

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.4231 of 2017 (O&M)
Date of Decision.03.05.2019

Ramesh Sharma

...Appellant

Vs

Ansals Colours Engineering SEZ Ltd.

..Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.K. Hooda, Advocate
for the appellant.

-:-

AMIT RAWAL J. (ORAL)

C.M. No.10985-C of 2017

The application for making good the deficiency of court
fee is allowed subject to all just exceptions.

C.M. No.10986-C of 2017

For the reasons stated in the application, delay of 218
days in re-filing of the appeal is condoned.

Application is allowed.

Main case

The appellant-defendant is in regular second appeal
against the concurrent finding of fact whereby suit of the respondent-
plaintiff for seeking specific performance of agreement to sell dated
28.02.2007 agreed to be sold for a total amount of ₹59,51,000/-, out
of which ₹15,75,000/- was paid as earnest money by splitting up
₹75,000/- as cash and ₹15 lakhs through cheque has been decreed by
granting alternative relief. It was alleged that the defendant did not
come forward on the stipulated date of 15.04.2007 and thereafter,
legal notice was sent on 14.03.2009 and suit was filed on 27.02.2009.

Both the parties led in evidence.

The trial Court declined the discretionary relief but granted alternative relief, which was confirmed by the lower Appellate Court in appeal.

Mr. Hooda, learned counsel appearing on behalf of the appellant submitted that both the courts below have abdicated in granting relief, which was never sought i.e. alternative relief and therefore, it could not have been granted. It was without stamp paper and there were not signatures of the purchaser, therefore, could not be looked into.

I am afraid aforementioned argument is not sustainable, for, it is settled law that even if a person in suit for specific performance claim liquidated damages, the court is not debarred or denuded from granting specific performance. The aforementioned view of mine is derived from the ratio decidendi culled out in judgment of Hon'ble Supreme Court in **P. D'Souza Vs. Shondrilo Naidu 2004(6) SCC 649.** The relevant paragraphs of aforementioned judgment are reproduced as under:-

“27. In Dadarao (supra) whereupon Mr. Bhat placed strong reliance, the binding decision of M.L. Devender Singh (supra) was not noticed. This Court furthermore failed to notice and consider the provisions of [Section 23](#) of the Specific Relief Act, 1963. The said decision, thus, was rendered per incurium.

28. Furthermore, the relevant term stipulated in Dadarao (supra) was as under:

"Tkaram Devsarkar, aged about 65, agriculturist, r/o Devsar, purchaser (CHENAR) - Balwantrao Ganpatrao Pande, aged 76 years, r/o Duadi Post Devsar, vendor

(DENAR), who hereby give in writing that a paddy field situated at Dighadi Mouja, Survey No. 7/2 admeasuring 3 acres belonging to me hereby agree to sell to you for ₹ 2000 and agree to receive ₹1000 from you in presence of V.D. N. Sane. A sale deed shall be made by me at my cost by 15.4.1972. In case the sale deed is not made to you or if you refuse to accept, in addition of earnest money an amount of ₹500 shall be given or taken and no sale deed will be executed. The possession of the property has been agreed to be delivered at the time of purchase. This agreement is binding on the legal heirs and successors and assigns. (Emphasis supplied)

Interpreting the said term, it was held:

"6 The relationship between the parties has to be regulated by the terms of the agreement between them. Whereas the defendants in the suit had taken up the stand that the agreement dated 24.4.1969 was really in the nature of a loan transaction, it is the plaintiff who contended that it was an agreement to sell. As we read the agreement, it contemplates that on or before 15.4.1972 the sale deed would be executed. But what is important is that the agreement itself provides as to what is to happen if either the seller refuses to sell or the purchaser refuses to buy. In that event the agreement provides that in addition to the earnest money of ₹1000 a sum of ₹500 was to be given back to Tukaram Devsarkar and that the sale deed will be executed". The agreement is very categorical in envisaging that a sale deed is to be executed only if both the parties agree to do so and in the event of any one of them resiling from the same there was to be no question of the other party being compelled to go ahead with the execution of the sale deed. In the event of the sale deed not being executed ₹500 in addition to the return of ₹1000, was the only sum payable. This sum of ₹500 perhaps represented the amount of quantified

damages or, as the defendants would have it, interest payable on ₹1000.

7. If the agreement had not stipulated as to what is to happen in the event of the sale not going through, then perhaps the plaintiff could have asked the Court for a decree of specific performance but here the parties to the agreement had agreed that even if the seller did not want to execute the sale deed he would only be required to refund the amount of ₹1000 plus pay ₹500 in addition thereto. There was thus no obligation on Balwantrao to complete the sale transaction.

Apart from the fact that agreement of sale did not contain a similar clause, Dadarao (supra) does not create a binding precedent having not noticed the statutory provisions as also an earlier binding precedent. (See [Government of W.B. v. Tarun K. Roy and Others](#), [2004] 1 SCC 347 para 26).

The second contention of Mr. Bhat therefore, cannot also be accepted.

29. The third contention of the learned counsel to the effect that this Court should not exercise its discretionary jurisdiction in view of hardship which would be faced by the defendant is stated to be rejected. Such a plea was not raised before the High Court.

30. It is not a case where the defendant did not foresee the hardship. It is furthermore not a case that non-performance of the agreement would not cause any hardship to the plaintiff. The defendant was a landlord of the plaintiff. He had accepted part payments from the plaintiff from time to time without any demur whatsoever. He redeemed the mortgage only upon receipt of requisite payment from the plaintiff. Even in August, 1981, i.e. just two months prior to the institution of suit, he had accepted ₹20,000 from the Plaintiff. It is, therefore, too late for the Appellant now to suggest that having regard to the escalation in price, the Respondent should be denied the benefit of the decree passed in his favour. Explanation 1 appended to [Section 20](#) clearly

stipulates that merely inadequacy of consideration or the mere fact that the contract is onerous to the defendant or improvident in its nature would not constitute an unfair advantage within the meaning of sub-section (2) of [Section 20](#).

The decision of this Court in [Nirmala Anand \(supra\)](#) may be considered in the aforementioned context.

31. Raju, J. in the fact and circumstance of the matter obtaining therein held that it would not only be unreasonable but too inequitable for courts to make the appellant the sole beneficiary of the escalation of real estate prices and the enhanced value of the flat in question preserved all along by the respondents No. 1 and 2 by keeping alive the issues pending with the authorities of the Government and the municipal body. It was in the facts and circumstances of the case held :

23... Specific performance being an equitable relief, balance of equities have also to be struck taking into account all these relevant aspects of the matter, including the lapses which occurred and parties respectively responsible therefor. Before decreeing specific performance, it is obligatory for courts to consider whether by doing so any unfair advantage would result for the plaintiff over the defendant, the extent of hardship that may be caused to the defendant and if it would render such enforcement inequitable, besides taking into (sic consideration) the totality of circumstances of each case...."

The Court for arriving at the said finding gave opportunities to the parties to settle the matter and the respondents No. 1 and 2 were prepared to pay upto ₹60 lakhs as against the demand of the appellant to the tune of rupees one and a half crores which was subsequently reduced upto ₹120 lakhs. In view of the respective stand taken by the parties, the Court inter alia directed the respondents No. 1 and 2 to pay a sum of ₹40 lakhs in addition to the sum already paid by them.

Bhan, J. however, while expressing his dissent in part observed:

38. It is well-settled that in case of contract for sale of immovable property the grant of relief of specific performance is a rule and its refusal an exception based on valid and cogent grounds. Further, the defendant cannot take advantage of his own wrong and then plead that decree for specific performance would be an unfair advantage to the plaintiff.

40. Escalation of price during the period may be a relevant consideration under certain circumstances for either refusing to grant the decree of specific performance or for decreeing the specific performance with a direction to the plaintiff to pay an additional amount to the defendant and compensate him. It would depend on the facts and circumstances of each case."

The learned Judge further observed that delay in performance of the contract due to pendency of proceedings in court cannot by itself be a ground to refuse relief of specific performance in absence of any compelling circumstances to take a contrary view. However, the learned judge noticed the events which occurred subsequent to the passing of the decree and held:

45. The appellant has always been ready and willing to perform her part of the contract at all stages. She has not taken any advantage. of other own wrong. The appellant is in no way responsible for the delay at any stage of the proceeding. It is the respondents who have always been and are trying to wriggle out of the contract. The respondents cannot take advantage of their own wrong and then plead that the grant of decree of specific performance would amount to an unfair advantage to the appellant.

46. Requiring the appellant to pay further sum of Rs. 40 lakhs would/may amount to frustrating the agreement itself as the appellant may not be in a position to pay the

sum of Rs. 40 lakhs. Respective counsel for the parties had quoted the figure of a particular sum which could be paid to the appellant in lieu of avoiding the decree of specific performance. The appellant had not made an offer to pay any additional sum over and above the quoted price to sell by way of compensation. It does not indicate the financial position of the appellant to pay the additional sum of Rs. 40 lakhs. With due respect, in my view, it would be unfair to grant the decree of specific performance by one hand and take it back by the other.

47. For the reasons stated above, I am of the view that the appellant is entitled to the specific performance of agreement to sell the flat No. 71 on the 7th floor of Divya Prabha Building on the price mentioned in the agreement to sell which would be subject to the terms (iii), (iv), (v) and (vi) of the last paragraph of the judgment of my learned Brother. There would be no order as to costs.

The said decision cannot be said to constitute a binding precedent to the effect that in all cases where there had been an escalation of prices the court should either refuse to pass a decree on specific performance of contract or direct the plaintiff to pay a higher sum. No law in absolute terms to that effect has been laid down by this Court nor is discernible from the aforementioned decision.

For the reasons aforementioned, we do not find any merit in this appeal which is accordingly dismissed" However, in the facts and circumstances of the case, there shall be no order as to the costs."

Since the suit filed for availing of remedy of specific performance was not found fit for grant of discretionary relief, the Court confined to alternative relief, the appellant-defendant has not been able to belie his signatures on the agreement to sell.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact and law rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 03, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No