEERASAB (DEAD) BY LEGAL REPRESENTATIVES⁶, the Supreme Court observed that a decree for specific performance can be granted on the basis of an oral contract. Reference in this regard was made to the observations of Lord Du Parcq in SHANKARLAL NARAYANDAS MUNDADE V/ s. NEW MOFUSSIL CO.LTD.⁷ In KOLLI PARA SRI RAMULU V/ s. T.ASWATHA NARAYANA⁸, the Supreme Court however added the rider that when the plaintiff comes forward to seek a decree for specific performance on the strength of an oral agreement, a heavy burden lies upon him to prove that there was consensus *ad idem* between the parties and whether there was such a concluded contract or not would be a question of fact to be determined in the facts and circumstances of each individual case.

It is in the light of the aforestated settled legal position, that the alleged oral development agreement asserted by the plaintiff has to be tested. In this regard, the first and foremost aspect that must be noted is that there was no prior relationship between the parties. The plaintiff admits

⁶ (2016) 1 SCC 762

⁷ AIR 1946 PC 97

⁸ AIR 1968 SC 1028

that he met the defendant for the first time on 02.10.1994 and according to him, the oral development agreement was concluded at their second meeting on 12.10.1994. There are a number of discrepancies as to this claim. The plaintiff's case is that Mohd. Masiuddin Farooqui (P.W.5) introduced him to the defendant. However, it is brought out in the evidence that P.W.5 and Mir Nasir Ali Khan (P.W.7) are more closely associated with each other. If that be so, it is hardly believable that P.W.5 would introduce the defendant to the plaintiff instead of taking him to see P.W.7, had he desired to enter into a development agreement. Further, the plaintiff's stand is that P.W.5 only introduced him to the defendant on 02.10.1994. While confirming this, P.W.5 went a step further in his chief-examination and asserted that during the first meeting itself, the defendant agreed to give the property for development to the plaintiff, who accepted it. He further stated that he was present during these talks. In his cross-examination, P.W.5 was put a specific question and he answered thus:

Q. After you introduced defendant to the plaintiff, did the plaintiff immediately agree to take the property for development?

A. At the instance of Abbas to develop his property, I arranged the meeting at Abbas's place, Suresh and Abbas agreed to develop the property and the entire finance will be made by Suresh. They agreed for the normal ratio between the builder and owner. It was agreed that the entire liaison work is the responsibility of the plaintiff.

This is not the version of the plaintiff. In his cross-examination, he said that on 02.10.1994, it was agreed that he would take up the contract and except that nothing was agreed. He further stated that it was only on 12.10.1994 that the terms, set out in para 5 of the plaint, were agreed upon.

Further, the plaintiff contradicted himself time and again. On the one hand, he said he was not executing constructions individually and that the agreement with the defendant was that the construction on the suit schedule property would be through Front Line Constructions Limited, but on the

other hand, he admitted that Front Line Constructions Limited was not even in existence on 12.10.1994 and came into being only in January, 1995 but did not indicate as to which was the other company through which he wanted to take up the subject construction. He then said that he had not decided whether he would undertake such construction individually or through a company. He further stated that by the date of filing of the suit, he thought of developing the property through Front Line Constructions Limited and that he arrived at that decision in April, 1996.

He claimed that while he was on a visit to see his parents at Guntur, Minhaj Amjad (P.W.6), a friend, informed him that the defendant was negotiating for disposal of the suit schedule property with third parties. In his cross-examination, he stated that he went to Guntur in January, 1996 and was there for 2 or 3 days. Minhaj Amjad (P.W.6), on the other hand, stated in his cross-examination that it was in March, 1996 that he was informed that the suit property was available for development and he immediately rang up the plaintiff. Further, in his plaint, the plaintiff claimed that when he rushed to Hyderabad and made efforts to meet the defendant, he could not do so. However, in his cross-examination, he admitted that he met the defendant on one occasion after coming back from Guntur but did not remember the date. He further clarified that he met him immediately after he came from Guntur and it must have been in January, 1996.

As regards the payment made under Ex.A1/Ex.B1 Challan, the plaintiff filed Ex.A1 copy of the said Challan claiming that it was the original. On the other hand, the defendant filed Ex.B1 copy of the said Challan asserting that it was the original retained by him. Though the original suit record was transmitted by the trial Court after the institution of this appeal, it is distressing to note that the said record is not complete. Some of the original

records, and more particularly Ex.A1 and Ex.B1 Challans, are not available in the original record. However, photocopies of Ex.A1 and Ex.B1 Challans are part of the appeal record and perusal thereof demonstrates that Ex.A1 is the duplicate copy for estate/planning/ development office of the HUDA, while Ex.B1 is the original remitter's copy. Ex.A1 copy of the Challan filed by the plaintiff is therefore from the record of the Hyderabad Urban Development Authority while the original Challan, which would normally be available with the remitter, is Ex.B1 produced by the defendant. These photocopies put it beyond doubt that the original Challan was produced by the defendant and a duplicate copy from the records of the HUDA was produced by the plaintiff.

Upal Ghosh (P.W.8) admitted straightaway that the contents of his affidavit (Ex.C2) were dictated by the plaintiff over the phone and he noted down the same and gave instructions to his office to prepare the affidavit. He then tried to make up for the slip by saying that the plaintiff told him over the phone to submit an affidavit regarding his involvement in the suit project, so he got prepared the affidavit in his Delhi office and sent it. He further admitted that in his affidavit (Ex.C2), he did not mention about furnishing any architectural sketch designs, i.e., rough designs for the suit project and only mentioned that he verified the contours of the site plan.

That apart, it may be noted that the plaintiff did not issue any notice to the defendant prior to the institution of the suit, as per the plaint. But during his cross-examination, the plaintiff claimed that he got issued a legal notice to the defendant between January and April, 1996, before filing the suit. He further stated that the notice was not filed in the Court. Conveniently, he did not remember the date of the notice and the date he posted it. According to him, the defendant denied the contract on phone on

19.04.1996. He claimed that the notice was sent by ordinary post and he retained a copy thereof, but never produced it.

In *PUSHPARANI S.SUNDARAM V/ s. PAULINE MANOMANI JAMES (DECEASED)*⁹, the Supreme Court found fault with the plaintiff in not even sending any notice to the defendant about his willingness to perform his part of the contract while suing for specific performance.

It may also be noticed that Section 16(c) of the Act of 1963 requires the plaintiff to aver and prove that he has performed or was always ready and willing perform the essential terms of the contract. In terms of this requirement, a suit notice must precede the institution of the suit, wherein the plaintiff would set forth his averments as to his performance or his readiness or willingness to perform the essential terms of the contract. In the present case, there is no evidence of the plaintiff serving upon the defendant a notice prior to institution of the suit fulfilling the requirements of Section 16(c) of the Act of 1963.

It is also relevant to notice that the plaintiff admits to the fact that written development agreements were executed in relation to the projects that he thereafter undertook at Raj Bhavan road and opposite the Secretariat at Saifabad. Interestingly, these projects were in respect of the properties belonging to the relations of Mir Nasir Ali Khan (P.W.7), the Managing Director of Front Line Constructions Limited. Despite the said relationship, the parties resorted to written development agreements! When the plaintiff admittedly met the defendant for the first time on 02.10.1994 and orally settled the terms of the alleged development agreement relating to the suit schedule property ten days thereafter, it is hardly believable that he would not have taken some sort of commitment in writing from the defendant. All

⁹ (2002) 9 SCC 582

the more so, when he claimed that he took several steps pursuant to the oral agreement resulting in expenditure of Rs.1,00,000/-. The said sum was not an insubstantial amount in the year 1994. However, the plaintiff conveniently claimed that he did not keep an account of the said expenditure and could not give details of the same.

Apart from the aforestated discrepancies in the oral evidence of the plaintiff's witnesses, it may be noticed that the plaintiff's claim is that the terms of the oral development agreement, as set out in para 5 of the plaint, were decided on 12.10.1994. The details of such terms, totalling 9 clauses in all, which were never reduced to writing, were recalled by the plaintiff with such clarity so as to be set out at great length nearly one and half years later. If the parties had really negotiated these terms of the development agreement with such precision and in such detail, it is hardly believable that they would not have reduced the same to some sort of informal written agreement even if they agreed to have a formal agreement drawn up later. The terms and conditions of the oral development agreement, as set out in para 5 of the plaint, therefore weaken the case of the plaintiff that such an oral agreement was concluded between him and the defendant on 12.10.1994. At the same time, as rightly pointed out by Sri Sunil B.Ganu, learned counsel, a development agreement would be essentially lacking if it does not set out the particulars and specifications of the development sought to be made. The plaintiff's own witness, Upal Ghosh (P.W.8), admitted that for a project like this, normally, a development agreement would be there in respect of the nature of construction, flooring, plastering, elevation, etc. In the absence of the building specifications, the nature of construction, the quality of the components of such construction, etc., the exact nature of the development that was proposed to be undertaken pursuant to the so-called

agreement between the plaintiff and the defendant is not certain or determinable. It may also be noted that though as many as 9 detailed terms of the development agreement were stated to have been settled orally, there was no condition imposed as to what would happen in the event of default. There was also no identification of the 60% of the built up area that would fall to the share of the defendant. Therefore, the terms and conditions of the oral agreement, while detailed in relation to some aspects, fall woefully short in relation to the aforestated aspects.

Further, it is difficult to believe that the plaintiff, being an experienced builder, would blindly settle the terms of the development agreement orally without even verifying the title of the defendant and without causing a public notice to be issued before he ventured to invest his monies in the project. Admittedly, the plaintiff did neither.

Section 14 of the Act of 1963, as it stood then, spoke of contracts not specifically enforceable. Section 14 of the Act of 1963 is relied upon strongly by Sri Sunil B.Ganu, learned counsel, and it reads as under:

‘14. Contracts not specifically enforceable.— (1) The following contracts cannot be specifically enforced, namely:—

- (a) a contract for the non-performance of which compensation in money is an adequate relief;
- (b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;
- (c) a contract which is in its nature determinable;
- (d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

(2) Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences or arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

(3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:—

(a) where the suit is for the enforcement of a contract,—

- (i) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once:

Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract; or

- (ii) to take up and pay for any debentures of a company;

(b) where the suit is for,—

- (i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or

- (ii) the purchase of a share of a partner in a firm;

(c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land:

Provided that the following conditions are fulfilled, namely:—

- (i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;
- (ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and
- (iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.'

It may be noted that Sections 14(1) and (2) of the Act of 1963 effectively bar suits for specific performance in relation to the contracts mentioned therein. Section 14(3) thereof is in the nature of an exception to Section 14(1)(a), (c) and (d) and permits enforcement of contracts falling within its ambit, notwithstanding the aforesaid three clauses. Sections 14(3)(a) and (b) are not relevant to the case on hand. Sri Sunil B. Ganu, learned counsel, would however press into service Section 14(3)(c) and assert that the plaintiff's suit is barred thereunder. Significantly, Section 14(3)(c) permits enforcement of a contract for construction of a building or execution of work on land subject to fulfilment of the conditions prescribed in the three *provisos* thereunder. The first *proviso* reads to the effect that the building or other work must be described in the contract in terms

sufficiently precise to enable the Court to determine the exact nature of the building or work. The second *proviso* stipulates that the plaintiff must have a substantial interest in the performance of the contract and the interest must be of such a nature that compensation in money for non-performance of the contract is not an adequate relief. The third *proviso* states that the defendant must have obtained possession of the whole or any part of the land on which the building is to be constructed or the work is to be executed, pursuant to such contract. All the three conditions stipulated in the aforesaid three *provisos* have to be fulfilled before the contract can be enforced.

In effect, a suit to enforce a development agreement in terms of Section 14(3)(c) of the Act of 1963 necessarily has to be construed to be a suit at the behest of the land owner and not at the instance of the developer. The use of the words 'the defendant' in the third *proviso*, in the context of his 'obtaining possession' of the whole or any part of the land 'pursuant to the contract', puts it beyond the pale of doubt that it is only the developer who could be arrayed as a defendant in such a suit, as he alone would come into possession of the land pursuant to the contract and not the owner of the said land. The possession of the land would ordinarily be with the owner thereof and would not be obtained by him pursuant to the development contract, specific performance of which is sought. It is thus clear that Section 14(3)(c) of the Act of 1963 visits stringent conditions upon the land owner when he sues for specific performance of a development agreement but such conditions are not applicable to a developer when he files a suit to enforce a development agreement. Therefore, a suit wherein the developer is the plaintiff, whereby he seeks enforcement of the development agreement, would not come within the ambit of Section

14(3)(c) of the Act of 1963 and the requirements to be fulfilled, under the three *provisos* thereunder, would have no application to such a suit. In consequence, the present suit, being one filed by a purported developer, would not attract Section 14(3)(c) of the Act of 1963. We are fortified in our interpretation of this provision by the Full Bench decision of the Calcutta High Court in ASHOK KUMAR JAISWAL V/ s. ASHIM KUMAR KAR¹⁰. Therein, Section 14(3)(c) of the Act of 1963 and more particularly, sub-clause (iii) thereof, fell for consideration. The Full Bench was dealing with the question as to whether a suit at the instance of a developer was not maintainable in view of Section 14(3)(c) of the Act of 1963. The conclusion of the Full Bench was that such a suit, where the developer was not the land owner, would not be prohibited by Section 14(3)(c) of the Act of 1963. Reliance placed by Sri Sunil B.Ganu, learned counsel, on Section 14(3)(c) of the Act of 1963 and the case law relating thereto is therefore misplaced.

That being said, we are of the opinion that Section 14(1)(a), (b) and (d) of the Act of 1963 would however apply to the case on hand.

In DAVENDER KUMAR SHARMA V/ s. MOHINDER SINGH¹¹, a learned Judge of the Delhi High Court was considering a case similar to the one on hand. The plaintiff claimed therein that he had an agreement to construct a four-storied building in the land belonging to the defendant. However, there was no agreement as regards the specifications of the proposed construction and as to what would happen if the plan was not sanctioned or in the event the parties did not agree on the specifications of the proposed construction. There was no provision with regard to the supervision of the construction and the agreement was silent as to what would happen if the plaintiff did not complete the construction. Significantly,

¹⁰ AIR 2014 (CAL) 92 (F.B.)

¹¹ ILR (2012) V DELHI 703

the agreement was not even oral but a written one. Despite the same, the learned Judge held that the contract was unenforceable in terms of Section 14(1)(b) and (d) of the Act of 1963.

Earlier, in VINOD SETH V/ s. DEVINDER BAJAJ¹², the Supreme Court was dealing with specific performance of an oral agreement for commercial collaboration for business benefits. The agreement alleged by the plaintiff was termed as a commercial collaboration agreement for development of a residential property belonging to the defendant. The Supreme Court however found that the alleged oral agreement was vague and incomplete, requiring consensus, decisions or further agreement on several minute details. The Court observed that the alleged oral agreement involved performance of a continuous duty by the plaintiff, which the Court would not be able to supervise and ultimately concluded that a collaboration agreement of the nature alleged by the plaintiff was not one that could be specifically enforced.

Applying the above principles, it may be noted that the plaintiff claims to have spent Rs.1,00,000/- but he is not in a position to substantiate the same. Even if the same is accepted to be true, Section 14(1)(a) of the Act of 1963 provides that in the event of non-performance of a contract for which compensation in money is an adequate relief, the contract cannot be specifically enforced. Therefore, going by the plaintiff's own claim of having spent Rs.1,00,000/-, he would, at best, be entitled to be recompensed and not to specific performance after such a long lapse of time as that would be an adequate relief given the fact that the plaintiff himself, speaking as P.W.1, stated to the effect that the suit project would run into crores of rupees and the claimed expenditure of Rs.1,00,000/-, as per the plaintiff's

¹² (2010) 8 SCC 1

own claim, would be a just an iota thereof. However, as already stated, the plaintiff did not even substantiate the claimed expenditure of Rs.1,00,000/-.

Further, as already pointed out, the alleged oral agreement put forth by the plaintiff, even if accepted, falls woefully short in relation to several essential aspects of the proposed development and in the absence of consensus between the parties on such crucial issues, it is not for this Court to fill in the blanks and enforce such an agreement. Section 14(1)(b) of the Act of 1963 would therefore be squarely applicable. Lastly, as the alleged oral agreement is bereft of essential details of the proposed development and if enforcement thereof is now to be permitted by this Court, the supervision of such development by the plaintiff over a period of time cannot be undertaken by this Court, when there is no specific agreement on various crucial factors of such development. Section 14(1)(d) of the Act of 1963 would therefore have application and bar grant of relief to the plaintiff, even if the alleged oral development agreement is accepted as true.

On the above analysis, even if the plaintiff's version is to be accepted, he would clearly be disentitled to seek specific performance of the oral agreement put forth by him. On the other hand, it may be noticed that the defendant has a cogent and reasonable explanation to offer for the participation of the plaintiff's employees in assisting him in his transactions and interactions with the authorities. According to him, it was Mir Nasir Ali Khan (P.W.7), his family friend, who offered to help him to get the change of land use in relation to the suit schedule property and put him in contact with M.N.Rao (P.W.3) and Upal Ghosh (P.W.8). The defendant further claimed that it was Mir Nasir Ali Khan (P.W.7) who introduced him to the plaintiff much later than 12.10.1994, the date of the alleged oral development agreement. In this regard, the desperate attempt of P.W.7 to disown

acquaintance with the defendant failed miserably as the defendant clearly brought out the close family relations that they had. That apart, they were also members of Nizam Club and Mir Taaqi Ali Khan (D.W.2) confirmed that he saw the defendant and Mir Nasir Ali Khan (P.W.7) together in the Club. D.W.2 also claimed to have been present in September, 1994 at the house of the defendant when the defendant spoke of his proposed plan to develop the suit schedule property on his own and at that time Mir Nasir Ali Khan (P.W.7) dropped in and the discussion continued and during the course of such discussion, P.W.7 offered to help the defendant, if he required, in obtaining the conversion of land use and getting MCH permissions and sanction. The details forthcoming from the defendant's oral evidence clearly bring out the falsity of the claim of Mir Nasir Ali Khan (P.W.7) that he had nothing to do with the defendant or the various transactions which form the sheet-anchor of the plaintiff's case. It may be noticed that all original documents were produced by the defendant himself in 'B' series while copies thereof were produced by the plaintiff in 'A' series. Given the admitted fact that R.V.Ramana Murthy (P.W.2), an employee of Mir Nasir Ali Khan (P.W.7) and the plaintiff, admittedly paid the fees under Ex.A1/Ex.B1 Challan, production of the duplicate Challan by the plaintiff from the records of HUDA is easily explained. As rightly pointed out by Sri Sunil B.Ganu, learned counsel, M.N.Rao (P.W.3) and Upal Ghosh (P.W.8) were both closely associated with the plaintiff and his construction company and would not have ventured to speak against him, even if their involvement with the plaintiff was only due to Mir Nasir Ali Khan (P.W.7). Despite being a close family friend of the defendant, Mir Nasir Ali Khan (P.W.7) surprisingly chose to support the plaintiff, perhaps to safeguard his own professional interests and those of his relations whose properties were being developed jointly by the plaintiff and

him through Front Line Constructions Limited, their company. Given the relationship between the defendant's family and the family of Mir Nasir Ali Khan (P.W.7), a presumption can be drawn under Section 114 of the Indian Evidence Act, 1872, that being members of old Hyderabad Muslim families, there would have been a close level of contact and friendship between them, lending credibility to the version put forth by the defendant and confirmed by Mir Taaqi Ali Khan (D.W.2). The evidence of the defendant to the effect that he was instrumental in the mother of Mir Nasir Ali Khan (P.W.7) being treated at Apollo Hospital, Hyderabad, when she suffered chest pain remained unshaken. The correspondence (Ex.B35) from Dr.Shailendra Singh, who treated her, clearly demonstrates the participation of the defendant in the said exercise. In that view of the matter, participation of the plaintiff's employees in assisting the defendant does not come to the aid of the plaintiff as they were also the employees of P.W.7, who is proved beyond doubt to have been a close acquaintance, if not a friend, of the defendant.

Significantly, Mir Nasir Ali Khan (P.W.7) admitted in his cross-examination that he had not even thought of taking the suit schedule property for development till the date of his deposition and that there was no discussion amongst the Directors of Front Line Constructions Limited to do so. The claim of the defendant was that Mir Nasir Ali Khan (P.W.7) helped him in his transactions with the authorities at that point of time for development of the suit schedule property on his own and one such help rendered by him was the payment of fees through his office employee and that the original Challan was then sent to him by Mir Nasir Ali Khan (P.W.7) in Ex.B37 cover. Significantly, P.W.7 admitted in his cross-examination that Ex.B37 cover was in his handwriting but claimed that he did not remember as to what paper he had sent in the said cover to the defendant.

The version of the defendant therefore has a ring of truth, unlike the plaintiff's version.

Lastly, it may be noted that Section 20(1) of the Act of 1963 confers discretionary jurisdiction upon the Court to decree specific performance and the Court is not bound to grant such relief merely because it is lawful to do so. Exercise of this discretion by the Court is not arbitrary but guided by sound judicial principles. In the case on hand, there is no explanation forthcoming from the plaintiff as to how and why he procured Ex.A1 Challan from the records of the HUDA. The original of the said Challan (Ex.B1) was produced by the defendant. Production of Ex.A1 Challan by the plaintiff therefore weighs heavily against him, as it reflects adversely upon his *bonafides*. Having resorted to such subterfuge to boost his suit claim, the plaintiff irrevocably disentitled himself from seeking the equitable relief of specific performance. This Court must also be conscious of the relentless passage of time since the alleged oral development agreement of October, 1994, and its concomitant vicissitudes. This Court therefore finds no grounds to exercise its discretionary jurisdiction in favour of the plaintiff, in any event.

On the above analysis, this Court holds that the plaintiff utterly failed in proving the oral development agreement dated 12.10.1994. Multitude of discrepancies in the oral evidence clearly sets at naught his claim as to how events transpired. Given the absence of irrefutable and consistent evidence in support of the so-called oral development agreement, this Court has no hesitation in rejecting the plaintiff's plea as to the very existence of such an oral development agreement. This Court therefore finds that the judgment and decree under appeal do not brook interference either on facts or in law. All the points framed for determination are answered against the appellant/plaintiff.

The appeal is devoid of merit and is accordingly dismissed with costs.

Pending miscellaneous petitions, if any, shall also stand dismissed.

SANJAY KUMAR, J

T.AMARNATH GOUD, J

28th AUGUST, 2018

Note: L.R. copy to be marked
B/o Svv

