IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

A.S No. 788 of 2012

A.Kanagaraj
Chairman, Jaya Educational Trust,
No.8, 2nd Main Road,
Krishnapuram,
Thiruninravur,
Poonamallee Taluk. ... Appellant

Vs.

M.Chakkaravarthy ... Respondent

Prayer: Appeal filed under Section 96 r/w Order 41 Rules 1 and 2 of CPC against the judgment and decree dated 15.03.2012 made in O.S.No.180 of 2017 on the file of Additional District and Session Judge, Fast Track Court No.III, Thiruvallur.

For Appellant : Mr.Om Prakash, Senior Counsel for M/s.H.MD Farood

For Respondent : Mr.V.Raghavachari

JUDGMENT

(Delivered by M.M.Sundresh,J.)

The unsuccessful plaintiff is the appellant in the suit filed for specific performance.

2. Under Ex.A1, dated 03.04.2006, an agreement was entered into between the appellant and the respondent. The sale consideration fixed was Rs.18,40,000/- with the time limit of six months. Under Ex.A2, an endorsement of sale agreement was made on Ex.A1 enhancing the sale consideration from Rs.18,40,000/- to Rs.28,00,000/-. An endorsement was also made to the effect that the time limit of six months granted has been

extended by one more month. The total sum of Rs.8,00,000/- was paid. Of this aforesaid amount, Rs.1,00,000/- was paid on 16.10.2006.

3. Thereafter, the respondent sent a notice marked as Ex.B10 dated 29.03.2007. In the aforesaid notice, the respondent has clearly stated that inasmuch as time is the essence of the contract and the same having been breached, the agreement stood cancelled. The xerox copy of the agreement as well as the demand draft for sum of Rs.8,00,000/- were also enclosed. The reply was given by the appellant/plaintiff on 17.04.2007, inter alia, stating that he is ready and willing to execute the agreement. It is further stated that the time is not the essence of the contract and there is sufficient time to execute the agreement. He further stated there was exchange of notices between the parties. In one of the notices, the appellant has stated that the sale deed was executed at the time and place stipulated by the respondent. He has also stated that he has got three years from the date of execution of Ex.A1 to execute the sale deed.

4. Immediately thereafter, the suit was filed on 21.05.2007 seeking specific performance. The aforesaid suit was filed without making any reference to Ex.A2, which is an endorsement on Ex.A1. Accordingly, based upon the sale consideration mentioned in Ex.A1 dated 03.04.2006, the suit was filed. In the written statement, the respondent disputed the aforesaid factum. Thereafter, an amendment petition was filed and the same was allowed. It is contended, inter alia, that inasmuch as Ex.A1 was taken by the Income Tax Department, the appellant was not aware of the endorsement made. However, a plea has been taken that even as per Ex.A2, the time limit is only six months.

5. Before the trial Court, the appellant examined himself as PW1 and marked Exs.A1 to A9. Similarly, the respondent examined himself as DW1 and marked Exs.B1 to B11.

6. The trial Court, framed the following issues:-

> "1.Whether the plaintiff was ready and willing to perform his part of contract?
> 2.Whether the suit is filed in time?
> 3.Since about time the arguments were submitted by both parties, additional issues is framed?
> 4.Whether time is the essence of contract?"

7. The trial Court, accordingly, held that the time is essence of the contract as stipulated under Exs.A1 and A2. Incidentally, the appellant has not proved the readiness and willingness to execute the sale agreement within the time frame specified under Exs.A1 and A2. It was held that the appellant has not come forward to file the suit with clean hands inasmuch as the suit was laid based upon Ex.A1, while ignoring Ex.A2. Challenging the same, the present appeal is before us.

8. Learned Senior Counsel appearing for the appellant would contend that the chronology of events would clearly show that the time is not essence of the contract. In law, time is not the essence of the contract unless the agreements specifically stipulates so, supported by evidence adduced by the parties. Inasmuch as the respondent received Rs.1,00,000/- on 16.10.2006 coupled with the fact that notice was issued six months thereafter, the trial Court ought to have held that time is not the essence of the contract. On the plea of readiness and willingness, it is submitted that though in the cross-examination PW1 has stated that he accepted ten months as time limit, Ex.A8 has not been construed correctly. Ex.A8 is only a renewal of the fixed deposit available for a sum of Rs.99,00,000/-.

9. Learned Senior Counsel further submitted that the explanation given by the appellant has not been taken into consideration by the trial Court while holding that he has approached the with unclean hands. Admittedly, the Income Tax Department seized Ex.A1. The appellant subsequently accepted Exs.A1 and A2. Therefore, the circumstances governing will have to be seen as a whole. Thus, the judgment and decree rendered by the trial Court would require interference.

10. Learned counsel appearing for the respondent would submit that the Court below has considered all the relevant materials available on record both the oral and documentary and came to the right conclusion. When such is the position, the appellate Court is not required to substitute its views and thereafter come to a different conclusion.

11. On the question of time being the essence of the contract, the execution of Exs.A1 and A2 is not in dispute. The mere fact that a sum of Rs.1,00,000/- was received on 16.10.2006 by the respondent cannot be a ground to hold that the time is not the essence of the contract, as against the evidence adduced by PW1 that he has accepted 10 months. Even the period of seven months which was originally agreed got expired. The respondent was inclined to sell the property as he has intending to purchase some other land. There is no material available to hold

that the appellant was ready and willing. The reply notice given on behalf of the appellant would clearly show that he was seeking further time. The appellant filed the suit belatedly.

12. Learned counsel for the respondent further submitted that the trial Court has rightly held that the appellant has not come with clean hands. There is no proper reason for suppressing Ex.A1. It is the appellant who signed Ex.A1. Ex.A2 was also endorsed by the respondent in the presence of the appellant. Therefore, he cannot plead ignorance of the same. If that is the case, he cannot say that six months time was granted. Even otherwise, he was aware of it after receiving the notice under Ex.B1. Thus, looking from any perspective the appeal will have to be dismissed.

13. The point for consideration is as to whether the appeal will have to be allowed or not.

14. The trial Court has rendered a well merited judgment by considering the evidence available on record both oral and documentary. Execution of Exs.A1 and A2 is not in dispute. Ex.A1 speaks about six months time. Thereafter, Ex.A2 was executed. In this document, the sale consideration was enhanced along with further time for execution of sale deed. The aforesaid one month period has not been disputed. From the above, the trial Court has rightly come to the conclusion that time is the essence of the contract. The fact that respondent had received Rs.1,00,000/- on 16.10.2006 cannot be a ground to hold that the time is not the essence of the contract.

15. When once Ex.A2 is admitted, it is for the appellant to substantiate that time is not the essence of the contract. In his evidence, PW1 has clearly stated that DW1 met and asked for payment within six months. The appellant has also abandoned his case to six months, by thereafter harping on ten months. Thus, evidence of the appellant in cross-examination has been rightly taken note of by the trial Court in giving a finding that the time is the essence of the contract.

16. The appellant was not ready and willing. The evidence of PW1 and also the exchange of notices between the parties is to that effect . The compliance of Section 16(c) of the Specific Relief Act is mandatory. Much reliance has been made on Ex.A8. Ex.A8 has to be seen in the context of the notices given on behalf of the appellant coupled with the evidence of PW1. Thus, even on this score, we do not find any error in the conclusion arrived at by the trial Court.

17. The conduct of the appellant, as rightly reprehended by the trial Court cannot be countenanced. The plaintiff is

expected to place all the facts before the trial Court. When once the appellant did not deny the execution of Ex.A2 coupled with Ex.B10, PW1 cannot wriggle out of it and claim ignorance to file the suit based on Ex.A1. This would clearly show that the appellant wants to suppress the factum of time and so also the sale consideration involved. The feeble attempt of the appellant that Ex.A1 was taken away by the Income Tax Department and, therefore, his memory has failed cannot be accepted.

18. The memory of the appellant was very much intact as he relied upon Ex.A1, but failed to refer Ex.A2 which is a subsequent act. In such view of the matter, we are of the view that the reasoning rendered by the trial Court cannot be found fault with. The appellant has filed the suit belatedly and the amendment application itself was filed one year and nine months after the filing of the written statement. The appellant has also not denied the execution of execution of Ex.A2 coupled with Ex.B10. Thus, looking from any perspective, we are of the view that the well merited judgment and decree rendered by the trial Court does not require any interference.

19. We feel that the trial Court has rightly considered the scope of Sections 16(c) and 20 of the Specific Relief Act in declining the relief sought for by the appellant. However, inasmuch as the respondent himself has clearly offered to return the amount of Rs.8,00,000/- which the appellant did not want to receive as is evidence from the averments made in paragraph 11 of the written statement, we direct the respondent to return the aforesaid amount within a period of eight weeks from the date of receipt of a copy of this order.

In view of the above, the appeal stands dismissed subject to the above direction. No costs. Consequently, M.P.No.1 of 2012 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssm

To:-

1.The Additional District and Session Judge,
Fast Track Court No.III,
Thiruvallur.

2.The Section Officer,
VR Section, High Court, Chennai.

+1cc to M/S.V.Raghavachari, Advocate Sr.36904
+1cc to Mr.H.Mohammed Farook, Advocate Sr.36929

A.S. No. 788 of 2012

ad[co]
srg 02/07/2019