

Item-5. 18-08-2022

FA 201 of 2012
CAN 3 of 2022

sg Ct. 8

Sk. Md. Yasin
Versus
Smt. Durga Rani Seal

Mr. Asit Kumar Choudhury, Adv.
Mr. Ishit Raut, Adv.

...for the appellant

The plaintiff has filed an application for substituted service. We do not feel it necessary to direct substituted service. We propose to take the appeal for hearing.

The appeal is arising out of a judgment and decree dated 6th January, 2012 passed by the learned Judge, 11th Bench, City Civil Court at Calcutta in Title Suit No. 199 of 2011.

The plaintiff has filed a suit for specific performance of an agreement for sale dated 29th December, 2008. The plaintiff alleged that the plaintiff had agreed to a sum of Rs.9,00,000/- and the defendant has agreed to receive the said amount as final consideration for sale of the said property. The terms and conditions were reduced in writing and are reflected in the agreement for sale dated 29th December, 2008.

In terms of the said agreement, the plaintiff claimed to have paid an earnest money of Rs.3,00,000/- in presence of witness on the date of execution of the said agreement. Subsequently, the defendant failed to execute the said agreement. As a result whereof, the plaintiff filed a suit for specific performance of the said agreement. It appears from the record that the agreement between the parties is not in dispute. However, it appears that the agreement was required to be performed within a period of two

years from the date of execution. Admittedly, the plaintiff did not pay the balance sum of Rs.6,00,000/- towards the balance consideration within the period of two years. In view thereof, the defendant denied the execution of the said sale agreement.

The learned Trial Judge has taking into consideration that the plaintiff has also prayed in the suit alternatively for a decree for refund of the earnest money along with interest, decreed the suit to the aforesaid extent. The prayer for execution of the agreement for sale was denied having regard to the fact that in between the value of the property has increased considerably and it would be inequitable at this stage to grant a decree in favour of the plaintiff for specific performance for the agreement for sale. Admittedly, the suit was filed on the verge of limitation. the agreement was of December, 2008 and the suit was filed approximately at the fag end of the year 2011.

The prayer for specific performance may be considered if the plaintiff has proved the agreement and readiness and willingness to perform the essential terms of the agreement. We used the word ‘may’ as the relief is discretionary and all factors including the belated filing of the suit on the verge of limitation and rise in the price of the property would be the other relevant considerations in exercising discretion in favour of the plaintiff. [***See: U.N. Krishnamurthy (since deceased) through LRS v. A.M. Krishnamurthy*** reported in **2022 SCC OnLine SC 840.**]

The Hon’ble Supreme Court denied the specific performance of an agreement for sale on the consideration that the readiness and willingness of the plaintiff is not reflected by reason of such delay in approaching the Court in a suit for specific

performance of agreement for sale. Although, the suit may have been filed within the period of limitation but this is a factor which would reflect upon the conduct of the plaintiff in proceeding with the suit for specific performance of the agreement for sale.

Moreover, it is trite law that the prayer is discriminatory. The consideration that weighed the learned Trial Judge in refusing to allow the prayer for execution of the deed of conveyance cannot be said to be erroneous or arbitrary or perverse. The suit was decreed with regard to refund of the consideration amount along with interest.

In view thereof, we do not find any reason to interfere with the decree passed by the learned Trial Judge.

The appeal stands dismissed.

Since there is no need of substituted service, the application being CAN 3 of 2022 also stands dismissed.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)