* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **RFA No. 316/2018**

% **Reserved on: 16th April, 2018**
Pronounced on: 19th April, 2018

SHAMSHER BAHADUR NAGPAL (SINCE DECEASED)
THROUGH LR's ..... Appellants

Through: Mr. S.C. Singhal, Advocate

versus

SHAM ARORA ..... Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

C.M. Appl Nos. 14613-14/2018 (Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

RFA No. 316/2018 and C.M. Appl. No. 14612/2018 (for stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiffs in the suit impugning the judgment of the trial court dated 30.11.2017 by which the trial court has dismissed the suit for specific performance and injunction filed by the appellants/plaintiffs seeking specific

performance of the Agreements to Sell dated 17.6.1992 and 22.3.1995 with respect to Shop No. 59, Sarojini Nagar Market, New Delhi. (in short 'the suit shop')

2. The case of the appellants/plaintiffs was that the first Agreement to Sell dated 17.6.1992 was entered into with respect to the suit shop for consideration of Rs.15,00,000/- of which Rs.2,50,000/- in cash was paid by the appellants/plaintiffs to the respondent/defendant on the same date when the agreement to sell was executed and with respect to this payment a separate receipt of the same date of 17.6.1992 was executed in favour of the appellants/plaintiffs by the respondent/defendant. A Supplementary Agreement to Sell dated 22.3.1995 was thereafter entered into increasing the sale consideration from Rs.15,00,000/- to Rs.17,50,000/- when another sum of Rs.2,00,000/- in cash was said to have been paid by the appellants/plaintiffs to the respondent/defendant and evidenced by a receipt of the same date. There remained a balance sale consideration of an amount of Rs.13,00,000/-. Pleading that the respondent/defendant failed to execute the sale deed and instead asked

for a further increase of Rs.10,00,000/-, the subject suit for specific performance and injunction was filed.

3. Respondent/defendant contested the suit and filed his written statement. Execution of the agreements to sell and receipts were denied. These documents were pleaded to be forged and fabricated documents. Suit for specific performance was prayed to be dismissed.

4. After pleadings were complete the trial court framed the following issues:-

> *"1. Whether the defendant agreed to sell shop no. 59, Sarojini Nagar Market, New Delhi to the plaintiff vide agreement to sell dated 17th June, 1992 and supplementary agreement dated 22nd March, 1995? OPP*
> *2. Whether the plaintiff paid consideration of Rs.4,50,000/- to the defendant as alleged in the plaint? OPP*
> *3. Whether the suit is barred by limitation? OPD*
> *4. Whether the plaintiff has no cause of action to file the present suit? OPD*
> *5. Whether the plaintiff entered into any transaction with the defendant with respect to any property in Lajpat Nagar, New Delhi as alleged in preliminary objection no.6 of the written statement? OPD*
> *6. Whether the plaintiff is entitled to a decree for specific performance of the agreement to sell dated 17th June, 1992 and the supplementary agreement to sell dated 22nd March, 1995 pertaining to the suit shop? OPP*
> *7. Relief."*

5. The documents which have been proved by the appellants/plaintiffs are those stated in para 11 of the impugned judgment and this para 11 reads as under:-

S.No.	*Particulars of documents*	*Exhibition of documents*
1	Original GPA	Ex.PW1/1
2	Site Plan	Ex-PW1/2
3	Agreement to Sell dated 17.06.1992	Ex-PW1/3
4	Receipt dated 17.06.1992	Ex-PW1/4
5	Supplementary agreement to sell dated 22.03.1995	Ex.PW1/5
6	Receipt dated 22.03.1995	Ex.PW1/6
7	Account opening form	Ex.PW2/1

6. After hearing arguments on behalf of the appellants/plaintiffs I put a question to the counsel for the appellants/plaintiffs as to whether appellants/plaintiffs are interested in receiving back the amount of Rs.4,50,000/- which amount is alleged to have been paid by the appellants/plaintiffs to the respondent/defendant, and which query was put that in case specific performance relief cannot be granted then the appellants/plaintiffs can seek refund of the amount paid to the respondent/defendant. Counsel for the appellants/plaintiffs however argued and stated that appellants/plaintiffs are not interested in taking back the money but is seeking specific performance. I may also note that in the suit as filed there is prayed only the relief of specific performance and no

monetary relief is claimed, whether for damages or for refund of the amount of Rs.4,50,000/- paid under the two agreements to sell.

7. Trial court has held that the appellants/plaintiffs have failed to prove the two agreements to sell and receipts. I am not however going into this aspect in detail, inasmuch as, if the appellants/plaintiffs are not found to be ready and willing in terms of Section 16(c) of the Specific Relief Act, 1963 then even assuming agreements to sell were entered into, yet, the appellants/plaintiffs cannot be granted the relief of specific performance.

8. With respect to the appellants/plaintiffs being ready and willing to perform the contract, issue no. 6 was framed and this issue has been decided against the appellants/plaintiffs by the trial court, and in my opinion is rightly against the appellants/plaintiffs, because the appellants/plaintiffs did not lead any credible evidence to prove the financial capacity including the income tax returns or bank statements or other modes of availability of funds or arrangement to pay the balance sale consideration, etc. The relevant observations of the trial court in this regard are contained in paras 36 to 38 of the impugned judgment and these paras read as under:-

"36. It has already been held that the plaintiff has failed to prove the execution of agreement to sell dated 17.06.1992 as well as the supplementary agreement dated 22.03.1995 and the payment of the part sale consideration of Rs.4,50,000/- to the defendant which disentitle the plaintiff to claim relief of specific performance of agreement to sell dated 17.06.1992 and the supplementary agreement to sell dated 22nd March, 1995.

37. Even otherwise, the plaintiff is not entitled to the relief of specific performance as he has not been able to prove his readiness to pay the balance sale consideration from the date of execution of agreement to sell till the pendency of the present suit in terms of section 16(c) of Specific Relief Act which mandates that the plaintiff has to prove his readiness and willingness as a condition precedent to seek specific performance. It is settled law that the readiness depends on availability of requisite funds and willingness depends on the intention of the purchaser. The plaintiff was requested to prove his readiness by leading evidence relating to availability of funds whereas intention had to be inferred from the various circumstances on record. The plaintiff has simply averred in the plaint that he has always been ready and willing to perform his part of the agreement which has been denied by the defendant, meaning thereby, the burden was on the plaintiff to prove his readiness and willingness in terms of the agreement to sell dated 17.06.1992, Ex.0PW1/3 and supplementary agreement to sell dated 22.03.1995, Ex.PW1/5. According to the plaintiff, the defendant had to seek requisite sale permission from the competent authority as well as income tax clearance certificate from the department concerned under the provisions of Income Tax Act, which was never applied by the defendant and thus, there was no occasion for the plaintiff to arrange for the requisite funds. Be that as it may, merely because the defendant had to perform certain obligations under the agreement to sell, it would not absolve the plaintiff from proving readiness and willingness to perform his part of the agreement to sell. <u>The plaintiff has neither filed income tax return nor his bank statement and has not even led any evidence about the availability of funds or the arrangement of the same and thus failed to prove his financial capacity to pay the sale consideration.</u>

38. In view of the above, the plaintiff is not entitled to decree of specific performance to sell dated 17.06.1992 and the supplementary agreement to sell dated 22nd March, 1995." (underlining added)

9. No fault whatsoever can be found in the aforesaid reasoning and conclusion of the trial court because admittedly a self-serving statement and mere pleading of being ready and willing is not

sufficient to decree a suit for specific performance because readiness in the form of having financial capacity to pay the balance sale consideration has to be proved by the plaintiff to the satisfaction of the court in a suit for specific performance. The appellants/plaintiffs in this regard have miserably failed as noted in the last few lines of para 37 of the impugned judgment.

10. I may also note that no doubt a person does not have to have ready liquid amount available to pay the balance sale consideration, however that does not mean that the plaintiff in a suit for specific performance has not to prove his financial capacity. The meaning of the term readiness has been interpreted in a chain of judgments of the Supreme Court to be that the plaintiff has to have necessary financial capacity to pay the balance sale consideration. Once the appellants/plaintiffs have miserably failed to prove their financial capacity, and hence the readiness as required by Section 16(c) of the Specific Relief Act, trial court was justified in dismissing the suit for specific performance.

11. There is no merit in the appeal. Dismissed.

APRIL 19, 2018 **VALMIKI J. MEHTA, J**