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

Reserved on : 13 July, 2018

Date of decision :30th July, 2018

\+ **RFA 129/2010 & CM APPL. 12468/2018**

DULAL CHAND NANDI DECD THR LRS ..... Appellant

Through: Mr. Aman Mehta, Mr. N. Raja Singh & Mr. Ram Mehar Advocates (M-9818023754).

versus

KIRAN BALA MEHRU & ANR. ..... Respondents

Through: Mr. A.N. Haksar, Senior Advocate with Mr. U.A. Rana, Mr. Himanshu Mehta & Ms. Sitwat Nabi, Advocates (M-7838353242).

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

<u>Prathiba M. Singh, J.</u>

1. An agreement to sell was entered into on 12th May, 1983 for the sale of property bearing No.C-14A and C-15, Kailash Colony, New Delhi. As per the agreement, Sh. Dulal Chand Nandi-Defendant No.1, the owner had agreed to sell the property admeasuring 696.96 sq yards for a consideration of Rs.16 lakhs to Smt. Savitri Jain-Defendant No.2 and Mrs. Kiran Bala Mehru-Plaintiff. A sum of Rs.1 lakh was paid towards part payment of the total sale consideration. The contents of the agreement are not in dispute between the parties. The agreement is exhibited as Ex.PW-1/4, though there are two versions of the agreement, which are in original on record. One version of the agreement dated 12th May, 1983 is attested by Mr. K. B. Madan, who is the father of Mrs. Mehru and the other version, which is exhibited as Ex.PW-1/4 does not bear the signatures of Mr. K. B. Madan.

However, the terms and conditions of the agreement and the text of the agreement are not disputed and are identical in both the versions. The agreement to sell is unregistered.

2. It is the case of Mrs. Mehru that Mrs. Savitri Jain was not interested and assigned her rights to her. The payment of Rs.1 lakh was made vide cheques dated 11th & 12th May, 1983. The sale deed was to be executed within two months from the date when permissions were obtained from the income tax authorities and other competent authorities. Mr. Nandi forwarded the income tax clearance certificate and a draft sale deed on 13th June, 1984. As per the draft sale deed, the outstanding consideration of Rs.15 lakhs was to be paid in two tranches of Rs.7 lakhs and Rs.8 lakhs. The former was to be paid within 15 days of receipt of income tax clearance and the latter at the time of execution of the sale deed. As per the said draft, the possession was to be delivered within two months of the execution of the sale deed.

3. The terms and conditions of the draft sale deed were not agreeable to Mrs. Mehru, who called upon Mr. Nandi to execute the sale deed prior to 30th June, 1984, as per the conditions of the Agreement to Sell. It was not agreeable to Mrs. Mehru that the balance sale consideration was to be paid in two tranches and according to Mrs. Mehru she was willing to pay the entire amount at one go and also insisted on possession being handed over at the time of execution of the sale deed. Correspondence ensued between the parties and there was a complete stalemate in respect of payment of balance consideration and execution of the sale deed.

4. In the meantime, Mrs. Savitri Jain stated that she was no longer interested in the purchase and nominated Mrs. Mehru to go ahead with the transaction. She also informed Mr. Nandi to execute the sale deed in favour

of Mrs. Mehru and give her suitable adjustment for the sum of Rs.50,000 paid by her. This letter dated 20th September, 1984 was disputed by Mr. Nandi. In view of the stalemate, finally, Mrs. Mehru filed a suit for specific performance seeking the following reliefs.

> "*(a) that a decree for specific performance of the agreement to sell dated 12th May, 1983 be passed in favour of the Plaintiff and against defendant No.1 in respect of the property bearing Nos. C-14A and C-15, Kailash Colony, New Delhi and the defendant No.1 be ordered and directed to execute the sale deed in favour of the Plaintiff or her nominee, on terms and conditions as set out in the Agreement;*
> *(b) that in the event of sale deed not being executed by the defendant No.1 in terms of the orders of this Hon'ble Court, the same be executed by an Officer nominated by this Hon'ble Court to do so;*
> *(c) in the alternative to prayer (a) & (b), if for any reasons, this Hon'ble Court does not pass a decree for specific performance of the agreement, the Plaintiff prays for a decree for damages against the defendant in the sum of Rs.16 lacs jointly and/or severally;*
> *(d) that the defendant be ordered and decreed to pay to the plaintiff interest @18% per annum with monthly rests on the earnest money and/or sale consideration passed in terms of Clause 6 of the agreement dated 12th May, 1983 from the date of the agreement till payment;*
> *(e) that the defendant be ordered and decreed to pay to the plaintiff the costs of the present suit;*
> *(f) to pass such other or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."*

5. In his defence, Mr. Nandi took the stand that Mrs. Mehru and her father Mr. K. B. Madan, who was the neighbour of Mr. Nandi, had defrauded him and had taken advantage of his financial difficulties. He also stated that he was agreeable to sell the property jointly to Mrs. Mehru and Mrs. Jain and the fact, that Mrs. Jain gave up her rights, shows that all along Mr. Madan, through his daughter, was trying to purchase his property. Hence, according to him the sale transaction was a proxy transaction of Mr. K. B. Madan. According to the written statement, Mr. Madan, who was a chartered accountant, had tried to persuade Mr. Nandi to sign the agreement to sell and had offered Mr. Nandi to take Rs. 6 lakhs in cash. Thereafter, Mr. Madan started raising objections to the terms in the draft sale deed. He relied upon the correspondence exchanged between the parties. Mr. Nandi also claimed that while Mrs. Jain signed the no objection for Urban Land Clearance Certificate, Mrs. Mehru sent a letter written by her father. He stated that he doubted the signatures of Mrs. Mehru in various letters and felt that Mr. Madan had forged the same. Since Mrs. Mehru did not sign the no objection for obtaining the Urban Land Clearance Certificate, and as she did not perform her obligations, the suit is liable to be dismissed. Mr. Nandi also took the stand that the agreement to sell was repudiated as far back as on 27th September, 1984.

6. The Trial Court recorded the evidence of the parties and decreed the suit in favour of Mrs. Mehru on 30th January, 2010 in the following terms:

> "*In view of the above findings, suit of the plaintiff is decreed in her favour and against the legal representatives of defendant No.1, and by way of decree for specific performance of the agreement dated 12.5.1983, they are called upon to execute*

sale deed and get the same registered in favour of the plaintiff on payment of the balance sale consideration in terms of the agreement to sell, and also to deliver possession of the suit property, within one month, failing which plaintiff shall be at liberty to get the same executed and registered with the assistance of the Court, in accordance with law.

Decree sheet be prepared and file be consigned to record room."

<u>Submissions of the parties</u>

7. Mr. Aman Mehta, learned counsel appearing for Mr. Dulal Chand Nandi through his heirs i.e., his daughter Mrs. Anima Dasgupta, has submitted that the present case raised several legal issues. His submissions, as to why the specific performance ought not to be granted, are as under:

- The agreement to sell was executed under suspicious circumstances.
- The correspondence showed that Mrs. Mehru was never in the picture and it was her father Mr. K. B. Madan, who was negotiating and dealing with Mr. Nandi. The entire transaction was a *benami* transaction being entered into in the name of Mrs. Mehru and Mrs. Jain, though the actual purchaser was Mr. Madan.
- Both Mrs. Mehru and Mrs. Jain were not forthcoming with their finances and failed to pay the balance sale consideration. The purchasers were cooking up various excuses for not coming forward with the payment of sale consideration and the nomination of Mrs. Jain in favour of Mrs. Mehru was also not valid.
- The written statement was wrongly rejected by the Trial Court and the verification in the plaint is not proper.

- The agreement to sell stood rescinded on 27th September, 1984.
- Mrs. Mehru failed to pay the Court fee of Rs.15 lakhs.
- As per the clauses in the agreement, if the permission was not obtained, the amount could be refunded with 18% interest per annum.
- In various letters, the signatures of Mrs. Mehru are forged. All the letters purportedly written by Mrs. Mehru were, in fact, written by Mr. Madan.
- As far back as in 1984, when the transaction was not getting fructified Mr. Nandi wrote to Mrs. Mehru that he is willing to refund the amount paid along with reasonable interest.
- That the two parties i.e., Mrs. Mehru and Mrs. Jain were colluding with each other. Mr. Madan and the husband of Mrs. Jain i.e. Mr. N. K. Jain were friends and the nomination would be valid only after Mrs. Mehru returns the sum of Rs.50,000/- paid by Mrs. Jain. Until then the nomination of Mrs. Mehru by Mrs. Jain is invalid.
- Mrs. Mehru has failed to establish readiness and willingness as the funds were not available and no documents have been filed to show the financial readiness and willingness.
- The affidavit of Mrs. Mehru is beyond pleadings. The bank record of Mr. Madan cannot be relied upon to show readiness and willingness.
- Mr. Nandi was over 90 years old and was cheated by Mrs. Mehru and her father Mr. Madan.
- The handwriting expert has given an opinion that the signatures of Mrs. Mehru have been forged.

- The agreement to sell provides for cancellation by giving back the money with interest.
- Despite the no objection under the Urban Land Ceiling Act and the income tax clearance having been obtained, the readiness and willingness was not shown as they did not have the money.
- The Trial Court has granted specific performance and compensation, which cannot be done.
- The Trial Court has wrongly dismissed the application under Section 340 Criminal Procedure Code 1973, as Mr. Madan had forged the signatures of his daughter.
- The relief of specific performance is not liable to be granted as it would cause severe hardship to Mr. Nandi's heirs.
- Since only 6.25% of the total sale consideration i.e., Rs.1 lakh was paid out of Rs.16 lakhs, Mrs. Mehru is not entitled to specific performance.

8. He relies on the following judgments:

1. ***His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar – (1996) 4 SCC 526***
2. ***N.P. Thirugnanam (Dead) through LRs v. Dr. R. Jagan Mohan Rao – (1995) 5 SCC 115***
3. ***K. Narendra v. Riviera Apartments (P) Ltd. – (1999) 5 SCC 77***
4. ***Chand Rani (Smt) (Dead) through LRs v. Kamal Rani (Smt) (Dead) through LRs – (1993) 1 SCC 519***
5. ***Futuristic Solutions Limited v. Nirmal Promoters (P) Ltd. – Order dated 18.07.2006 passed by Del. HC in CS(OS) No.146/2006***
6. ***A.C. Arulappan v. Ahalya Naik (Smt) – (2001) 6 SCC 600***

7. *Gyaneshwar v. Smt. Moongabai - 2006(1)MPLJ221*
8. *Jugraj Singh v. Raj Singh – AIR 1995 SC 945*
9. *Bal Krishna v. Bhagwari Das (Dead) through LRs – 2008 (2) UC 829*
10. *Ved Prakash Kharbanda v. Vimal Bindal – 198 (2013) DLT 555*
11. *Man Kaur (Dead) through LRs v. Hartar Singh Sangha – 2010 (9) UJ SC 4569*
12. *Saradamani Kandappan v. S. Rajalakshmi – (2011) 12 SCC 18*
13. *M/s. A.D. Overseas v. Smt. Sneh Lata Sharma – 2013 (133) DRJ 198*
14. *Bhim Singhji v. Union of India – AIR 1981 SC 234*
15. *Central Bureau of Investigation v. V.C. Shukla – 1998 (75) ECR 484*
16. *Satya Jain (Dead) through LRs v. Anis Ahmed Rushdie (Dead) through LRs–2013(1)AWC 625(SC)*
17. *Scindia Potteries v. Sri Chand - 1996(3)RCR(Civil)229*
18. *Uday Shankar Triyar v. Ram Kalewar Prasad Singh - AIR 2006 SC 269*
19. *Jayakantham v. Abhaykumar - 2017 2 AWC 1729 SC*
20. *Bank of India v. M/s Allibhoy Mohammed & Ors. – AIR 2008 BOM 81*
21. *Smt. Shail Kumari v. Smt. Saraswati Devi – 6(2002) DLT131*
22. *Chandrika Prasad Yadav v. State of Bihar & Ors. – AIR 2004 SC 2036*
23. *Motilal Vora, Young Indian Sam Pitroda @ Satyanarayan Gangaram Pitroda, Suman Dubey, Oscar Fernandes v. Subramanian Swamy & Anr – 231 (2016) DLT 431*
24. *Sandeep Bhargava & Ors v. Yadav N. Bhargava & Ors. – 2016 (1) RLR 242*
25. *Ravi Khunteta v. Sanjay Rana – Order passed 02.07.2012 passed in CS(OS) 1883/2012*

26.Pritish v. State of Maharashtra & Ors – (2002) 1 SCC 253

27.Radhey Shyam Garg v. Naresh Gupta – AIR 2010 SC 3210

9. Mr. A. N. Haksar, learned Senior Advocate appearing on behalf of Mrs. Mehru submitted that there are various inconsistencies in the Defendant's case. The lady, who is currently prosecuting is Mrs. Dasgupta, daughter of Mr. Nandi, who herself been disinherited. The stand taken by her in respect of fraud and mis-representation is contrary to her father's written statement. He relies on the pleadings in the written statement to state that Mr. Dulal Chand Nandi was agreeable to sell the property. No coercion or inducement was pleaded by Mr. Nandi. According to Mr. Haksar the letter dated 15th February, 1984 shows that Mr. Nandi was facing financial difficulties, and he wanted the formalities to be completed by 31st March, 1984, so the agreement itself is not disputed. In fact, five days after the agreement to sell i.e., on 17th May, 1983, Mr. Nandi executed a Will, in which he did not give any of his properties to his daughter Mrs. Dasgupta. As per the Will, Mr. Nandi left all his assets to his wife, and thereafter to his son, who has also recently passed away. He submits that the draft sale deed was contrary to the agreement to sell as it contemplated payment of the balance consideration in two tranches. Mr. Haksar further relies upon various letters to argue that the readiness and willingness of Mrs. Mehru has been proved. He submits that in a suit for specific performance, the conduct is relevant for grant of discretionary relief and while balancing equities, the Court is to decide who the defaulting party is. He also submits that in order to prove readiness and willingness, the ready money need not to be shown and just because there is an increase in the property rates, it does not mean

that specific performance should not be granted. He relies upon the following judgments.

- ***Nathulal v. Phoolchand (1969) 3 SCC 120***
- ***Boramma v. Kroshna Gowda & Ors. (2000) 9 SCC 214***
- ***Nirmal Anand v. Advent Corporation (P) Ltd. and Ors.(2002) 8 SCC 146***
- ***Azhar Sultana v. B. Rajamani & Ors. (2009) 17 SCC 27***
- ***Narindejit Singh v. North Star Estate Promoters Limited (2012) 5 SCC 712***
- ***Satya Jain (Dead) Through LRS. And Ors v. Anis Ahmed Rushdie (Dead) Through LRS and Ors (2013) 8 SCC 131***
- ***K. Prakash v. B.R. Sampath Kumar (2015) 1 SCC 597***
- ***Zarina Siddiqui v A. Ramalingam Alias R. Amarnathan (2015) 1 SCC 705***

<u>Proceedings in suit</u>

10. The suit was instituted on 30th August, 1984. Mr. Nandi passed away on 23rd March 1987 and an application was filed to bring on record his LRs, namely Smt. Shobha Nandi, Mrs. Amina Dasgupta and Mr. Bhola Nath Nandi. Since Mr. Bhola Nath Nandi did not appear, he was served by publication and affixation. On 11th December, 1997, the Joint Registrar ordered that the Defendant Nos. 1(b) and 1(c) are the only LRs of Mr. Nandi, and both are on record. The following issues were framed in the suit on 23rd September, 1999.

> *"1) Whether the agreement to sell dated 12.5.83 was got executed by misrepresentation? Is so its effect. OPD-1*

2) Whether Shri D. C. Nandi (defendant No.1) executed a Registered Will dated 17.05.1983? If so, its, effect on the present case? OPP
3) Whether the agreement to sale was validly repudiated cancelled by the defendant No.1? OPD-1
4) Whether the defendant. No.1 has committed the breach of agreement? OPP
5) What is the legal effect of not signing and verifying the written statement as filed by defendant No.1? OPP
6) Whether the plaintiff is entitled to relief for specific performance of the Agreement to Sell dated 12.05.83? OPP
7) Whether the plaintiff is entitled for decree of damages against defendants1(b), and 1(c) in the event issue No.5 is answered against the plaintiff? OPP
8) Whether any nomination by the defendant No.2 in favour of the plaintiff in respect of the Agreement to Sell can be enforced by the plaintiff? OPD-1
9) Relief."

11. An application was filed under Order XVI Rule 1 CPC, for summoning Mrs. Jain, Mr. N. K. Jain and the husband of Mrs. Mehru. The said application was rejected on 21st August, 2006. An application was also filed under Section VI Rule 14 CPC on the ground that the plaint has not been properly verified and is liable to be dismissed. The said application was dismissed on 30th January, 2010.

12. Mrs. Mehru appeared as PW-1, her father Mr. K. B. Madan appeared as PW-2 and a manager from the HDFC bank appeared as PW-3. On behalf of the Defendant, Mrs. Amina Dasgupta, daughter of Mr. Nandi appeared as D1W1.

Mrs. Mehru's witnesses exhibited the following documents:

- Ex. PW1/1 Copy of the notice
- Ex. PW1/2 Postal receipts
- Ex. PW1/3 Acknowledgement cards
- Ex. PW1/4 Original Agreement to Sell
- Ex. PW1/5 Receipt dated 11th May, 1983 for ₹10,000/-
- Ex. PW1/6 Receipt dated 12th May, 1983 for ₹90,000/-
- Ex. PW1/7 Draft Sale Deed
- Ex. PW1/8 Letter dated 18th June, 1984 from Mrs. Mehru to D.C. Nandi
- Ex. PW1/9 Letter dated 30th June, 1984 from Mrs. Mehru to D.C. Nandi
- Ex. PW1/10 and Ex. PW1/15 Postal receipts
- Ex. PW1/11 letter dated 5th July, 1984 from D.C. Nandi to Mrs. Mehru and Savitri Jain
- Ex. PW1/12 Copy of the income tax permission
- Ex. PW1/13 Letter dated 10th July, 1984 from Mr. Madan to Mrs. Mehru
- Ex. PW1/14A to 14C original treasury challans
- Ex. PW1/16 Letter dated 3rd August, 1984 from Mrs. Mehru to D.C. Nandi
- Ex. PW1/17 Form VII dated 30th July 1984
- Ex. PW1/18 Letter dated 22nd August 1984 from Mrs. Mehru to D.C. Nandi
- Ex. PW1/19 AD card received duly signed by D.C. Nandi

- Ex. PW1/20 Receipt of Savitri Jain for ₹ 1,00,000/-
- Ex. PW1/21 Letter dated 17th September 1984 from Mrs. Mehru to D.C. Nandi
- Ex. P-2 Letter dated 21st July 1984 from D.C. Nandi to Mrs. Mehru
- Ex. P-3 Letter dated 27th September 1984 from D.C. Nandi to Savitri Jain
- Ex. PW3/1 Certificate of HDFC Bank 21st September, 2006
- Ex. PW4/1 Certificate of Central Bank of India dated 26th September 2006
- Ex. PW4/2 Statement of Account of Central Bank of India from 27th November, 1999 to 30th October, 2006
- Ex. PW4/3 Letter of Central Bank of India dated 30th October, 2006
- Ex. PW4/4 Statement of account of Central Bank
- Ex. PW4/5 Photocopy of FD dated 10th July, 2006
- Ex. P-5 Original letter dated 15th February, 1984 by D.C. Nandi to Shri K.B. Madan
- Ex. P-6 Original Letter date 15th March, 1984 by S.C. Chhabra, advocate to D.C. Nandi
- Ex. P-1 Letter dated 13th June, 1984

The Defendant's witnesses exhibited the following documents:

- Ex-DW1/A Original Will of D.C. Nandi dated 17th May, 1983
- Ex-DW1/1 Letter dated 18th June, 1984 by Mrs. Mehru to D.C. Nandi
- Ex-DW1/2 Letter dated 30th June, 1984 by D.C. Nandi to Mrs. Mehru

<u>Analysis of the Documents and evidence</u>

13. Mrs. Mehru, who appeared as PW-1, gave her family background in

the cross- examination. She confirmed that she lived in C-15A, Kailash Colony, New Delhi with her father until her marriage in 1976. She was familiar with Mr. D. C. Nandi and his family. She confirmed that Mr. Nandi was approximately 90 years old and his wife was almost 85 years old when the agreement to sell dated 12th May, 1983 was prepared. She identified her own signatures, Mr. Nandi's signatures and the signatures of Smt. Savitri Jain. She said that the payment of the earnest money was made by her through cheque. She denied the suggestion that the contents of the agreement to sell were explained to Mr. D. C. Nandi and that his signatures were taken on some pretext. She also confirmed that in the original agreement to sell, which was confronted to her, her father Mr. K. B. Madan had attested the agreement to sell on all the pages.

14. Mr. K. B. Madan- PW2, in his evidence, confirmed the signatures in the agreement to sell. He also stated in his affidavit that he used to hold discussions and negotiations on behalf of his daughter Mrs. Mehru, who was living in Chandigarh. He stated that after the agreement was executed, he checked with Mr. Nandi about the permission under the Urban Land Ceiling Act. He reiterated various letters and replies. He further stated that Mr. Nandi was trying to wriggle out of the contract as his son in law was not handing over the vacant possession of the property to him. He also stated that the terms of the draft sale deed were in departure to the agreement to sell and hence they could not accept the same. He stated that his daughter and Smt. Jain had sufficient funds for paying Mr. Nandi. One important fact stated by PW-2 Mr. Madan is that he purchased the stamp paper for Rs.1,28,010/- from the treasury and that he had informed Mr. Nandi about the same. PW-2 thereafter stated that vide letter dated 21st July, 1984

(Ex.P2), Mr. Nandi insisted that Mrs. Mehru should come and meet him. As per his affidavit, Mr. N. K. Jain i.e. the husband of Smt. Jain also did not agree with the changed terms in the sale deed. PW-2 said that he insisted with the Defendant that delivery of vacant possession at the time of the registration of the sale deed is essential. He stated that the amount of Rs.50,000/- was paid to Mrs. Jain by Mrs. Mehru and the receipt was exhibited as Ex.PW-1/20.

15. In his cross-examination, PW-2 stated that Mr. Nandi was his neighbour right till his death in Kailash Colony. He stated that Mr. Nandi lived with his wife, his son, daughter and son-in-law. One of the sons Mr. Vishwanath Nandi pre-deceased his father. He admitted that Mr. N. K. Jain, husband of Mrs. Savitri Jain was a property agent, who was known to him. He confirmed his signatures on the agreement to sell and stated that he was asked to attest all the signatures by Mr. D. C. Nandi as he did not know Mr. N. K. Jain or his wife or his daughter. It was at the request of Mr. D. C. Nandi that he attested their signatures in red ink. He said that his daughter had authorised him by letters to deal with the matter on her behalf as she was working in Chandigarh. He also stated that as per the Will executed by Mr. Nandi on 15th May, 1983 to which Mr. N. K. Jain is an attesting witness, he had disinherited his daughter from his movable and immovable properties. He exhibited the original Will as Ex.PW-2/D1. He denied the suggestion that the agreement to sell was fraudulently got executed.

16. PW-3, the official from the HDFC bank confirmed the bank statements of Mr. K. B. Madan. PW-4 was an official from the Central Bank of India. who also confirmed Ex. PW4/1 to Ex.PW-4/5.

17. Mrs. Anima Dasgupta appeared as D1W1. She confirmed that she was

living with her parents in the suit property and that they were not in good health. She claimed that Mr. K. B. Madan was the next-door neighbour and there was no discussion of the sale of the house at all. She also stated that Mr. Madan hatched a conspiracy and played a fraud to deceive her father. She used extremely derogatory language in her affidavit against Mr. Madan that he used *'sugar coated words'* and got the agreement signed. She also claimed that neither she nor her brother Mr. Bhola Nath Nandi, were told about the execution of the said agreement, by either Mr. Madan or Mr. N. K. Jain. It was only when an advertisement was given by Mr. Madan in the newspaper and property dealers started visiting the property, that they became aware of the contents of the agreement to sell 12th May, 1983. She claimed that her father did not have a copy of the agreement to sell and it was vide letter dated 12th May, 1983 that he called for an agreement but by then, he had already been *"trapped"*. She claimed that Mr. Madan, upon receipt of Ex. P-5 came to Mr. Nandi's house and told them that he would take care of all the formalities and only the sale deed needs to be signed by Mr. Nandi. According to her, he failed to deal with the specific issues that were raised in Ex. P5. She claimed that Mrs. Mehru never visited Mr. Madan on 12th May, 1983 and the agreement was not signed by her in the presence of her father. She also claimed that the Will dated 17th May, 1983, having been witnessed by Mr. N. K. Jain and none of the other family friends or friends of Mr. D. C. Nandi, showed that even the said Will got signed by Mr. Madan and his associates by cheating her father. She stated that Mr. Madan wanted to *"dupe her father and had used all hook and crook in the process"*. She also claimed that the pleadings filed by Mrs. Jain were through impersonation. She stated that both her brother, Mr. Bhola Nath

Nandi and she herself have no other place in Delhi to stay and the handing over of vacant possession was an impossibility as even her father did not have a place to stay. She stated that her mother's Will dated 17th October, 1992 bequeathed all the properties in favour of herself and her brother.

18. In her cross-examination, she tendered the original Will of her mother, which was endorsed as Mark A. In her cross-examination, she stated that she had not shown the written statement to her brother Mr. Bhola Nath Nandi or his son posted at Delhi. She stated that she was not aware as to whether her father had filed the written statement. She identified her mother's signatures on the agreement to sell. She claimed that her father had not signed the agreement. She also stated that the various corrections and initials are not of her father. She also stated that her mother did not sign as a witness to the agreement, however immediately thereafter, she recognised the signatures of her mother in the original. She claimed that she was not aware that as to whether the original agreement to sell was in the possession of her family, and only, therefore, carbon copy had been proved. She claimed ignorance in respect of the four cheques by Mrs. Mehru and Mrs. Jain. She confirmed her father's and mother's signatures in Ex.PW-1/5, the receipt. However, on receipt dated 12th May, 1983 Ex.PW-1/6 she disputed the signatures of her father. She claimed that the written statement filed on record did not bear the signatures of her father. When she was shown her own written statement, she admitted her signatures. She strangely claimed "*I put my signatures on written statement 27.4.89 at pt. S without knowing the contents of the written statement. Vol. I was also not made understand contents of written statement. The written statement 27.4.89 was not drafted or prepared at my instructions.*" She stated that she cannot recognise the

signatures of Mrs. Mehru, Mrs. Jain, Mr. N. K. Jain and Mr. Madan.

19. She claimed that her father never obtained any clearance from the income tax department for selling the property and that he was never ready and willing to sell the property for a consideration of Rs.16 lakhs. She stated that no document was signed or executed in her presence for sale of the property. She claimed that she had not read or gone through the correspondence filed on record. She identified the signatures of her father in Ex.P-1. She also volunteered "*I again say that I have absolutely no knowledge of the facts of this case and regarding any other aspects of the case.*"

20. She claimed that her father had not executed the Will dated 17th May, 1983 in her presence. She also said that she was not aware of the contents of the Will or that her father had deprived her of the assets. She claimed that the said Will was executed under coercion. She claimed that she was not aware as to what conversation took place between her father and Mr. K. B. Madan. She stated that "*I do not know anything as to what happened regarding this transaction during the life time of my father.*"

21. She claimed that her father was bed-ridden for some period before his death. She stated that she was not aware as to whether her father had requested some money out of the balance sale consideration in order to purchase a flat in Chitranjan Park. She stated that she had heard from her mother about her father's agreement to sell the property. She claimed that the four cheques given by Mrs. Mehru and Mrs. Jain were not deposited by her father in his account where he was receiving pension and she was also not aware if he had deposited them in some other account. She denied that her husband wanted to usurp the property.

Analysis and findings

22. The agreement to sell dated 12th May, 1983 has been filed and exhibited on record. Though there are 2 originals of this agreement, one which is attested by Mr. Madan and second the carbon copy, which is not attested, there is no dispute as to the contents of the same. The agreement to sell is, therefore, deemed to be the exhibited document on record, Ex.PW-1/4, which contains the following important terms.

> *"Agreement to sell between Dulal Chand Nandi as the seller and Smt. Savitri Jain and Smt. Kiran Bala Mehru as the purchasers.*
>
> *1. The First Party agrees to sell the said agreement property and Second Party agrees to purchase the same belonging to the First Party free from all encumbrances, charges, liens, lispendens, claims whatsoever at or for the price of Rs. 16,00,000/- (Rs, Sixteen lacs only) making out a good and marketable title to the same.*
>
> *2. The Second Party has paid a sum of Rs.10,000/- (Rs. Ten thousand only) to the First Party vide Cheque No. 154331 dt. 11.05.83 on Andhra Bank, Green Park, New Delhi for Rs.5,000/- & Cheque No. 161786 dt. 11.05.83 on Central Bank of India, Asaf Ali Road, New Delhi (for Rs.5,000) as earnest money towards the sale of the said property, the receipt of which the First Party hereby acknowledges.*
>
> *The Second Party has also paid a further sum of Rs. 90,000/- (Rs. Ninety thousand only) this day, date and year of this Agreement to Sell vide Cheque No. 154332dt. 12.05.83 on Andhra Bank, New Delhi for Rs. 45,000/- (Rs. Forty Five thousand only) and Cheques No. 161787 dt. 12.05.83 on Central Bank of India, Asaf Ali Road, New Delhi, (for Rs.45,000/- Rs. Forty Five thousand only) towards part payment of total sale*

consideration of the said property, the receipt of which the First Party acknowledges.

3. The First Party shall obtain all necessary permission or permissions from Competent Authority and any other permission or permissions by the Government of India, necessary, to sell the said property to the Second Party namely clearance from Urban Land Ceiling Income Tax Authority to unable the Second Party to get the said property registered in their name.

4. The First Party shall make all the said applications and obtain and procure all the necessary certificates and sanctions and permission referred to in paragraph 3 above and the first Party making out a good and marketable title to the Said property free from all encumbranches, the sale shall be completed within two months from the date the aforesaid permission, certificates and sanctions have been obtained.

5. On a good and marketable title to the said property free from all encumbrances being made, out in terms of this Agreement, the First Party shall execute and register a proper sale Deed in favour of the Second Party or its nominee or nominees.

6. In case however the First Party is unable to obtain and procure the necessary permissions as referred to in clause 3 above and/or fails to make out a good and marketable title to the said property at the option of the Second Party, the earnest/part payment made by the Second Party to the First Party shall be forthwith repaid and refunded by the First Party to the Second Party paying interest thereon at the rate of 18 per cent per annum with monthly rests without prejudice to the rights of the Second Party to sue the First party for specific performance of this Agreement.”

23. The signatures in the agreement to sell are all admitted by the various witnesses who have appeared. Even from the correspondence the terms of the agreement are not in dispute. Mr. Nandi, the seller has referred to the agreement by various letters sent by him. The consideration amount has been admitted.

24. The Defendant has sought to cast a doubt on the said agreement by arguing that the same was signed under coercion and misrepresentation. A perusal of the pleadings and correspondence reveals that though the transaction is doubted by Mr. Nandi in the sense that he believes that he was swayed into signing the same, the letters written by him, the income tax clearance obtained by him and the Urban Land Ceiling Permission obtained by him clearly go to show that the signing of the agreement and the execution of the same is not in dispute. The receipt of Rs.1 lakh from Mrs. Mehru and Mrs. Jain is also not disputed, inasmuch as the same has been offered by Mr. Nandi later on for the purposes of refunding. The testimony of the daughter of Mr. Nandi (D1W1) does not inspire confidence as she attempts to repeatedly contradict herself. On some occasions she admits her father's signatures in the agreement and on another occasion, she denies it. She also responds similarly in respect of her mother's signatures. Thus, it is held that the agreement to sell is a valid agreement in law and is enforceable.

25. However, the events following the agreement to sell require to be captured, inasmuch as counsels have laid a large amount of stress on the letters and replies thereto. Moreover, since Mr. Nandi himself is no more, his conduct can only be deciphered from the various letters written by him which are on record. This Court cannot go by the evidence of his daughter who seemed to have very little knowledge of the transaction and appeared to

contradict herself.

26. A narration of the various letters and replies, which are duly admitted by the parties, shows that on 15th February, 1984, Mr. D. C. Nandi, admits that he had signed the receipts and the agreement on 11th & 12th May, 1983. He also states in the said letter that it was Mr. Madan who had agreed to get everything done for disposing of the property at a price of Rs.16 lakhs and to also obtain the clearances from the authorities. He admitted receipt of the advance sum of Rs.1 lakh. He then expressed his concern about the fact that more than nine months had lapsed and no action had been taken by Mr. Madan to complete the deal inspite of repeated requests and personal meetings. He also took severe umbrage to the fact that Mr. Madan had got an advertisement issued in the newspaper regarding sale of the property because of which he and his family was being tortured every day by property dealers and brokers who kept visiting the property. He further claimed that he had even been offered a sum of Rs.25 Lakhs for the property and under such circumstances, he calls upon Mr. Madan to get all the formalities done by 31st March, 1984. Admittedly, this is the first letter written after execution of the agreement to sell.

27. Surprisingly, the response was issued by a counsel on behalf of Sh. N. K. Jain and Mrs. Mehru and Smt. Jain. In the said reply, it was claimed that all the permissions were to be obtained by Mr. Nandi, who was more than 90 years of age. In the said letter, a stand was taken that no permission was required under the Urban Land Ceiling Act but an income tax clearance was to be obtained. An allegation was made that Mr. Nandi was avoiding obtaining the clearance on one pretext or the other. It was also alleged that Mr. Nandi was trying to wriggle out of the contract. On 13th June, 1984, Mr.

Nandi wrote to Mrs. Mehru, and stated that as per the agreement he was attaching a photocopy of the income tax clearance and also a draft copy of the sale deed to be got registered with the Sub-Registrar. He added a note in this letter to the effect that the income tax clearance and the draft sale deed were also given by him to Mr. N. K. Jain on 5th June, 1984, when he met him at his residence. The income tax clearance is attached to the said letter dated 13th June, 1984 and clearly mentions the names of the purchasers i.e. Mrs. Mehru and Mrs. Jain as also the consideration of Rs.16 lakhs. The draft sale deed mentions the following clauses:

> "*And whereas the Vendor has agreed to sell and the Vendees have agreed to purchase the aid property for a sum of Rs. 16,00,000 (Sixteen lakhs) only.*
>
> *<u>Now this Sale Deed witnesseth as under</u>*
>
> *That in consideration of the sum of Rs. 16,00,000 /- out of which a sum of Rs.1,00,000/- has already been received by the Vendor from the Vendees, the receipt of which the Vendor hereby admits and acknowledges and the balance sum of Rs.15,00,000/- (Fifteen lakhs) which the Vendees shall pay in two instalments, i.e. (1) Rs.7,00,000/- (Seven lakhs) within fifteen days from the date of receipt of the Regd. A/D letter with Photostat copy of I.T. Clearance of the Vendor and a copy of the proposed Sale Deed to be executed and registered and (a) the balance amount of Rs. 8,00,000/- making the total of Rs.l6,00,000/-, the sale price of the property, to be received by the Vendor from the Vendees before the Sub-Registrar, New Delhi, at the time of registration of this Sale Deed, the vendor doth hereby sell, convey and transfer the said property, with all rights pertaining to the said property with all permanent fittings, fixtures, connections, structures standing thereon, free*

> *from all encumbrances unto the Vendees absolutely.*
> *That the actual physical vacant possession of the said property to be delivered by the Vendor to the Vendees within two months on the execution and registration of the Sale Deed before the Sub-Registrar. All payments, however, shall have to be made by the Vendees to the Vendor by Bank Drafts."*

28. There is an interesting twist in the case, at this stage. Counsel for Mr. Nandi has tried to claim that a letter dated 18th June 1984 which is again in two versions is forged. It is claimed on behalf of Mrs. Mehru that a letter dated 18th June, 1984 was sent by her to Mr. Nandi. There are two versions of this letter. One at page 975 and the other at 1073. In Ex.PW-1/8, there is a note to Mrs. Savitri Devi @ Savitri Jain, w/o Shri N. K. Jain. In Ex. D1/1, the said note is missing. However, insofar as the content of the letter addressed to Mrs. Mehru, there is no difference. It is, therefore, completely possible that on the carbon copy of the letter that the note to Mrs. Jain was separately typed out and signed by Mrs. Mehru. Nothing, in fact, turns on the two versions of this letter, inasmuch as Mrs. Mehru had called upon Mr. Nandi to confirm that the clearance under Urban Land Ceiling Act has been obtained and that she would prefer that the vacant physical possession could be handed over before 30th June, 1984. Interestingly, Ex. D-1/1 which is the copy of the letter dated 18th June, 2014 sent by Mrs. Mehru has been placed on record by Mr. Nandi's counsel. Thus, it cannot be disputed that this letter was actually sent and the allegation of forgery or otherwise need not be gone into, as the same does not affect the decision in the present case.

29. On 30th June, 1984 again Mrs. Mehru called upon Mr. Nandi to

confirm that he would be handing over vacant physical possession latest by 10th June, 1984, failing which she would sue for specific performance. In response, Mr. Nandi informed her that the income tax clearance certificate has been obtained and that the same was forwarded on 13th June, 1984. He states categorically that *"we are now in a position to execute the sale deed and that she should arrange for the balance sale consideration of Rs.15 lakhs and if the same is not arranged by 31st August, 1984, the agreement would be treated as cancelled".* He also informs her that he should be conveyed the date of execution of the sale deed with sufficient advance notice. Along with this letter, he again attached the income tax clearance certificate and the draft sale deed.

30. It is claimed by Mrs. Mehru that letter dated 10th July, 1984, Ex. P1/13 was sent to Mr. Nandi and that he should hand over vacant and peaceful possession after executing the sale deed on 25th July, 1984. Mr. Madan, however, called upon Mr. Nandi to obtain the permission under the Urban Land Ceiling Act.

31. On 21st July, 1984, Mr. Nandi requested Mrs. Mehru and Mrs. Jain to visit him at his residence as they are required to make a statement seeking transfer under Urban Land Ceiling Act. He again asked them to confirm the draft sale deed. In this letter, Mr. Nandi also informed them that he had met Mr. N. K. Jain on 19th July, 1984 at his residence. On 3rd August, 1984, a letter was sent by Mr. Madan on behalf of Mrs. Mehru to Mr. Nandi that Mr. N. K. Jain had met Mr. Nandi's family on 19th July, 1984 and that they had informed him that they were not in a position to hand over possession of the property. He, therefore, asked Mr. Nandi as to when he would be in a position to give the vacant possession, and in any event, it should not be

later then 16th August, 1984.

32. On 22nd August, 1984, Mrs. Mehru informed Mr. Nandi that she had no recourse left but to seek specific performance. On 11th August, 1984, a letter was written by Mr. D. C. Nandi informing Mrs. Mehru and Mrs. Jain that despite repeated reminders, they are not approving the draft of the sale deed. He gave a final date on 31st August, 1984 for the purposes of signing Form-8 as well as a date of draft agreement and by this letter he informed them that if they do not meet him personally within the aforesaid period, the agreement to sell would stand cancelled and the Rs.1 lakh would be forfeited. This letter is, however, neither marked, nor exhibited in evidence. On 17th September, 1984, Mrs. Mehru sent another letter to Mr. Nandi that she had already sent the Form-8 in respect of the clearance under Urban Land Ceiling Act and that she had agreed to be present before the competent authority. In the said letter, she also informed Mr. Nandi that the proposed sale deed is not in terms of the agreement to sell and that she would now seek specific performance. This letter makes a reference to a letter of Mr. Nandi dated 1st September, 1984, which is, however, not on record.

33. Finally, on 27th September, 1984 Mr. Nandi wrote two letters, one to Mrs. Mehru and another to Mrs. Jain that the agreement to sell is neither registered and there were no witnesses to the same. He also stated in this letter that he had thought of selling the house without consulting his children and they had pleaded to him not to sell the house. He ends this letter as under:

> "…..
>
> *I would, therefore, request you to treat the agreement to sell as non-existent/invalid. You may*

kindly collect the sum of Rs.50,000/- (Rupee fifty thousand) only paid to me by you along with any reasonable interest. The other sum of Rs.50,000/- (Rupee fifty thousand) only is being returned to Mrs. Sawitri Jain separately."

34. On 20th September, 1984, Mrs. Jain nominated Mrs. Mehru as her nominee to complete the sale transaction and she confirmed that she had received a sum of Rs.50,000/-. Present suit came to be filed on 30th August, 1984. Thus, on the day of the filing of the present suit Mr. D. C. Nandi had cancelled the agreement to sell and had offered refund of the amounts to both the purchasers. He had also offered to Mrs. Mehru that he would pay reasonable interest.

35. A perusal of the chronology of events, the correspondence and the stands taken by various parties shows that after the execution of the agreement for several months, there was a complete silence. It appears that the income tax clearance and the Urban Land Ceiling Act clearance were to be obtained by Mr. Madan who had also to make all the arrangements for execution of the sale deed. There can be no reason for the lack of any inquiry for a period of nine months on the part of the purchasers. The first letter in this matter was written by Mr. Nandi on 15th February, 1984, which establishes his *bonafides*. Though, he was a reluctant seller, as is clear from the various letters written by him, he still did not resile from the same. He was willing to go ahead with the transaction despite his old age of over 90 years, and despite severe protests from his children as he did not want to give up on his words. Immediately after the first letter dated 15th February, 1984, a spate of letters were exchanged between the parties and there is a blame game, which then begins. Between February and September for a

period of six to seven months, the parties corresponded with each other, and this Court does not wish to indulge in hair splitting of the said correspondence. Suffice it to say that Mr. Nandi obtained the income tax clearance and was also willing to obtain clearance under Urban Land Ceiling Act, which admittedly as per Mrs Mehru was itself not needed as was clearly stated in the letter dated 15th March 1984, written by her counsel.

36. Finally, despite his repeated attempts, when the transaction was not going through, he on 27th September, 1984 cancelled the agreement and offered to refund the amount. This conduct of Mr. Nandi was very much as per the terms of the agreement. Clause 6 of the agreement made it clear that if Mr. Nandi was unable to obtain and procure the necessary permissions as referred to in clause 3, i.e., the income tax clearance and other clearances including the Urban Land Ceiling Act clearance, the earnest money was to be refunded and repaid with interest @ 18% p.a. with monthly rests. Though, this clause was without prejudice to the rights of the Mrs. Mehru and Mrs. Jain to sue for specific performance, the seller Mr. Nandi abided by his obligation by offering to refund with interest.

37. Upon the filing of the suit, a learned Single Judge of the Delhi High Court had granted an injunction on 30th October, 1984 in the following terms:

> "…….
>
> *I.A. 6330/84*
>
> *Notice to the defendants for 13.11.84. In the meantime, in view of the averments made in the application, defendant No.1 is restrained from dealing with, alienating transferring or parting with the possession of the property bearing No.C-*

14A, and C-15, Kailash Colony, New Delhi without the permission of this Court. The plaintiff should take out notice of this order to the respondent No.1 as required under Order 39 Rule 3. A copy of the order may be given to the counsel dasti.

.............”

38. The Trial Court, thereafter, decreed the suit, which was however, stayed by this Court in appeal on 8th March, 2010. The injunction in this case against the property has been in operation for 34 years. The correspondence shows that Mr. Nandi at his ripe old age of 90-92 years, against the wishes of his children, did everything in his power and control. Even assuming that the agreement to sell was executed by him out of his own free will, he was initially informed that no clearance was required under the Urban Land Ceiling Act vide letter dated 15th March, 1984. He obtained the income tax clearance certificate and sent it to Mrs. Mehru at least 3 times. He also sent the draft sale deed, which was at variance with the agreement to sell. However, the differences were not irreconcilable. It was clear that Mr. Nandi needed some time, after receiving the balance sale consideration, in order to find himself an alternate home. The terms of the draft sale deed were not in conformity with the agreement to sell and it clearly appears that Mr. Nandi had difficulty in handing over the possession of the property, as his entire family was living in the said property. Despite all these difficulties, at the end, Mr. Nandi offered to refund the money along with the interest.

39. Out of the total sale consideration of Rs.16 lakhs, Mrs. Mehru and Mrs. Jain had only paid a sum of Rs.1 lakh. The same is not substantial and even in percentage terms constitutes only about 6% of the total sale

consideration. The father of Mrs. Mehru, Mr. Madan had placed on record the treasury challans showing deposit of the stamp duty and his bank statements to show the readiness and willingness. While it is completely possible and reasonable for a father to help his daughter in a property sale transaction, the bank statements, which are on record, do not relate to the period in issue. They show liquidity in the account of Mr. Madan at a much later date i.e. sometimes in 2006. Ex.PW-4/3 has been placed on record to state that there was a fire in the Central Bank of India and the records of Mr. Madan's account for the year 1983-84 are not available. Mrs. Mehru or Mrs. Jain have not filed anything on record to show the availability of funds. In any case, Mrs. Jain had already nominated Mrs. Mehru to complete the sale transaction as she was no longer interested. Thus, the readiness and willingness is also clearly in doubt.

40. During the pendency of the litigation, Mr. D. C. Nandi has passed away and so had his son on 1st March, 2018. The grandsons of Mr. Nandi namely Mr. Amitabha Nandi and Mr. Arunadha Nandi have been brought on record vide order dated 18th April, 2018 They along with their aunt Mrs. Anima Dasgupta are pursuing the appeal in the present case.

41. This Court has not gone into their *inter se* arrangements or the bequeaths in their favour as per Wills dated 17th October, 1992 or 17th May, 1983 by Mr. D. C. Nandi. The said issues are not the subject matter of this case. The family of Mr. D. C. Nandi has spent the last 35 years defending this litigation. Though, the agreement to sell is genuine, the relief under Section 20 of the Specific Relief Act is a discretionary remedy. There was no coercion or misrepresentation in the execution of the agreement to sell. However, in the facts of this case, the relief of specific performance is not

liable to be granted. The Trial Court's finding, that Mrs. Mehru showed readiness and willingness, is not borne out. The Trial Court has, on the basis of the bank records, relating to a period almost 20 years later, come to a conclusion that there was readiness and willingness. The Trial Court has ignored that Mr. Nandi rescinded the contract on 27th September, 1984 vide letter Ex. P-3. Thus, the finding of the Trial Court, that he did not rescind the contract for any valid reason, is incorrect. Mr. Nandi, as is clear from the correspondence, had sufficient reasons to bring the contract to a close as there was a complete stalemate between the parties. From May, 1983 there is not a single letter written by purchasers i.e. Mrs. Mehru and Mrs. Jain following up the sale transaction till the first letter written by Mr. Nandi. Mr Nandi, as is clear from the correspondence, honestly tried to bring the transaction to a closure but could not do so, for whatever reason.

42. The judgments cited by both sides reiterate the well settled principles that in every case the Plaintiff has to establish readiness and willingness in order to be entitled for a decree of specific performance. Some of the authorities sited, namely, ***K. Prakash v. B.R. Sampath Kumar*[1], *Zarina Siddiqui v. A. Ramalingam Alias R. Amarnathan*[2]** clearly hold that the conduct of parties must be considered before exercise of discretion in a specific performance suit. In ***Satya Jain (Dead) Through LRS & Ors. V. Anis Ahmed Rushdie (Dead) Through LRS & Ors.*[3]**, the Supreme Court has clearly held that there can be no straight jacket formula to establish readiness and willingness. It would depend upon the facts of each case. In

[1] (2015) 1 SCC 597
[2] (2015) 1 SCC 705
[3] (2012) 8 SCC 131

Narinderjit Singh v. North Star Estate Promoters Limited[4], the Supreme Court observed that readiness and willingness is to be decided with reference to the conduct of the parties, attendant circumstances and evidence on record. In ***Chand Rani (Dead) Through LRs v. Kamal Rani (Dead) Through LRs***[5], the Supreme Court held that the mere assertion of readiness and willingness is not sufficient but the same ought to be followed by the conduct of the party concerned. In ***K. Narendra v. Riviera Apartments (P) Ltd.***[6], the Supreme Court considered the astronomical rise in the value of land as one of the factors that would affect the relief of grant of specific performance. In ***Jugraj Singh v. Raj Singh***[7] the Supreme Court held that the plea of readiness and willingness is personal to the purchaser. In ***Nirmala Anand v. Advent Corporation (P) Ltd and Ors***[8] it has been held that the Court has to balance the equities. In ***Jayakantham and Ors v. Abaykumar (2017) 5 SCC 178,*** recently the Supreme Court has held that compensation can be granted in lieu of specific performance. The relevant observations of the Supreme Court are set out hereinbelow:

> *"11. In our view the material which has been placed indicates that the terms of the contract, the conduct of parties at the time of entering into the agreement and circumstances under which the contract was entered into gave the plaintiff an unfair advantage over the defendants. These circumstances make it inequitable to enforce specific performance.*
> *12. for the above reasons a decree for the payment of compensation in lieu of specific*

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[4] (2012) 5SCC 712
[5] (1993)1SCC 519
[6] (1999) 5SCC 77
[7] AIR 1995 SC 945
[8] (2002) 8 SCC 146

performance would meet the ends of justice…"

43. In ***Saradamani Kandappan v. S. Rajalakshmi***[9], the Supreme Court had noticed that the principle of time not being the essence of the contract in relation to immovable property is not inflexible, owing to the changes in the economy and the increase in prices. The observations of the Supreme Court are apt in the context of the present case and are set out herein below:

> "*36. The principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market value of immovable properties were stable and did not undergo any marked change even over a few years (followed mechanically, even when value ceased to be stable). As a consequence, time for performance, stipulated in the agreement was assumed to be not material, or at all events considered as merely indicating the reasonable period within which contract should be performed. The assumption was that grant of specific performance would not prejudice the vendor defendant financially as there would not be much difference in the market value of the property even if the contract was performed after a few months. This principle made sense during the first half of the twentieth century, when there was comparatively very little inflation, in India. The third quarter of the twentieth century saw a very slow but steady increase in prices. But a drastic change occurred from the beginning of the last quarter of the twentieth century. There has been a galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds. Market values of properties are no longer stable or steady. We can take judicial notice of the comparative purchase power of a rupee in the year 1975 and now, as also the steep increase in the*

[9] (2011) 12SCC 18

value of the immovable properties between then and now. It is no exaggeration to say that properties in cities, worth a lakh or so in or about 1975 to 1980, may cost a crore or more now.

37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and "non-readiness". The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and received rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees."

In this case, the court noticed that by paying merely 10% sale price specific performance is granted, it will become a ***`cruel joke'*** and result in injustice.

44. Both the counsels have cited large number of cases that the conduct of a party needs to be seen in a specific performance suit. In the present case, even apart from the conduct, there are various other factors because of which specific performance is not liable to be granted, which are as under:

i) The family of Mr. D. C. Nandi has no other residence.

ii) Sale consideration paid is Rs.1 lakh out of Rs.16 lakhs in the year 1983.

iii) Income tax clearance was obtained by Mr. Nandi and it is unclear as to whether under the Urban Land Ceiling Act clearance was actually needed.

iv) On 15th March, 1984, Mr. Nandi was informed that under Urban Land Ceiling Act clearance was not needed, however, the same has been insisted upon in the subsequent correspondence by the purchasers.

v) Mr. Nandi felt that Mrs. Mehru was merely a front for her father, and thus there was a lack of trust between the parties.

vi) The property has remained entangled in litigation for almost 35 years and is now extremely valuable. The market value, as per Counsels is in the range of Rs. 35 crores.

vii) The bank statements filed are of Mr. K.B.Madan and not of Mrs. Mehru. They also relate to a much later period and are not contemporaneous. Thus the readiness and willingness on behalf of the Plaintiff is suspect.

viii) Mr. Nandi had acted *bonafidely* by offering to refund the amount along with interest within 8 months from the time the correspondence had commenced between the parties and within 16 months from the execution of the agreement to sell. hence his conduct cannot be termed as dishonest. Though this Court does not place much reliance on the evidence given by his daughter, Ms. Dasgupta, the letters written by Mr. Nandi clearly establish his bonafides and exhibit complete truthfulness and candidness. Though he was a reluctant seller, he tried his best to bring the transaction to its closure and finally when there was a complete stalemate, he cancelled it and offered refund with interest.

viii) Mr. Nandi was a frail old man, even at the time when the agreement to sell was entered into and it is reasonable plausible that he was relying on Mr. Madan, who was a chartered accountant, for getting all the clearances and bringing the transaction to a close, which did not happen.

Thus, the relief of specific performance cannot be granted.

45. Applying the above dictum of the Supreme Court, in the present case, it is directed that the amount of Rs.1 lakh shall be refunded to Mrs. Mehru, along with the interest @ 18% per annum with monthly rests, as per clause 6 of the agreement, from the date of filing of suit till date which would amount to Rs.4,34,65,555/-. In addition an amount of Rs.20 lakhs is awarded as compensation to the Plaintiff. The said amounts shall be payable within a period of eight weeks. The decree for specific performance is set aside. Decree sheet in terms of the paragraphs above shall be drawn.

46. The appeal is disposed of in the above terms. All pending applications are disposed of.

PRATHIBA M. SINGH, J.
JUDGE

JULY 30, 2018/*dk*