

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.472 of 2013
C.M.P.No.4362 of 2020

A.Krishnan

...Appellant/Defendant

Vs.

PNB Tech Waves(P) Ltd,
Rep.by its Director,
K.Ponnusamy,
7/4, Baroda Street Extension,
West Mambalam, Chennai-33.

...Respondent/Plaintiff

Prayer : First Appeal filed against the Judgment & Decree dated 10.07.2013 passed in O.S.No.2492 of 2011 on the file of the learned Additional District and Sessions Judge, Chennai (XVIII Additional Court), Chennai.

For Petitioner : Mr.V.Lakshmi Narayanan
for Mr.E.C.Ramesh

For Respondents : Mr.K.Radha Krishnan

ORDER

The appeal suit is directed against the judgment and decree dated 10.07.2013 passed in O.S.No.2492 of 2011 on the file of the XVIII Additional Judge, City Civil Court, Chennai.

2. The defendant is the appellant in the appeal suit and the suit was instituted for specific performance. The contention set out in the plaint are as under:

Plaintiff is a Private Limited Company represented by its Director K.Ponnusamy. Plaintiff came to know that defendant was willing to sell his property in Survey No.34/2 to an extent of 2.30 acres agricultural land situate at No.23, Vengadamangalam Village. Defendant also represented to the plaintiff that adjoining to his land measuring 40 cents of land situate in Survey No.34/7 owned by one Mrs.Meenakshi Ammal and she also authorized the

defendant to sell above said land. Plaintiff believing the words of defendant entered into sale agreement dated 12.02.2004 at Chennai, in respect of the suit property as well as the land owned by Meenakshi Ammal in survey No.34/07. Total sale consideration is fixed as Rs.14,50,000/- (Rupees Fourteen Lakhs Fifty Thousand Only). Defendant received a sum of Rs.1,00,000/- from the plaintiff at their office at Chennai as Advance. As per sale agreement, further payment of Rs.2,10,000/- (Rupees Two Lakhs Ten Thousand Only) will be paid at the time of cancelling the mortgage deed entered into between Mrs.Pushpa Jain and the defendant regarding his property. As per agreement plaintiff paid mortgage amount of Rs.2,10,000/- on 14.02.2004 and took possession of the Title deeds in respect of the defendant's property. Plaintiff further paid Rs.8,60,000/- (Rupees Eight Lakhs and Sixty Thousand only) on various dates as stated in the plaint. Balance of Rs.5,90,000/- to be paid towards sale consideration. All the payment were made by the plaintiff at Chennai either by cash or by Demand draft. Plaintiff is always ready and willing to complete the transaction. But the defendant did not show any interest in receiving the balance sale consideration and to execute the sale deed. Plaintiff, themselves approached Meenakshi Ammal and informed about the sale agreement entered in Survey No.34/7 to an extend of 40 cents. Meenakshi Ammal agreed that she only authorized the defendant to sell her land. Accordingly, she received the sale consideration towards her land and executed the sale deed in respect of her property and plaintiff took possession of that property from Meenakshi Ammal. Even though plaintiff approached the defendants several times to execute the sale deed, defendant is delaying the performance of his part. Therefore, plaintiff caused a legal notice on 14/12/2005 to the defendant calling upon him to receive the balance sale consideration and to execute the sale deed. The reply notice dated 21.12.2005 by the defendant contains unwanted allegations. Plaintiff sent rejoinder notice reputing the allegations in the reply notice. Even though plaintiff is ready and willing to perform his part of the contract by depositing the balance sale consideration defendant is evading his part of performance. Hence, the plaintiff has come forward with this suit for specific performance on the basis of suit sale agreement.

3. The defendant disputed the allegations as well as averments stated in the plaint and filed a written statement as follows:

All the averments in the plaint are denied as raise except those thats specifically admitted by the

defendant. There is no averments in respect of readiness and willingness from the date of agreement till the date of suit in the Cause of action. Hence the suit deserves to be dismissed. The signatory to the plaint is not authorised to institute the suit. Hence on that score also suit is not maintainable. It is admitted that sale agreement has been executed between the parties regarding the suit property. On the date of execution of the sale of agreement, plaintiff paid Rs.1,00,000/- as advance towards sale consideration. The original titled deeds pertaining to the property was handed over by defendant on the date of execution of sale agreement. As per sale agreement, the entire sale has to be completed within 12 months from the date of sale agreement that is by 12/02/2005. It is admitted that plaintiff paid the mortgage amount and the mortgage was also redeemed. It is denied that the possession was handed over to the plaintiff. Defendant is still in possession of the suit property. It is not true that the agreement was executed at Chennai. At the same time agreement was executed at Vengadamangalam Village outside the jurisdiction of this Court. Hence this Court has no territorial jurisdiction to entertain this suit. Plaintiff did not have enough money to complete the transaction. Defendant can show that plaintiff is not ready and willing to perform his contract. Plaintiff breached the terms and conditions of the sale agreement. Even though the sale agreement has entered for Survey No.34/7 to an extent of 40 cents plaintiff directly contacted Meenakshi Ammal and purchased the property. This is also a clear breach of contract. Because of the attitude of the plaintiff, defendant was not interested in selling the property to the plaintiff. Since there is no merit in this case, this suit deserves to be dismissed with cost.

4. The Trial Court framed the issues as to whether the agreement to sell dated 12.02.2004 emerged between the plaintiff and the defendant is true and valid? whether the plaintiff has been ready and willing to perform their part of the contract throughout and if so, whether the plaint is bad for non-specification of such readiness and willingness in the plaint? whether the plaintiff is entitled to specific performance of the agreement to sell? to what relief is the plaintiff entitled?

5. On the side of the plaintiff, the Director of plaintiff Company one K.Ponnusamy was examined as P.W.1 and Ex.A1 to Ex.A8 are marked. On the side of the defendant, defendant is examined as D.W.1. No documentary evidence produced on the side of the defendant.

6. With reference to issue Nos.1 to 3, the trial Court considered the pleadings of the parties and the documents. The sale agreement was executed on 12.02.2004 and total sale consideration agreed between the parties was Rs.14,50,000/-. Rs.1,00,000/- was paid by way of an advance on 12.02.2004 itself and further, advances were paid by the plaintiff to the defendant on various dates in piecemeal, and the learned counsel for the appellant made a submission that a sum of Rs.8,60,000/- was paid by way of an advance. The defendant had also received the said advance amount in piecemeal and issued receipts and those receipts were marked as document before the trial Court. The receipt of the amounts paid by the plaintiff to the defendant are marked as Ex.A4 and Ex.A5. D.W.1 in his cross-examination, has deposed as follows:

நான் என் நிலத்தையும் அதன் பக்கத்திலுள்ள மீனாட்சி அம்மாளுடைய நிலத்தையும் விற்பதற்காக வாதியிடம் ஒப்பந்தம் ஏற்படுத்தினேன் என்றால் சரிதான். முன் பணமாக ரூ.4,00,000/- பெற்றுக்கொண்டேன். பூபா ஜெயின் என்பவரிடம் தாவா சொத்து மீதான அடமான கடன் தொகை ரூ.2,10,000/- செலுத்தி வாதி மீட்டார் என்றால் சரிதான். அசல் ஆவணத்தை வாதி நேரிடையாகப் பெற்றுக்கொண்டார் என்றால் சரிதான். அதன் பின் வாதி நிறுவனம் சென்று, வாதியிடமிருந்து பணத்தை பெற்றுள்ளேன் என்றால் சரிதான். தொகைகளை முழுவதும் வரைவோலை மூலமாக கொடுத்துள்ளார் என்றால் சரிதான்.

7. The Trial Court, while appreciating the deposition of D.W.1, has stated that the suit sale agreement was executed between the parties and the defendant received a sum of Rs.1,00,000/- on the date of sale agreement and received further advance amount by way of a demand draft on various dates, as per the averments stated in the plaint. The plaintiff has stated that he was always ready and willing to execute his part of the contract and the defendant was evading the execution of the sale deed which resulted in institution of the suit for specific performance. Though the defendant had contended that the plaintiff was not ready and willing to perform his part of the contract as per the time fixed in the sale agreement (i.e.,) one year, the said averments are not established. As per Ex.A1, suit sale agreement, the time limit fixed was 12 months and in view of the fact that the defendant had not executed the sale deed by performing his part of the contract, the plaintiff was constrained to institute the suit.

8. In the written statement, the defendant has stated that "the defendant denies the possession was handed over to the plaintiff, the defendant is still in possession. The plaintiff has made such an averment only to avoid seeking possession which would take the suit away from the jurisdiction of this Court. The defendant states that by giving up the prayer for possession, the plaintiff cannot claim poss again".

9. The Trial Court arrived a finding that the said averments in the written statement reiterated that the plaintiff cannot get possession of the suit property for the reason that recovery of possession of the suit property is not sought for in the suit. This apart, the trial Court arrived at a conclusion that though the sale agreement for the property of Meenakshi Ammal also, there is no bar in getting sale deed from Meenakshi Ammal directly. Accordingly, the trial Court rejected the arguments made on behalf of the defendant. Finally, the trial Court arrived at a conclusion that the plaintiff was ready and willing to perform his part of the contract through out is also true and issue No.2 is also answered in favour of plaintiff. Accordingly, the relief of specific performance was granted. Therefore, the defendant filed the present appeal suit.

10. The learned counsel appearing on behalf of the appellant contended that the judgment of the trial Court is perverse, in view of the fact that the respondent himself was not ready and willing to perform his part of the contract and subsequently, the appellant had executed the settlement deed in favour of her daughter by canceling the suit sale agreement. In other words, it is contended that the suit sale agreement was canceled on 06.09.2019, on account of his old age. The property was settled in favour of his own daughter. This apart, the plaintiff had not established the readiness and willingness, in fact, even after completion of the time limit agreed. Therefore, the sale deed was not executed. The sale agreement was signed between the parties on 12.02.2004 and the suit was instituted on 17.03.2006. Even during that period, the plaintiff was not ready and willing. Beyond all these things, the learned counsel for the appellant made a submission that the appellant is now aged about 75 years and he has settled his property in favour of his daughter and the property measuring 2.03 acres situated nearby Tambaram in the sub-urban of Chennai city. The market price of the property is for more higher than that of the sale consideration fixed between the parties. It is contended that the value of the property as of now is in crores and the sale consideration fixed in the year 2004 was Rs.14,50,000/-. Therefore, in the event of granting the relief of specific performance, the appellant would be greatly prejudiced.

11. The learned counsel appearing on behalf of the respondent/ plaintiff disputed the entire contention by stating that escalation in the market price would not affect the claim of the plaintiff for the relief of specific performance. The plaintiff could able to establish that he was ready and willing to perform his part of the contract and he deposited the balance sale consideration immediately. Therefore, in all other respects, the plaintiff had proved his case before the trial

Court and the trial Court has rightly granted the relief of specific performance. No doubt, the respondent is now an old age. However, issues are prolonged, on account of pendency of the litigation and therefore, the respondent/plaintiff was ready and willing, even at that time and even now he is ready and willing to complete his sale process.

12. The learned counsel appearing on behalf of the respondent relied on the judgment of the Supreme Court of India in the case of S.V.R.Mudaliar vs. Mrs.Rajabu F.Buhari reported in AIR 1995 SCC 1607, the relevant paragraph is extracted hereunder:

"27. Insofar as the delay in the disposal of the case and the rise in prices during interregnum, Shri.Parasaran urges that the delay not having been occasioned by any act of the plaintiff, he may not be punished for the same on the principle of "actis curiae neminem gravabit" - an act of the Court shall prejudice no man. As regards the rise in prices, the submission is that it should not weigh with the Court in refusing the relief if otherwise due, as opined in S.V.Sankaralinga Nadar v. P.I.S.Ratnaswami Nadar, AIR 1952 Madras 389, which decision was cited with approval in Mir Abdul Hakeem Khan v.Abdul Mannan Khadri, AIR 1972 Andh Pra 178. We are in agreement with this view because of the normal trend of rise in prices of properties especially in metropolitan city like Madras, where the property in question is situate. If merely because the prices have risen during the pendency of litigation, we were to deny the relief of specific performance if otherwise due, this relief could hardly be granted in any case, because by the time the litigation comes to an end sufficiently long period is likely to elapse in most of the cases. This period is likely to elapse in most of the cases. This factor, therefore, should not normally weigh against the suitor in exercise of discretion by a Court in a case of the present nature."

13. The Supreme Court made an observation that "We are in agreement with this view because of the normal trend of rise in prices of properties situate especially in metropolitan city like Madras, where the property in question is situate. If merely because the prices have risen during the pendency of litigation, we were to deny the relief of specific performance if otherwise due, this relief could hardly be granted in any case, because by the time the litigation comes to an end sufficiently long period is likely to elapse in most of the cases."

14. In yet another case, Uttarkhand High Court in the case of RADHA KRISHNA AGARWAL vs. KRISHNA LAL reported in 2013(6) R.C.R.(Civil) 1022, held as follows:

10. Learned counsel for the appellant contended that in view of Section 20 of Specific Relief Act, the plaintiff is not entitled to the grant of decree of specific performance merely because it is lawful to do so. It is submitted that the property in question is of much more value than the amount for which, it was agreed to be sold. However, this Court is unable to accept the submissions advanced on behalf of the appellant, for the reason that the Explanation(I) Section 20 of Specific Relief Act, provides that mere inadequacy of consideration or mere fact that the contract is onerous to the defendant shall not be deemed to constitute the unfair advantage to the plaintiff. The value of the property is required to be seen as it existed at the time, when the agreement of sale was executed by the party. In every case, after some period, the value of the immovable property normally increases, and on such ground, the decree of specific performance cannot be refused lightly to the purchaser. Accordingly, the point of determination No.(III) is also decided against the appellant.

15. Undoubtedly, the judgments cited by the learned counsel appearing on behalf of the respondent has got certain reliefs with reference to the facts and circumstances. This Court cannot close its eyes, with reference to the observations made by the Hon'ble Supreme Court of India, more specifically, in the case of S.V.R.Mudaliar vs. Mrs.Rajabu F.Buhari reported in AIR 1995 SCC 1607.

16. However, the relief of specific performance being a discretionary relief, the Courts are bound to consider the facts and circumstances and conduct as well as other factors for the purpose of granting the relief. Ultimately, the Court should ensure that a balancing and pragmatic approach has to be adopted so as to minimize prejudice to either of the parties, may be in some cases, where there is a possibility of prejudice to be caused. However, the Courts are bound to ensure that such prejudices are not caused so as to result in injustice. Certain loss or gain may not be a ground for rejecting or granting the relief. However, the overall facts and circumstances are of paramount importance so as to arrive a conclusion.

17. In the present case on hand, admittedly, the sale agreement was entered into between the parties on 12.02.2004 and the total sale consideration is fixed as Rs.14,50,000/-. An

advance amount of Rs.8,60,000/- was paid by the respondent/plaintiff in piecemeal on several occasion and the appellant had also issued receipts. However, the sale transactions were not concluded and the defendant had not executed the sale deed which resulted in institution of the suit for specific performance. In this context, this Court has to consider whether the judgment rendered by the Hon'ble Supreme Court of India in the year 1995 can be applied directly with reference to the facts, now after a lapse of 25 years. Efflux of time changes in the market price of immovable property are to be considered, while deciding the cases.

18. Admittedly, the properties situate in Sub-urban of Chennai City, more specifically, very near to Tambaram and the extent of the properties is 2.03 acres and the sale consideration agreed was Rs.14,50,000/- and after some years, now the market price of the property is approximately about six crores and the market price of six crores is ascertained by this Court with the assistance of the Bar Counsels who belong to that locality. Under these circumstances, it would not be preferable to grant the relief of specific performance and in the event of confirming the judgment and decree, undoubtedly, the same would cause greater prejudice to the appellant. Contrarily, the alternative relief can be granted for refund of advance amount with a reasonable interest in order to settle the disputes between the parties.

19. It is brought to the notice of this Court that the alternative relief has not been sought for in the plaint. However, in the absence of any such prayer, the Courts are empowered to mould the relief under the general clause relief, more specifically, under Order VII Rule 7. This Court also considered the alternate relief of refund of advance amount in the case of rejection of the relief of specific performance, since grant of alternate relief is consequential and in the event of not granting, it would cause unjust enrichment to the defendant. The Courts are bound to grant such relief in order to mitigate the circumstances. Thus, grant of alternate relief of refund of advance amount with interest is not a bar under the general clause relief.

20. The alternate relief of return of advance in a suit for specific performance is a consequential relief and therefore, the same need not be construed as a different relief. Once the relief of specific performance is rejected, then the refund of advance amount shall be consequential as no parties to the suit can be allowed to have an unjust enrichment. In other words, the dismissal of the relief of suit for specific performance, cannot stand in the way of granting the alternate relief to refund the advance amount with reasonable interest. The question arises in

the absence of any such relief sought for in the plaint, whether the Court can grant the relief or not. This Court is of the considered opinion that the alternate relief to refund the advance amount is to be construed as a general relief, as such a relief is consequential to the rejection of the relief of specific performance. In the event of not considering the alternate relief under the umbrella of general relief, then one of the party to the civil suit would be prejudiced and the other party will get an unjust enrichment.

21. Keeping in mind the prejudice likely to be caused to one of the parties in the event of not granting the alternate relief of refund of advance amount, this Court has to adopt a pragmatic approach and constructive interpretation with reference to the Code of Civil Procedure.

22. Order VII, Rule 7 of the Code of Civil Procedure enumerates that "every Plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement".

23. The spirit of Order VII, Rule 7 of the Code of Civil Procedure is to be considered in the general format of the plaint. In the relief column, the plaintiffs used to pray for "grant such other relief or reliefs as the Hon'ble Court may deem fit and proper in the circumstances and thus render justice". Such a relief is to be construed as a general relief sought for in the plaint, the facts and circumstances and the equity to be considered in the interest of justice and the general relief is to be molded, so as to grant the alternate relief of refund of advance amount in the event of rejecting the relief of specific performance by the Courts.

24. Order XLI, Rule 33 of the Code of Civil Procedure enumerates that "the Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection". Therefore, the Trial Court granted the general relief by molding the prayer for grant of the relief of refund of advance amount with interest in the event of rejection of the relief of specific performance and the Appellate Court by invoking Order XLI, Rule 33 also grant the

similar relief in respect of the appeals preferred against the judgment and decree of the Trial Court. In either of the circumstances, both the Trial Court as well as the Appellate Court are empowered to grant the consequential relief of return of advance amount in the event of rejection of the relief of specific performance on the basis of the principles of equity. Therefore, there is no impediment either for the Trial Court or for the Appellate Court to grant the alternate relief of refund of advance amount to either of the parties to the civil suit or an appeal in the event of rejecting the relief of specific performance in a suit or in an appeal suit.

25. Therefore, the judgments cited by the learned counsel appearing on behalf of the respondent though applicable on principle, it need not be applied in this case, in view of changed circumstances as well as facts placed and with reference to high escalation in the market price in the suit mentioned property, the Courts cannot brush aside the escalation of the price and if such escalations are not comparable with reference to sale consideration agreed between the parties, then it is preferable that the relief of specific performance is declined. Thus, this Court is of the considered opinion that the facts and circumstances in entirety has not been considered by the trial Court. The trial Court adopted a view just based on the materials placed and other circumstances as well as conduct, the market price etc., are not considered by the trial Court in detail for the purpose of granting the relief of specific performance.

26. It is very much relevant to cite the judgment of the Hon'ble Apex Court of India in the case of Surinder Kaur v. Bahadur Singh, (2019) 8 SCC 575, made an observation that "A perusal of Section 20 of the Specific Relief Act clearly indicates that the relief of specific performance is discretionary. Merely because the plaintiff is legally right, the court is not bound to grant him the relief. True it is, that the court while exercising its discretionary power is bound to exercise the same on established judicial principles and in a reasonable manner. Obviously, the discretion cannot be exercised in an arbitrary or whimsical manner. Sub-clause (c) of sub-section (2) of Section 20 provides that even if the contract is otherwise not voidable but the circumstances make it inequitable to enforce specific performance, the court can refuse to grant such discretionary relief. Explanation (2) to the section provides that the hardship has to be considered at the time of the contract, unless the hardship is brought in by the action of the plaintiff."

27. Now, it is brought to the notice of this Court that the market price of the suit mentioned property is over and above

six crores per acre and the total market value would be more than Rs.13 crores. The sale consideration was fixed at Rs.14,50,000/-. In the event of confirming the relief of specific performance, undoubtedly, greater prejudice would be caused to the appellant. This being the factum, this Court is inclined to consider the appeal suit now preferred against the judgment and decree. Accordingly, the judgment and decree dated 10.07.2013 passed in O.S.No.2492 of 2011 is set aside. As far as the alternative relief is concerned, the appellant is directed to refund the advance amount of Rs.8,60,000/- along with interest at the rate of 12% per annum from the date of plaint till the date of decree and thereafter, 6% till the date of realization. The said amount is to be refunded in favour of the respondent within a period of three months from the date of receipt of a copy of this Judgment.

28. Accordingly, the first appeal stands allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The learned Additional District and Sessions Judge, Chennai
(XVIII Additional Court), Chennai.

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

+1cc to Mr.E.C.Ramesh, Advocate Sr.17520

+1cc to Mr.K.Radhakrishnan, Advocate Sr.17581

WEB COPY

A.S.No.472 of 2013

sr[co]
srg 09/11/2020