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IN THE HIGH COURT OF DELHI AT NEW DELHI*Reserved on : 5th October, 2018**Date of decision : 12th November, 2018***+ RFA 100/2016 & CM APPLs. 11818/2016, 482/2017, 21290/2018****URVASHI AGGARWAL & ANR.**

..... Appellants

Through: Mr. Shanti Bhushan and Mr. Anil Sapra, Senior Advocates with Mr. Shyam Agarwal, Ms. Akansha & Mr. Sarthak Katyal, Advocates (M-9997345670).

versus

KUSHAGR ANSAL & ORS.

..... Respondents

Through: Mr. Sachin Datta, Senior Advocate with Mr. Vikas Tiwari & Mr. Amir Jamal, Advocates for R-1 & 4 (M-9971336949)

CORAM:**JUSTICE PRATHIBA M. SINGH****JUDGMENT****Prathiba M. Singh, J.**

1. The present appeal arises out of the judgment dated 23rd December, 2015 passed by the Trial Court by which the relief of specific performance sought by the Appellants/Plaintiffs was rejected and the suit was dismissed.
2. The background facts leading to the filing of the present suit date back to an agreement to sell executed on 5th October, 1974 in favour of the Plaintiffs, and the Defendant No.5 by Mrs. Suraj Kumari- Defendant No.1. The suit property is a house in a posh locality of South Delhi, which explains the long drawn litigation between the parties.
3. The suit property i.e. House No.82, Jorbagh, New Delhi consists of the Ground Floor, First Floor, and Second Floor. The father-in-law of Mrs.

Urvashi Aggarwal- Plaintiff No.1 took the First and Second Floors of the suit property on rent. Plaintiff No.2- Mr. Sanjeev Chander Aggarwal and the Defendant No.5- Mr. Rajeev Chander Aggarwal are the sons of Plaintiff No.1. The father-in-law of Mrs. Urvashi Aggarwal passed away in 1973 and subsequent to his death, the tenancy of the first floor was transferred to one firm by the name M/s Vinod Industries Pvt. Ltd. (*hereinafter, 'M/s Vinod Industries'*) Mrs. Urvashi Aggarwal's husband was the Managing Director of this Company and Mrs. Urvashi Aggarwal was one of the directors. The rent being paid was a sum of Rs.500/- p.m. by M/s. Vinod Industries to Mrs. Suraj Kumari – Defendant No.1. For the purpose of brevity and easy understanding, Mrs. Urvashi Aggarwal-Plaintiff No.1, Mr. Sanjeev Chander Aggarwal and proforma Defendant No.5- Mr. Rajeev Chander Aggarwal are together referred to as the purchasers.

4. On 5th October, 1974, the purchasers entered into an agreement to sell with Mrs. Suraj Kumari for sale of the entire property. It is the case of the purchasers that the total sale consideration was Rs.1,85,000/- out of which Rs.20,000/- was paid by the purchasers at the time of the agreement, and thereafter, another Rs.50,000/- was to be paid in instalments. Along with the execution of the agreement to sell, a power of attorney was also executed authorising Mrs. Urvashi Aggarwal to take action on behalf of the owner against the tenant of the ground floor, Mr. A. C. Deb. It is further the Plaintiffs' case that a sum of Rs.40,000/- and Rs.10,000/- thereafter, was paid to the seller- Defendant No.1 and that the purchasers were put in proprietary possession of the suit property. It is the case of the Plaintiffs that after the payment of Rs.70,000/-, since the purchasers were put in proprietary possession, there was no requirement to pay any rent and hence

Vinod Industries stopped paying rent. After the demise of Mr. A.C. Deb in 1985, his family vacated the ground floor in September, 1987. The Defendant No.4 i.e. son of the seller - Mrs. Suraj Kumari occupied the ground floor and altercations took place sometime in 1987. This led to disputes between the parties and the purchasers then demanded the specific performance of the agreement to sell dated 5th October, 1974.

5. Various offers appear to have been exchanged between the parties, but there was no settlement. Thus, a suit was filed by the Plaintiffs seeking the following reliefs:

“(a) decree this suit for specific performance and direct the defendants to execute the sale deed for property at 82 Jor Bagh, New Delhi and for possession of Ground Floor in favour of the plaintiffs and Shri Rajiv Chander Aggarwal, Performa defendant No. 5 .

b) Issue a prohibitory injunction to the defendants, restraining them from occupying or permitting any one else to occupy the ground floor of the property at 82, Jor Bagh, New Delhi.

c) Issue a mandatory injunction to the defendants directing them to remove the wall constructed in place of the side gate of the property at 82, Jor Bagh, New Delhi.

d) Award cost of this suit to the plaintiffs”

6. The suit was registered on 21st October, 1987 and an ad-interim injunction order was passed in the following terms:

“I.A. No.8029/87:

Notice for the same date. In the meanwhile, the defendants No.1 to 4 are restrained by way of a temporary injunction from letting out or otherwise parting with the possession of the property in dispute. Dasti.

7. The Defendants, thereafter, filed their written statement. In the written statement, the stand taken by the Defendants was that the Plaintiffs were at fault as they were not ready and willing to perform the essential terms of the contract. It was further claimed that the tenancy of the purchasers was only with respect to the first floor along with a *barsati* floor of the property and not a separate second floor as alleged. The single payment of Rs.20,000/- was denied. It was also denied that the purchasers were put in proprietary possession. It was further alleged that the power of attorney in given by Mrs. Suraj Kumari in favour of Mrs. Urvashi Aggarwal, was never acted upon by the purchasers. The receipt of Rs.10,000/- as part of the sum of Rs.50,000/- was also denied. It was averred that the sum of Rs.10,000/- was adjusted towards the rent and that the sum of Rs.50,000/- was payable by 31st October, 1974. Thus, the Defendants took the stand that the sum of Rs.70,000/- was not received towards the sale consideration. Even the sum of Rs.40,000/- was paid on 31st January, 1975 i.e. after a delay and Rs.10,000/- was paid on 27th December, 1975 with a delay of more than 1 year and no further payment was made. The agreement dated 5th October, 1974 was, however, not denied. Mr. Deb, the tenant on the ground floor, continued to pay rent to the sellers and not to the purchasers, despite there being a power of attorney in favour of Mrs. Urvashi Aggarwal. It was also alleged that M/s. Vinod Industries, never became a tenant of the purchasers, but continued as a tenant of the seller, i.e., the Defendant No.1. According to the Defendants, the stoppage of payment of rent by M/s. Vinod Industries was illegal. In 1980, an eviction petition was filed by the sellers against Mr. Deb. The purchasers never took any steps pursuant to the power of attorney. In fact, it was pleaded that it was not professor Deb, who was the tenant but

an entity called Society for Advancement of Education, which was the tenant on the Ground Floor.

8. After the eviction of the tenant on the ground floor, the Defendant No.1 agreed to let out the ground floor to Defendant No.4 for his business, who started carrying out repairs in 1987, which is when the disputes arose and the purchasers started asserting the agreement to sell. According to the sellers, the purchasers had breached, repudiated, and abandoned the agreement. They were even not ready and willing to perform their part of the contract and had given up the agreement and hence there was no cause of action as the sale deed had to be executed by 31st March, 1975, which right was never asserted until the filing of the suit in 1987, i.e., until almost twelve years later.

9. The suit then proceeded for pleadings and evidence. On 10th May, 1991, an order was passed that the Plaintiffs would not be dispossessed from the premises except in accordance with law in I.A. 6409/1991. On 4th February, 1994, it was directed as under:

“Till, the next date of hearing, no person other than defendant No.4 shall occupy ground; floor of the premises 82, Jor Bagh, New Delhi.”

10. Various other interim orders were passed allowing a right of passage for the Plaintiffs. In the meantime, an eviction petition was also filed by seller against M/s. Vinod Industries. The Supreme Court on 21st September, 1995 passed the following order:

“After hearing the counsel for the parties, it appears that an application for eviction filed on behalf of the petitioner against the respondent is still pending before the Rent Controller. A suit for specific performance of

contract, filed on behalf of Smt. Urvashi Agrawal and her two sons in respect of the same premises is also pending before the High Court of Delhi. We do not consider it desirable to express any opinion on the merit of the petition for eviction or the suit because it is likely to prejudice one party or the other.

According to us the best course under the circumstances is to request the High Court to dispose of O.S.No.2296/87 before 31st March, 1996. Both parties have assured us that they will co-operate in early disposal of the said suit. We also direct the Rent Controller to proceed with the hearing of the application for eviction filed on behalf of the petitioner against the respondent. However, no decree for eviction shall be passed before the disposal of the suit by the High Court.

The Special Leave Petition is accordingly, disposed of.”

11. On 26th October, 1995 the following issues were framed in the suit:

- “1. Whether the suit is within limitation?*
- 2. Whether the suit is not bad for misjoinder of parties in cause of action?*
- 3. Whether the agreement to sell dated 5.10.74 was amended and varied by the parties with regard to payment of Rs.50,000/- upto 31.10.74 and the balance sale consideration in instalments of Rs.7,000/- P.M. commencing from Ist week of January, 1975 till full payment of the sale consideration as alleged? If so, to what effect.*
- 4. Whether the amount of Rs.10,000/- paid by the plaintiff was towards instalment of Rs.50,000/- as alleged by the plaintiff?*
- 5. Whether the plaintiff was put in proprietary possession of the entire property in suit by defendant No.1 as alleged in para 15 of the plaint?*

6. *Whether there is a subsisting agreement to sell capable of specific performance as alleged?*
7. *Whether the defendant committed breach of the contract?*
8. *Whether the plaintiff has been ready and willing to perform the agreement to sell?*
9. *Whether time for payment was not the essence of the contract as alleged by plaintiff?*
10. *Whether the agreement to sell was breached repudiated, abandoned and given up as alleged by the defendant?*
11. *Whether the plaintiffs are entitled specific performance of the agreement to sell dated 5.10.74 and to what other relief or reliefs the plaintiffs are entitled in the suit and against whom?*
12. *Relief.”*

12. On the said date i.e., on 26th October, 1995, the application by M/s. Vinod Industries seeking impleadment in the suit was rejected. The sellers were, however, permitted to make use of the ground floor of the property, however without obstructing the occupation by the purchasers. Evidence was recorded of the following witnesses:

- PW-1 - Shri Dal Chand, UDC from the L&DO
- PW-2 - Shri Vinod Chandra Aggarwal – Husband of Smt. Urvashi Aggarwal

13. On behalf of the Defendants, evidence of DW1- Mr. Deepak Ansal was recorded.

14. The suit was transferred to the District Court in the year 2000. The Defendant No.1 had passed away in the meantime, on 15th October, 2000 and the application filed to bring the LRs of Mrs. Suraj Kumari on record i.e. Mr. Kushagr Ansal, was dismissed by the Trial Court. This application

was carried in appeal and vide order dated 23rd July, 2007, the application of impleadment of Mr. Kushagr Ansal was allowed in the following terms:

“Both impugned orders are quashed. Application filed by the plaintiffs for impleadment of Kushagr Ansal as the legal heir of deceased defendant No.1 is allowed taking on record that the sons and daughters of deceased have accepted his claim under the will executed by their mother i.e. grandmother of Kushagr Ansal.”

15. Finally on 2nd March, 2010 the evidence of the Defendants was also closed. An amendment application to amend the plaint was, thereafter, filed by the Plaintiffs. The same was allowed on 20th July, 2015. The suit was thereafter finally heard and was dismissed on 23rd December, 2015.

16. Before going into the contentions of both the sides of the judgment of the Trial Court, a summary of the evidence led is set out below:

PW1 – Shri Dal Chand, UDC from L&DO, Nirman Bhawan

17. PW-1 deposed that an application was made by the owner Mrs. Suraj Kumari seeking permission for sale of the property in favour of Mrs. Urvashi Aggarwal on 15th October, 1976. The same was granted on 10th October, 1977, and was communicated to the owner. In cross-examination, PW-1 confirmed that the first application, seeking permission to sell the property in favour of Mrs. Urvashi Aggarwal, was filed by Mrs. Suraj Kumari on 27th November, 1974. Reminders for the same were sent on 19th December, 1974, 6th December, 1974, and 17th April, 1975. A letter dated 26th June, 1975 was issued to Mrs. Urvashi Aggarwal intimating the various terms and conditions for grant of permission to sell, to which a reply was sent on 20th November, 1974. Mrs. Suraj Kumari had deposited a sum of

Rs.52,682.60 towards unearned interest, ground rent and damages on 9th May, 1977. The permission was valid for a period of 90 days, during which period, the sale deed was to be executed.

PW-2 Shri Vinod Chandra Aggarwal, husband of Mrs. Urvashi Aggarwal

18. He confirmed most of the facts pleaded in the plaint including the tenancy of his father since 1957-58 in the suit property. He further confirmed that he and his wife were the directors of M/s. Vinod Industries, which had its office in a portion of the property. He confirmed the execution of the agreement to sell. He claimed that after the payment of Rs.20,000/- at the time of execution of the agreement to sell and thereafter Rs.40,000/- in January, 1975 and Rs.10,000/- in December, 1975, he did not make any payments of any instalments. He claimed that the said payments were not made as his friend Mr. Sushil Ansal told him not to pay any instalments, till the permission from L&DO for selling the property is obtained. He confirmed that though the agreement to sell provided that his wife could receive the rent from the ground floor tenant, he did not collect the same, presuming that the same could be adjusted towards the instalments. He relied upon Ex.P2 an authority letter issued by Mrs. Suraj Kumari authorising his wife to collect the rent for the ground floor. He further claimed that though M/s. Vinod Industries stopped paying rent with effect from January, 1976, the owners, in fact, never demanded rent. Neither he, nor his wife were informed about the forfeiture of Rs.10,000/- towards the rent. He claimed that he and the Defendant No.2 - Mr. Sushil Ansal were very close friends. The agreement for the Jorbagh property was entered into

in lieu of another sale of a plot in Faridabad, which was to be sold to M/s Ansal & Saigal Properties. He claimed that the sellers never demanded the outstanding consideration of Rs.1,15,000/-. He claimed that his family was always ready and willing as also had the financial capacity to pay the sum of Rs.7000/- per month which is evident from the fact that his father was a High Court Judge, and his brother was the Chief Justice of Allahabad High Court and Brother-in-law was Law Minister of India. There was never any doubt of their capacity to pay. He also claimed that he himself was running a factory in Faridabad and had capacity to pay.

19. In cross-examination, he could not confirm the exact date when Mr. Sushil Ansal told him not to pay the instalments. He confirmed that the sum of Rs.50,000/- was to be paid by his wife and sons latest by 31st October, 1974 and that the payment was not made by the said date. He confirmed that M/s. Vinod Industries did not pay any rent from 17th January, 1975. However, a sum of Rs.10,000/- was paid by M/s. Vinod Industries in December, 1975, and that there was no receipt issued as this amount was towards the sale consideration of the suit property. He confirmed that Mrs. Suraj Kumari had filed an eviction petition against M/s. Vinod Industries after the filing of the present suit. He admitted that he did not know the distinction between proprietary possession and possession. He was also not aware of any proceedings filed by Mrs. Suraj Kumari against the tenant of the ground floor Mr. Deb.

20. He further confirmed that no letter was written by his wife or sons asking Mrs. Suraj Kumari as to whether the permission from L&DO was obtained and he was also not aware if such an application for permission was made with the L&DO. He also confirmed that no notice was issued

from the side of his family to Mrs. Suraj Kumari asking her to perform her part of the agreement. He relied on the conversations with Mr. Sushil Ansal that there were some difficulties in obtaining the permission from the L&DO, but his own family had not made any inquiries from the L&DO. He confirmed that no document was executed between M/s. Vinod Industries and M/s. Ansal and Saigal Properties (P.) Ltd. (*hereinafter, 'Ansal and Saigal Properties'*) in respect of any plot in Faridabad. He confirmed that M/s. Vinod Industries was running in losses from 1974. He also confirmed that no letter was written to Mrs. Suraj Kumari that the Plaintiffs were ready and willing to perform the obligations under the contract. He further admitted that the prices of the properties had risen manifold between the period of 1974-1987. He confirmed that his wife did not take any steps to have the property vacated by Mr. Deb and his family. He also confirmed that his family had not made any payment of ground rent for the property to the L&DO.

DW1-Deepak Ansal

21. He is one of the sons of Mrs. Suraj Kumari. He confirmed that whenever any documents were required to be signed by Mrs. Urvashi Aggarwal, she would sign the same and forward them to his mother, who would then file the documents with the L&DO. He confirmed that his brothers are Mr. Sushil Ansal and Mr. Gopal Ansal, who were in the real estate business of Ansal Group of Companies. He stated that he was not aware of any agreement to sell dated 4th October, 1974 between M/s. Vinod Industries and Ansal & Saigal Properties for a Faridabad property. He confirmed that he was not a party in the negotiation process for the sale of

the suit property. He stated that his parents were holding talks with Mrs. Urvashi Aggarwal and Mr. Vinod Aggarwal. He claimed that he was present at the time when the agreement to sell dated 5th October, 1974 was executed in his house. One of his brothers Mr. Gopal Ansal was a witness to the agreement. He confirmed that he had not signed as a witness as per the directions of his father. He relied on Ex.PW-1/7, the letter dated 26th June, 1975 to state that it was the joint responsibility of his mother and the Plaintiffs to obtain the permission from the L&DO. He denied that it was his mother's sole responsibility. DW-1 relied on clause 7 of the agreement to sell dated 5th October, 1974 and stated that whenever L&DO's permission is to be taken, the vendor and the vendee have to apply jointly and that the inspection of the property is also conducted. He stated that the L&DO people came for inspection in the year 1974-75. He relied upon clause 2 of the agreement to sell to state that time was of the essence of the contract. He denied the existence of any understanding between the Plaintiffs and his brother Mr. Sushil Ansal. He claimed that his father had informed him that the amount of Rs.10,000/- paid by M/s. Vinod Industries was towards the payment of rent. He categorically denied that Rs.70,000/- was paid towards part sale consideration. He claimed that he and his mother had informed the Plaintiffs of the permission received from the L&DO. He further denied the suggestion that his mother had intentionally not informed the Plaintiffs of the permission from L&DO. He, however, confirmed that there was no document to show that the Plaintiffs were told about the said permission. The suggestion about the adjustment of the ground floor rent towards the sale consideration was denied.

22. There were various documents filed by the parties, which were

exhibited. Many documents were only marked for identification. The following are the lists of exhibits, which were exhibited during the evidence:

A. Plaintiffs' Exhibits

- **Ex.PW1/1** – Application for permission to sell the property by Mrs. Suraj Kumari to the L&DO;
- **Ex.PW1/2** – Letter dated 10th October, 1977 from L&DO giving permission to sell the property to Mrs. Suraj Kumari;
- **Ex. PW1/3** – Letter from Mrs. Suraj Kumari to L&DO dated 20th/27th November, 1974 seeking permission to sell the house;
- **Ex.PW1/4** – Letter dated 19th December, 1974 from Mrs. Suraj Kuamri to L&DO seeking permission to sell the suit property;
- **Ex. PW1/5** – Letter dated 6th February, 1975 from Mrs. Suraj Kuamri to L&DO seeking permission to sell the suit property;
- **Ex.PW1/6** – Letter dated 17th April, 1975 from Mrs. Suraj Kuamri to L&DO seeking permission to sell the suit property;
- **Ex.PW1/7** – Letter dated 26th June, 1975 from L&DO to Mrs. Suraj Kumari stipulating terms and conditions to obtain permission from L&DO;
- **Ex.PW1/8** – letter dated 14th August, 1975 to L&DO enclosing affidavit of Mrs. Urvashi Aggarwal in compliance with letter dated 26th June, 1975;
- **Ex.P-1** – Agreement to Sell dated 5th October, 1974;
- **Ex.P-2** – Power of Attorney in favour of Mrs. Urvashi Aggarwal from Mrs. Suraj Kumari;

- **Ex.P-3** – Agreement to Sell, between M/s Vinod Industries and M/s Ansal and Saigal Properties (P.) Ltd. dated 4th October, 1974 qua the Faridabad property;
- **Ex.P-4** – Letter dated 7th December, 1978 from Mrs. Suraj Kumari to Mr. Vinod Chander Aggarwal, asking them to allow inspection of the property by the L&DO;
- **Ex.PW2/1** – Power of Attorney in favour of Mr. Vinod Chander Aggarwal from Mrs. Urvashi Aggarwal.

B. Defendants' Exhibits

- **Ex.DW1/1** –Affidavit dated 20th November, 1974 accompanying letter dated 27th November, 1974 by Mrs. Urvashi Aggarwal;
- **Ex.DW1/2** – letter dated 9th May, 1977 sent by Mrs. Suraj Kumari to L&DO showing payment of Rs.52,682 to regularise the property;
- **Ex.DW1/3** – Letter dated 28th July, 1975 from L&DO to Mrs. Suraj Kumari, stating that affidavit of Mrs. Urvashi Aggarwal was not in order;
- **Ex. DW1/4** – Undertaking dated 9th May, 1977 given by Mrs. Suraj Kumari to L&DO to get the breaches regularised in the suit property;
- **Ex.DW1/5** – Undertaking given by Mrs. Urvashi Aggarwal to L&DO to get the breaches regularised in the suit property;
- **Ex.DW1/5A** – Endorsement of receipt of Rs.52,682 by L&DO;
- **Ex.DW1/6** – Permission letter from the L&DO dated 10th October, 1977;

- **Ex. DW1/7A – Ex.DW1/15** – house tax receipts in the name of Mrs. Suraj Kumari;
- **Ex. DW1/16** - Receipt issued by Mrs. Roma Deb in favour of Mrs. Suraj Kumari for a sum of Rs.1,50,000/-;
- **Ex.DW1/17** - Certificate of possession in favour of Mrs. Suraj Kumari signed by Mrs. Roma Deb
- **Ex.DW1/18** – Wealth tax receipt of the suit property dated 30th March, 1979;
- **Ex.DW1/P1** – Affidavit of Mrs. Urvashi Aggarwal dated 6th September, 1976
- **Ex.DW1/P1 – Ex.DW1/P8** – rent receipts issue to M/s Vinod Industries for various periods between October, 1973 till January, 1975

23. The following were the documents marked for identification:

Marked Documents

- **Mark A** –house tax receipt from MCD to Mrs. Suraj Kumari dated 22nd October, 1975;
- **Mark B** – house tax receipt from MCD to Mrs. Suraj Kumari dated 11th February, 1982;
- **Mark C** – house tax receipt from MCD to Mrs. Suraj Kumari dated 28th March, 1985;
- **Mark D** – house tax receipt from MCD to Mrs. Suraj Kumari dated 17th October, 1986;
- **Mark E** – house tax receipt from MCD to Mrs. Suraj Kumari dated 10th April, 1987

- **Mark F** – house tax receipt from MCD to Mrs. Suraj Kumari dated 5th October, 1988
- **Mark G** – house tax receipt from MCD to Mrs. Suraj Kumari dated 13th December, (illegible)
- **Mark H** – house tax receipt from MCD to Mrs. Suraj Kumari dated 22nd May, 1975

24. Some other documents that are on record are as under:

Other Documents

- Rent receipts for the first floor of the Suit Property in favour of M/s Vinod Construction;
- Legal notice of eviction dated 11th September, 1989 served on M/s Vinod Industries;
- Letter dated 16th April, 1975 from Mr. Vinod Chander Aggarwal to Mrs. Suraj Kumari stating that there is encroachment of common areas of ground floor;
- Wealth tax receipt for the year 1973-1974;
- Wealth tax receipt for the year 1992-1993;
- Will of Mrs. Suraj Kumari dated 11th May, 1999.

Judgment of the Trial Court

25. The findings, of the Trial Court on the various issues, are as under:

A. Issue no. 2 – Whether the suit is not bad for mis-joinder of parties to the cause of action?

26. On this issue, the Trial Court came to the conclusion that the suit is not bad for mis-joinder of parties. The submission was that the inclusion of the Defendant Nos.2 to 4 was irrelevant and hence the suit was bad for mis-

joinder. The Trial Court held that since Defendant No.1 Mrs. Suraj Kumari passed away, her rights and interest in the property have devolved upon her grandson – Mr. Kushagr Ansal. The Trial Court, thus, holds that upon the demise of Defendant No.1, the Defendant Nos.2 to 4 are necessary parties. Thus, this issue was decided in favour of the Plaintiffs.

27. In the appeal, neither party has addressed submissions on this issue and hence the Trial Court's findings on this issue are affirmed.

B. Issue 4 – Whether the amount of Rs.10,000/- paid by the plaintiffs was towards instalment of Rs.50,000/- as alleged by the plaintiff?

28. On this issue, the question was whether the payment of Rs.10,000/- was towards rent by M/s. Vinod Industries or towards the part sale consideration. Admittedly, the amount was paid from the account of M/s. Vinod Industries in favour of Mrs. Suraj Kumari on 26th December, 1975. The initial payments of Rs.20,000/- and Rs.40,000/- are not disputed. After going through the evidence on record, the Trial Court comes to the conclusion that the amount of Rs.10,000/- paid by the Plaintiffs was towards the part sale consideration.

C. Issue no.3 – Whether the Agreement to sell dated 5/10/74 was amended and varied by the parties with regard to payment of Rs.50,000/- upto 31/10/74 and the balance sale consideration in instalments of Rs.7,000/- commencing from January 1975 till full payment of the sale consideration as alleged? If so, to what effect?

29. On this issue, the case of the Plaintiffs was that the payment of Rs.50,000/- was admitted and accepted even in December, 1975. The Trial Court, after considering the law of novation of contracts, has held that the agreement to sell was amended and varied by the parties with regard to

payment of Rs.50,000/- upto 31st October, 1974. Thereafter, the Trial Court considers the aspect of payment of Rs.7,000/-, monthly instalments. On this, the Trial Court held that in respect of payment of balance sale consideration in instalments, the agreement to sell was not amended.

D. Issue no.9 – Whether time for payment was not the essence of the contract as alleged by the plaintiff?

30. The Plaintiffs claimed that time was not of the essence of the contract as there were provisions for payment of hefty rates of the interest in the agreement to sell dated 5th October, 1974. Further, the Defendants having accepted the payments in December, 1975, it is clear that the time was not of the essence. However, the Trial Court came to the conclusion that time was of the essence of the contract.

E. Issue no.5 – Whether the plaintiff was put into proprietary possession of the entire suit property by defendant no.1 as alleged in para 15 of the plaint?

31. On this aspect, the Trial Court came to the conclusion that the Plaintiffs were not put in proprietary possession.

F. Issues 6 – Whether there is a subsisting Agreement to sell capable of specific performance as alleged?

G. Issue 8 – Whether the plaintiff has been ready and willing to perform the Agreement to sell?

H. Issue 10 – Whether the Agreement to sell was breached, repudiated, abandoned, and given up, as alleged by the defendants?

32. These three issues were decided jointly. The Trial Court came to the conclusion that time was of the essence of the contract. The Plaintiffs had failed to establish their readiness and willingness. The Trial Court, finally,

found that the Plaintiffs had breached, repudiated, abandoned and given up the agreement to sell dated 5th October, 1974.

I. Issue 1 – Whether the suit is within limitation?

33. The Trial Court holds that the suit is barred by Limitation.

J. Issue no.7 – Whether the defendant committed breach of the contract?

34. The Trial Court held that the Defendants did not commit breach of the contract.

K. Issue no.11 – Whether the plaintiffs are entitled to specific performance of the Agreement to sell dated 05.10.1974 and to what other relief or reliefs are the plaintiffs entitled to and against whom?

35. The Plaintiffs are not entitled to the relief of the specific performance.

Submissions on behalf of the Plaintiff

36. On behalf of the Appellants/Plaintiffs, Mr. Shanti Bhushan and Mr. Anil Sapra, learned Senior Counsels have made their submissions. The main submission of the Plaintiffs is that the agreement to sell, in the present case, is not an ordinary agreement. The manner in which it was worded shows that time was not of the essence of the contract. Since permission was required from the L&DO for effecting the sale, which was received only in October, 1977, the clauses for payment stipulated in the agreement had no meaning. Mr. Bhushan submitted that since Mr. Sushil Ansal and his conduct was inextricably linked with this transaction. The fact that he did not enter appearance, shows that an adverse inference ought to be drawn

against him. It is his further his submission that if the agreement was indeed rescinded, the sum of Rs.70,000/- ought to have been refunded. Since the Defendants continued to apply to the L&DO for permission till 1977, according to Mr. Bhushan, they themselves did not believe that time was of the essence of the contract. He relies on the following judgments in support of these propositions:

A. On adverse inference

- a) *Vidhyadhar v. Manikrao & Anr. (1999) 3 SCC 573;*
- b) *Gurbaksh Singh v. Gurdial Singh CWN (XXXII) 119;*
- c) *Union of India v. Ibrahimuddin & Anr. (2012) 8 SCC 148;*
- d) *Habeeb Khan v. Valasula Devi AIR 1997 AP 53;*

B. On limitation and time is not the essence of the contract

- e) *Laxminarayana Reddiar v. Singaravelu Naicker & Anr. AIR 1963 Mad, 24*
- f) *Govind Prasad Chaturvedi v. Hari Dutt Shastri & Anr. (1977) 2 SCC 539;*
- g) *Hind Construction v. State of Maharashtra (1979) 2 SCC 70;*
- h) *Gomathinayagam Pillai & Ors. v. Pallaniswami Nadar AIR 1967 SC 868.*

37. As per entry 54 of the Limitation Act, 1963, the three year period in case of a fixed date starts from the date of the agreement to sell but in the present case, the three year period would commence when the performance is refused. Since the owners never refunded Rs.70,000/- and also did not demand any rent from M/s. Vinod Industries from January, 1976, it was clear that the contract was alive. No letter of termination of the agreement to sell has been issued, and any delay in payments can be compensated with

money by payment of interest. According to Mr. Bhushan, the date for payment became immaterial. It is further submitted that the family of the Plaintiffs was quite well off and never had any issue in making the balance payments. Neither was the rent demanded, nor the balance sale consideration was demanded. Since the Plaintiffs' family was in proprietary possession after payment of Rs.70,000/-, the Plaintiffs also did not issue any notice. The family of the Plaintiffs was using the suit property as their residence since 1958 and under Section 53A of the Transfer of Property Act, 1882 (*hereinafter, 'Transfer of Property Act'*), their rights in same became absolute. Mr. Bhushan further relies upon the finding of the Trial Court that the agreement to sell came to be amended insofar as the extension of date is concerned. However, for the payment of Rs.7000/- per month the Trial Court held that the amendment had to be in writing. These are contradictory findings according to Mr. Bhushan.

38. While admitting, under Section 20 of the Specific Relief Act, 1963, that the grant of specific relief is a discretionary remedy, the fact, that Mr. Sunil Ansal was arrested in respect of the Uphaar tragedy etc., ought to be considered in favour of the Plaintiffs as he was unavailable during that period. In respect of the above propositions, the Plaintiffs rely on the following judgments:

- a) ***Man Kaur v. Hartar Singh Sangha (2010) 19 SCC 512;***
- b) ***Nathulal v. Phoolchand (1969) 3 SCC 120;***
- c) ***Sant Lal v. Shyam Diwan AIR 1986 Del. 275;***
- d) ***Butchiraju v. Sri Ranga Satyanarayana AIR 1967 AP 69;***
- e) ***Satya Jain v. Anis Ahmed Rushdie (2013) 8 SCC 131;***
- f) ***K. Prakash v. B.R. Sampath Kumar (2015) 1 SCC 597;***
- g) ***Zarina Siddiqui v. A. Ramalingam (2015) 1 SCC 705.***

39. Mr. Anil Sapra, learned Senior Counsel appearing for the Plaintiffs

held that the sale deed in this case was to be executed even without the payment of the entire consideration. Retention of Rs.10,000/- as rent was according to Mr. Sapra, *malafide*. Vehement reliance is placed on Section 54 of the Transfer of Property Act by Mr. Sapra. The payment of instalments was open ended and could be deferred. According to him, consideration was not the key in this transaction. The Defendants were to obtain clearances from Income Tax, Department L&DO, Bank etc., which was never done in time. The contract was never cancelled. There was no forfeiture clause in the agreement and money was also not refunded. This goes to show that the agreement was alive.

Submissions on behalf of the Defendants

40. Mr. Sachin Datta, learned Senior Counsel appearing for the Defendants, submits that the Plaintiffs are guilty of breaching each and every term of the agreement to sell. It is his submission that none of the payments were made in time. In fact, part consideration of Rs.70,000/- was not paid at all. Only Rs.60,000/- was paid. Rs.10,000/- was received from M/s. Vinod Industries and that the payment could not be towards the sale consideration as M/s. Vinod Industries was a tenant of the Defendants. As per the agreement to sell, the Plaintiffs were to collect the rent from the ground floor tenant, which was never done. The Plaintiffs were to take steps to evict the ground floor tenant, which was also not done. So long as the ground floor remained tenanted, the Plaintiffs were not interested in purchasing the suit property. It was only when the tenant was evicted after payment of Rs.1.5 Lakhs was made to Mr. Deb's wife by his client that suddenly enormous interest was shown by the Plaintiffs. The cause of action

for filing of the suit, according to Mr. Datta, is totally cooked up.

41. Further, the Defendants have been made to litigate for the last almost 30 years to evict M/s. Vinod Industries by filing an eviction petition. Date of the eviction decree was 26th April, 2018 and six months time was granted to M/s. Vinod Industries to vacate the suit property. No rent has been received from M/s. Vinod Industries for the last four decades. According to Mr. Datta, the dates for payment do not govern the computation of limitation. Under Section 54 of the Transfer of Property Act, since there is no sale deed, no ownership had passed. For there to be any sale, the elements required under Section 55 of the Transfer of Property Act have to be established. He relied on judgements of the Supreme Court to argue that the view that time is not the essence of the contract in a transaction for sale of immovable property no longer holds good. He relied on the following judgements:

- a) ***Ravinder Nath Sahni v. Poddar Construction (2014) 211 DLT 561;***
- b) ***Rahul Gupta & Anr. v. Ashok Biswal (2013) 197 DLT 461;***
- c) ***Sardamani Kandappan v. S. Rajlakshmi (2011) 12 SCC 18;***
- d) ***Fatehji & Company & Anr. v. L.M. Nagpal & Ors. (2015) 8 SCC 309;***
- e) ***Chand Rani v. Kamal Rani (1993) 1 SCC 309;***
- f) ***K.S. Vidyandandam v. Vairavan (1997) 3 SCC 1;***
- g) ***D.S. Paravathamma v. A Srinivasan (2003) 4 SCC 705;***
- h) ***Ravinder Singh Chauhan v. Wings Wear Pvt. Ltd. [Co. App. 31/2012 decision dated 28th March, 2012 – Delhi High Court];***
- i) ***Karan Madan & Ors. v. Nageshwar Pandey (2014) 6 HCC (Del) 738;***

- j) *H.S. Basavaraj & Anr. v. Canara Bank & Anr. (2010) 10 SCC 115;*
- k) *N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao & Ors. (1995) 5 SCC 115;*
- l) *Ved Prakash Kharbanda v. Vimal Bindal (2013) 198 DLT 555;*
- m) *Nanjegowda & Anr. v. Gangamma & Ors. (2011) 13 SCC 232;*
- n) *Ahmad Sahab Abdul Mulla (2) Dead v. Bibijan & Ors. (2009);*

Rejoinder submissions by the Plaintiffs

42. In rejoinder submissions, Mr. Sapra has highlighted the unique features of the agreement to sell, which are as under:

- a) Upon payment of 40% of the sale consideration the Plaintiffs became the landlords of the suit property;
- b) Power of Attorney was executed in favour of the Plaintiffs to evict the tenant from the Ground Floor;
- c) The sale deed was to be executed by 31st March, 1975 but the installments were to be paid thereafter.
- d) Three part payments were made to the tune of Rs.70,000/-.
- e) Even if the monthly installments were not paid, the payment could be deferred by levying interest @ 12% per annum between January to May, 1976 and at @24% per annum thereafter.
- f) The Plaintiffs could have raised the remaining sale consideration by mortgaging the property immediately after execution of sale deed.

43. According to him, this agreement to sell is different from an ordinary agreement. In fact, the Defendants sought permission from the L&DO seven months after the last payment was due, which itself shows that the time was

not of the essence of the contract.

44. Insofar as the relationship between M/s. Vinod Industries and Mrs. Suraj Kumari are concerned, the Plaintiffs are the 85% shareholders of M/s. Vinod Industries. On 5th August, 1993, the eviction petition was stayed and on 21st September, 1995 the Supreme Court had directed that no final eviction order would be passed. However, if such order is passed, six months' time would be given for eviction.

Proceedings in the Appeal

45. Before going into the merits of the appeal, some further facts need to be noticed. The present appeal, challenging the impugned judgment dated 23rd December, 2015 passed by the Trial Court, was filed on 24th February, 2016. On 31st March, 2016, it was recorded by the Court that the owners have initiated proceedings under the Delhi Rent Control Act against M/s. Vinod Industries. Thus, an order to the following effect was passed:

“3. Having regard to the submissions made by the learned counsel for the parties, I feel that the interest of the appellants shall be sufficiently protected in case the respondents are restrained from creating any third party interest in respect of the title and possession of the suit property.

4. So far as the eviction proceedings against M/s. Vinod Industries Private Limited are concerned, they may continue; however, in the event of any decree of eviction being passed against the said tenant, the same shall not be executed without seeking permission of this court. The aforesaid order shall operate till the next date of hearing.”

46. The appeal has since been pending. On 21st May, 2018, an application was moved on behalf of the Defendants/Respondents, being CM No.

21290/2018. By this application permission was sought to execute the eviction decree. On 30th May, 2018, the hearing in the matter was commenced, and both the parties consented that the main appeal itself be heard. The matter was heard, thereafter, from time to time, and judgment was reserved on 5th October, 2018.

Analysis & findings

47. The present case demonstrates how an extremely valuable property in South Delhi can remain entangled in litigation for a period of four decades.

48. Before going into the issues raised, it is important to set out the conditions contained in the agreement to sell:

“AGREEMENT TO SELL

THIS AGREEMENT entered into at New Delhi on this 5th day of October 1974, between Shrimeti Suraj Kumari w/o Shri Charanji Lal R/o 57-Jorbagh, New Delhi, hereinafter referred to as the vendor (which expression shall unless excluded by or repugnant to the context, mean and include her heirs, executors, administrators, legal representatives or assigns) of the One Part and Smt. Urvashi Agarwal w/o Shri Vinod Chander Agarwal and Master Rajiv chander Agarwal & Master Sanjiv Chander Agarwal (both minors) through their father and guardian Shri Vinod Chander Agarwal R/o 82-Jorbagh, New Delhi, hereinafter collectively referred to as the purchaser (which expression shall unless excluded by or repugnant to the context, mean and include their heirs, executors, administrators, legal representatives & assigns) of the Other Part.

WHEREAS by an Indenture of Perpetual Lease Deed dated 5th February 1954 registered as document No. 1477 in Addl. Book No.1, Vol. No.245 on 2nd June 1954 on pages 25 to 32 in the office of the Sub-Registrar New Delhi. The President of India granted to

the Vendor a Lease in perpetuity in respect of the plot of land being plot No.82, Block No.172 in new Capital of Delhi (Popularly now known as 82-Jorbagh, New Delhi-3) containing by admeasurement 575 sqds. or thereabout and more particularly described in the schedule hereunder written:

On the North by Service Road

On the South by Main Road

On the East by Plot No.81

On the West by approach Road

On the terms and conditions contained herein:

AND WHEREAS the Vendor has erected on the said land a building in accordance with the building plans duly sanctioned by the competent authority and put up the same to the use for purpose permissible under the Indenture of Perpetual Lease.

AND WHEREAS the Vendor is desirous of transferring all her rights, title and interest in the aforesaid plot and the building constructed thereon and the purchaser is anxious to purchase the same.

NOW THIS AGREEMENT WITNESSETH AND PARTIES HERETO MUTUALLY AGREE AS FOLLOWS:

- 1. The Vendor will sell and the purchaser will buy the said land and buildings erected thereon alongwith existing tenants but free from all other charges, liens, suits, litigations on any account whatsoever at a price of Rs.1,85,000/- (Rupees one lac, eighty-five thousand only) payable as under:*
 - a) First instalment of Rs.20,000/- at the time of signing of this agreement, the receipt whereof the vendor hereby acknowledges.*
 - b) Second instalment of Rs.50,000/- latest by 31st October 1974.*

- c) Balance amount payable at the rate of Rs.7,000/- per month beginning from 1st week of January 1975 till the whole amount is paid.*
- 2. No interest will be payable on the above deferred payment schedule until December 1975. From January 1976 a simple interest at the rate of 12% per annum will be payable calculated on the balance amount. Interest will be payable every month (beginning from February 1976) alongwith the instalments of Rs.7,000/- mentioned above. If all the payments as per above mentioned schedule are not completed by May 1976 then the rate of interest shall be increased from 12% to 24% on the balance amount of the Sale Deed.*
- 3. The ground floor is occupied by Shri A.C. Deb, Principal Cambridge School who is paying regularly a rent of Rs.450/- per month. The first floor is occupied by M/s Vinod Industries (P) Ltd. is also paying a rent at the rate of Rs.500/- per month.*
- 4. After the receipt of first two instalments of Rs.20,000/- & Rs.50,000/- mentioned above the Vendor shall not be entitled to receive any rent from the tenants. All rents thenceforth shall be received and retained by the Purchaser.*
- 5. The Vendor shall be responsible for payment of house tax, ground rent and other outgoings, if any, in respect of the property till she enjoys the rents and from when the purchaser starts receiving rents as mentioned above, the house tax, ground rent & all other outgoing shall be borne by the purchaser.*
- 6. Simultaneously with the execution of this agreement to sell, the Vendor shall execute the favour of the purchaser a power of attorney authorising the purchaser to deal in the name and on behalf of the Vendor with the tenants and other departments for getting the tenants evicted.*

7. *The property is at present mortgaged with New Bank of India Ltd Rajinder Nagar Branch, New Delhi, against which Bank Guarantee for business purpose are secured.*
8. *The Vendor shall seek permission to sell from the Land & Development Office well before the date of execution of sale Deed and all the unearned increase or another charges payable by the Vendor shall be paid by the Vendor.*
9. *The Vendor shall obtain the necessary permission in form 34A from I.T.O. for the purpose of completing the transaction of sale in favour of the purchaser.*
10. *The Sale Deed shall be executed before 31-3-1975. If the Vendor fails to execute the sale deed, the purchaser shall be entitled to get the property conveyed by specific performance through Court. At the time of execution of the Sale Deed the property which is at present mortgaged with New Bank of India Ltd. Rajinder Nagar Branch, New Delhi shall be released and all original papers handed over to the purchaser.*
11. *The title deeds of the plot shall not be mortgaged by the Purchaser to any Bank, financial Institution, person or any other entity until the Vendor is fully paid and except for the purpose of raising loans to repay only the Vendor. After full payment of the property has been made, the Purchaser is free to utilise the title-deeds in any manner they deem fit.*
12. *All expenses in connection with the stamp duty and registration of the Sale Deed etc. will be borne by the purchaser.*
13. *The Sale Deed may be got executed by the Purchaser i their own names or in the name of their nominee and the Vendor will not have any objection to this,*

IN WITNESS WHEREOF the parties have set their respective hands unto this agreement at New Delhi on the day, month and year mentioned hereinabove.”

49. The agreement to sell itself is an admitted document and exhibited as Ex.P-1. The sale transaction was for the entire property along with the existing tenants. The total sale consideration was Rs.1.85 Lakhs. Receipt of Rs.20,000/- was acknowledged at the time of the execution of the agreement. Rs.50,000/- was to be paid by 31st October, 1974. Interest was payable on the monthly instalments of Rs.7000/- as contained in clause 2. The purchasers were entitled to receive rent from the tenants on the ground floor against whom they were to initiate eviction proceedings as per the Power of Attorney in favour of Mrs. Urvashi Aggarwal. Permission from the L&DO was to be sought by the sellers. The last date for execution of the sale deed was 31st March, 1975. If the sale deed was not executed by then, the purchasers could seek specific performance. The existing mortgage on the property was to be released at the time of execution of the sale deed. For the purpose of repaying instalments alone, the purchasers could mortgage the property after the sale deed was executed and the title deeds were handed to them.

50. The terms and conditions in the agreement do demonstrate that the payment of the entire sale consideration was not a pre-condition for execution of the sale deed. The outstanding balance sale consideration was to be paid after the sale deed was executed. To this extent, the agreement to sell was out of the ordinary. The question is, however, as to whether the open-endedness for payment of the instalments rendered the entire agreement to sell, as being open-ended.

51. The agreement clearly specifies a date for the execution of the sale deed i.e. 31st March, 1975. Consequences of non-execution of the sale deed are also specified. The execution of the sale deed was not contingent upon the payment of the instalments. Thus, clearly, the date for execution of the sale deed was not open ended. This is where the conduct of the parties has a bearing. The Plaintiffs' witness PW2 i.e., the husband of Mrs. Urvashi Aggarwal, has clearly admitted that no notice was ever issued by the Plaintiffs seeking execution of the sale deed. The case of the Plaintiffs, that they did not seek execution of the sale deed as the L&DO's permission was not obtained, even if accepted, does not take the case of the Plaintiffs forward. This is because the Plaintiffs were well aware of the documentation filed with the L&DO between 1974-1977, seeking permission to sell the property. There is not a single letter or notice calling upon the Defendants or seeking to know the status of the L&DO approval. Presuming that the approval from the L&DO was obtained in 1977, as has now been established on record by PW-1, this fact could not have been beyond the knowledge of the Plaintiffs. Mrs. Urvashi Aggarwal was executing documents including affidavits and signing forms to enable seeking permission the suit property. Two sets of documents signed by Mrs. Urvashi Aggarwal, available on record, are dated 20th November, 1974 (Ex.DW1/1) and 6th September, 1976 (Ex.DW1/P1). Thus, as of September 1976, Mrs. Urvashi Aggarwal was in the know that the permission from the L&DO was yet to be obtained. Even if the date of 1976 is taken to be when the Plaintiffs felt that the L&DO's permission was still pending, there ought to have been some documents or notice or letter issued by the Plaintiffs after 1976 seeking to know the status of the said approval by the L&DO. The Defendants have exhibited on record

Ex.DW-1/1, an affidavit of Mrs. Urvashi Aggarwal dated 20th November, 1974. The undertaking dated 14th July, 1977 (Ex.DW-1/5) signed by Mrs. Urvashi Aggarwal clearly shows that she was aware that Mrs. Suraj Kumari had taken steps to clear all the breaches upto 14th July, 1977. Text of the said undertaking is set out below:

“That I am intending purchaser of House built on plot No. 82 Block No.172, known as 82-Jorbagh, New Delhi. That I understand that there are certain breaches in the above-said premises and those have been got regularised by Smt. Suraj Kumari (present lessee) upto 14-7-1977.

I hereby undertake to get these breaches regularised beyond that date for the period for which these would remain in existence.

I shall have no hesitation in making the payment at the rates which will be fixed by Government from time to time.

I have clearly understood that the Ground Rent and other charges for breaches shall be accepted from me subject to the compliance of the terms of this undertaking.”

52. Thus, as of May, 1977, Mrs. Urvashi Aggarwal was well aware of the fact that the L&DO is likely to grant permission shortly. Admittedly, the L&DO granted permission on 10th October, 1977, which was valid for a period of 90 days. Considering that Mrs. Urvashi Aggarwal was well aware of her undertaking which was submitted on 14th July, 1977, the absence of any letter, notice or any communication seeking to know the status of the said permission, clearly shows that the Plaintiffs were not seriously pursuing the agreement to sell.

53. The other facts, which go to prove that the agreement to sell was not

followed up and acted upon by the Plaintiffs are as under:

- a) The rent from the ground floor tenant was not collected by the Plaintiffs.
- b) The eviction proceedings to evict the ground floor tenant were not filed by the Plaintiffs, though a Power of Attorney was executed authorizing them to do so;
- c) The entire follow up with the L&DO was being done by the owners, who were getting the documents executed from Mrs. Urvashi Aggarwal
- d) After the date for execution for sale deed had passed, no notice was issued by the Plaintiffs, exhibiting their readiness and willingness or enquiring the status of the permission from the L&DO.
- e) Even after execution of the undertaking dated 14th July, 1977, no enquiry was made by the Plaintiffs about the status of the L&DO approval.
- f) From 1977 till 1987 when the ground floor was vacated by the tenant, not a single letter was written by the Plaintiffs to the Defendants seeking a closure of the transaction.

54. All the above facts go to show that even if the period for counting limitation is stretched, the same cannot be considered to run beyond 14th July, 1977 when the last undertaking was executed by the Plaintiffs for filing in the L&DO. Even if limitation is taken to run from 14th July, 1977, the period within which specific relief ought to have been sought, ends on 13th July, 1980.

55. Going strictly by the agreement to sell, the fixed date for execution of the sale deed having been given in the agreement as 31st March, 1975, the period of limitation starts to run from the said date, as the remaining payments had no relationship with the execution of the sale deed. Open-endedness for making the payment, as contended by the Plaintiffs, does not render the agreement insofar as execution of the sale deed, open-ended. The period of limitation, thus, has to be reckoned from 31st March, 1975 and latest by 14th July, 1977 in any case. Either way, the suit is barred by limitation as the suit was filed only on 23rd October, 1987. This is not a case where there is a continuing cause of action or a recurring cause of action. The eviction of the tenant on the ground floor, which was the responsibility of the Plaintiffs, cannot create a cause of action in favour of the Plaintiffs, when admittedly they failed to act upon and behave as landlords would.

56. Insofar as the payment of Rs.10,000/- is concerned, the said payment was to come from the Plaintiffs. However, the cheque for the same was issued by M/s. Vinod Industries. The Plaintiffs argued that the amount of Rs.70,000/- was paid which included the amount of Rs.10,000/- paid by M/s. Vinod Industries. The Defendants argued that the said amount was adjusted towards the rent. The said entity M/s. Vinod Industries was a separate legal entity being a company, which was a tenant in its own right, of the owners. In fact, due to the stand taken by the Plaintiffs that M/s. Vinod Industries is a separate legal entity, though the Plaintiffs were directors and shareholders of the said company, the owners have had to commence separate eviction proceedings against them. Under such circumstances, the payment made by M/s. Vinod Industries, cannot be considered to be a payment made by the Plaintiffs as part of the sale

consideration for the suit property. Thus, the said amount of Rs.10,000/- cannot be given credit as being part of the sale consideration under the agreement to sell. Issue. No.1 and Issue no.4 are decided accordingly, against the Plaintiff and in favour of the Defendants.

57. The next issue is in respect of whether the Plaintiffs, in fact, had demonstrated readiness and willingness or had abandoned the agreement to sell. The Plaintiffs have never demonstrated serious interest towards the suit property, so long as the tenant remained in occupation of the ground floor. However, they fought long and hard thereafter. The Plaintiffs, have been in litigation for the last more than 30 years with the Defendants. Admittedly, the entire sale consideration of Rs.1.85 Lakh has not been paid. Even if it is considered that the monthly instalments of Rs.7,000/- could be paid with interest in an open ended manner, the same cannot be held to continue in perpetuity. Submission of counsels for the Plaintiffs that even today the Plaintiffs are willing to pay the interest on the remaining sale consideration at the rate specified is not appealing to this Court. Stipulation in any contract has to be viewed on a reasonable basis and cannot be interpreted in favour of one party in a manner so as to render the consequences of the same into an absurdity.

58. The remaining sale consideration of Rs.1.15 Lakhs or Rs.1.25 Lakhs (*either way with or without Rs.10,000/-*) has not been paid since 1975. Every term in a contract has to be construed reasonably and if no time is specified, time has to be construed as 'reasonable time' under Section 46 of the Indian Contract Act, 1872. What would be a reasonable time in the present case? The said time could not have been beyond the period of three years after 1975 and in any case cannot be beyond three years from 14th July, 1977

when the last undertaking for the L&DO was executed by Mrs. Urvashi Aggarwal. The instalments ought to have been paid by 1978 or latest by 1980. The agreement to sell specified rate of interest @12% p.a. for a block of five months, from January to May, 1976 and thereafter @ 24% p.a. The said period beyond 1976, cannot be an unending period. Consequences of non-execution of the sale deed being that the Plaintiffs had to seek specific relief, means that time has to be construed as 'reasonable time'. By any standard, the sale consideration having not been paid, it is clear that the Plaintiffs had abandoned the agreement to sell, until 1987, and were not interested in seeking specific performance.

59. Moreover, the stand that the Plaintiffs were in proprietary possession, is defeated from the conduct of the Plaintiffs i.e. that they never exercised the alleged proprietary rights which were granted under the agreement. Section 53A of the Transfer of Property Act does not come to the aid of the Plaintiffs as they were never put in possession of the suit property. They remained in possession as Directors/shareholders of M/s. Vinod Industries against whom eviction proceedings was initiated. The Defendants have duly exercised their rights as the owners of the suit property by taking steps to evict the ground floor tenant, and thereafter, by pursuing till date an eviction petition against M/s. Vinod Industries.

60. In order for Section 53A of the Transfer of Property Act to come to the aid of the Plaintiffs, there ought to have been some document putting the Plaintiffs in possession under the agreement to sell. Such a document does not exist. Insofar as Section 55(4)(b) of the Transfer of Property Act is concerned, this provision would apply only when the ownership of the property has passed to the buyer. The only manner in which transfer of

ownership can take place under Section 54 of Transfer of Property Act is by means of a sale. This provision could have protected the Plaintiffs, if the sale deed has been executed and part consideration was paid and only some consideration was remaining. However, in the present case, no sale deed was executed. What was executed was only an agreement to sell. A bare reading of Sections 54 and 55(4)(b) of the Transfer of Property Act clarifies this position.

61. Mr. Bhushan has vehemently urged before the Court that the oral testimony of the Plaintiffs' witness ought to be accepted as Mr. Sushil Ansal did not appear in the witness box. Present is a case where the transaction is in the form of a written document. If any amendments were to be made to the same, there had to be some documents in writing. The Plaintiffs could not have simply relied upon some oral assurances alleged to have been given by one of the sons of Mrs. Suraj Kumari to the following effect:

- a) That no part of the balance consideration was to be paid;
- b) That contract was interlinked with sale of Faridabad property, the status of which is unknown
- c) That no rent needs to be paid by M/s. Vinod Industries.
- d) That there was no time limit for payment of balance consideration.

62. All these inferences cannot be drawn merely on the basis of oral testimony in the absence of a written document. In any event, the Plaintiffs being legally well-advised, could not have simply relied on oral assurances and wait for more than 10 years to seek specific relief. The cause of action, insofar as the Plaintiffs are concerned, for execution of the sale deed arises in 1977 when undertaking was executed for the L&DO by Mrs. Urvashi

Aggarwal and the L&DO granted permission in 1977. Execution of the sale deed did not depend on any other factor. Thus, the cause of action had clearly arisen in 1977. The non-appearance of Mr. Sushil Ansal as a witness cannot lead to a situation of adverse inference being drawn, as this is a case based on written documents and not on oral testimony.

63. Insofar as readiness and willingness is concerned, the Plaintiffs belonged to a well to do family. However, there is no notice or communication from their side expressing readiness and willingness.

64. It is submitted that the market value of the property as on date, even as per the circle rates, is around Rs.35 Crores. It is further submitted by Ld. Senior Counsel for the Plaintiff that, considering the time that has elapsed, the grant of specific performance being a discretionary remedy, the market rate would have to be kept in mind as there would be a windfall to the Defendants, for a property which has been in the part occupation of the Plaintiffs since 1958.

65. The doctrine that time is not the essence of the contract of specific performance, has since undergone a sea change., This is settled in ***Saradamani Kandappan v. S. Rajalakshmi & Ors. (2011) 12 SCC 18*** (hereinafter, '*Saradamani Kandappan*') which is later in point of time than the judgments relied upon by the Appellants/Plaintiffs. On this question, the Supreme Court observed as under:

“36. The principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market values 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 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.

66. The present suit for specific performance was filed in 1987, recordal of evidence was completed in 2010 and the judgment of the trial court was rendered in 2015 i.e., after a period of 28 years. The facts in this case fall in the ratio of the above judgment, which holds that while granting specific performance, the steep rise in the market rates of properties ought to be kept in mind, especially when litigation has been pending for more than 30 years and the agreement to sell is more than 40 years old.

67. Further, while granting a discretionary remedy, equities on both sides would have to be balanced. Admittedly, the Plaintiffs have been in occupation of the property since 1958, i.e., for more than 60 years. The only sums that they have paid are monthly amounts of Rs.500/- till January, 1975 and the sum of Rs.60,000/-. Thus, a total sum paid by the Plaintiffs is only Rs.60,000/- under the agreement to sell dated 5th October, 1974 and Rs.1,12,000/- as rentals, by M/s Vinod Industries for the entire period from 1958 till 1976. No other payments have been made by the Plaintiffs. Grant of specific performance in such a case would not only be inequitable, but also result in travesty of justice. The market value of the property is more than Rs. 35 crores, even as per the Plaintiffs. Considering that the market price of

the property, specific relief being discretionary remedy, the Court ought to see the conduct of the parties, and their adherence to the terms and conditions of the agreements. The Plaintiffs are in serious breach of several terms of the agreement and are not entitled to the relief of specific performance. The suit is also barred by limitation. The relief of specific performance and other reliefs sought are liable to be denied. Remaining issues are decided accordingly.

68. The sum of Rs.60,000/- paid by the Plaintiffs to the Defendants is however liable to be refunded along with simple interest @ 24% per annum, which is the interest rate stipulated as per clause 2 in the agreement to sell, within a period of four weeks from today. The interest shall be payable from 31st January, 1975 which is the date of payment of Rs.40,000/-.

69. The Respondents are free to execute the decree for eviction against M/s. Vinod Industries in accordance with law. The Trial Court judgment is, accordingly, affirmed in the above terms.

70. The appeal is dismissed. All pending applications are disposed of. In the facts there shall be no order as to costs.

प्रतिभा म. सिंह

**PRATHIBA M. SINGH, J.
JUDGE**

NOVEMBER 12, 2018/dk