

THE HONOURABLE SRI JUSTICE M.LAXMAN

CITY CIVIL COURT APPEAL No.7 of 2017

JUDGMENT:

1. The present appeal has been directed against the judgment and decree dated 22.06.2016 in O.S.No.406 of 2008 on the file of the XIII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad, wherein and whereby, the suit filed by the appellant herein for specific performance was partly decreed directing the appellant to pay balance amount of sale consideration along with interest at 12 % per annum within three (3) months from the date of decree. Aggrieved by the same, the present appeal is filed.

2. The main grievance of the appellant in the present appeal is that the trial Court has granted interest at 12% per annum on the balance sale consideration, to be paid to the respondent No.1. There is no cross appeal from the respondent No.1 with regard to grant of relief of specific performance.

3. The appellant herein is plaintiff and the respondent No.1 herein is sole defendant in the suit. During the

pendency of the present appeal the sole defendant/respondent No.1 died and her legal heirs were brought on record as respondent Nos.2 to 7. For the sake of convenience, the parties hereinafter are referred to as they were arrayed in the suit.

4. It is the case of the plaintiff that he entered into agreement of sale with defendant on 21.03.2008 for sale of house property bearing No.16-9-612/3, Old Malakpet, Hyderabad, (hereinafter referred to as 'suit property) and on the date of execution of agreement the plaintiff paid an amount of Rs.2,00,000/-, out of total sale consideration of Rs.21,00,000/-. The defendant was obligated to obtain encumbrance certificate within 45 days, so as to proceed with execution of sale deed. When defendant did not obtain the encumbrance certificate and did not come forward to perform her part of agreement, the plaintiff issued legal notice dated 14.05.2008 calling upon defendant to receive balance sale consideration and to execute sale deed. Despite receipt of said legal notice, there was no response from the defendant. Hence, the present suit is filed.

5. The case of the defendant is that she approached plaintiff for obtaining hand loan of Rs.2,00,000/- and plaintiff obtained signatures of defendant on blank paper in order to discharge said loan amount. Such blank paper has been illegally used for creation of agreement of sale to institute the present suit. It is also the case of the defendant that she is having four (4) sons and two (2) daughters, they are also having share in the suit property, but they were not parties to the alleged agreement of sale and also not parties to the present suit. The market value of the suit property was above Rs.42,00,000/-. The defendant received Rs.2,00,000/- as hand loan, but not as advance sale consideration. Hence, she prayed to dismiss the suit.

6. On the basis of the above pleadings, the trial Court has framed the following issues:

- “1. Whether the suit agreement dated 21.03.2008 is valid, true and binding on the defendant?
2. Whether the plaintiff is entitled for specific performance as prayed for?
3. Whether the plaintiff is entitled for delivery of possession as prayed for?

4. To what relief ?”

7. The plaintiff, in support of his case, examined P.Ws.1 and 2 and relied upon Exs.A-1 to A-4. The defendant, to support her case, examined D.Ws.1 and 2, but did not mark any exhibits.

8. The trial Court on appreciating the evidence on record decreed the suit and consequently, orders were passed for specific performance of agreement and the plaintiff was directed to deposit balance sale consideration of Rs.19,00,000/- within three (3) months from the date of decree along with interest at 12 % per annum.

9. Heard, learned counsel for appellant and there is no representation for respondents.

10. In the light of above submissions, the point emerging for consideration in this appeal is as follows:

“Whether the trial Court committed error in ordering interest on the balance sale consideration?”

Point:

11. In the present case, there is no appeal from the defendant challenging the passing of decree of specific performance. The present suit is filed for specific performance of agreement of sale dated 21.03.2008. On the date of agreement, an amount of Rs.2,00,000/- is paid to the defendant out of total sale consideration of Rs.21,00,000/- and due amount was Rs.19,00,000/-. In fact, no evidence is placed on record before the trial Court to show that plaintiff was ready to pay balance sale consideration of Rs.19,00,000/-, but the trial Court has decreed the suit. Since there is no appeal from the defendant, this Court cannot interfere into the findings of the judgment and decree passed in the suit in respect of specific performance of agreement.

12. The evidence on record shows that the suit is filed in the year 2008 and the same was decreed on 22.06.2016. This clearly shows that the trial Court took nearly eight (8) years to adjudicate the issue. In all these eight (8) years the defendant was deprived of balance sale consideration. The trial Court considering fact that minimal amount was paid and substantial amount was due, to compensate such

loss has granted interest at 12 % per annum on the principal balance amount. Such interest was granted in order to do justice to defendant, who was deprived of Rs.19,00,000/- for more than eight (8) years. The said interest rate is in consonance of escalated price and it does not suffer from any arbitrariness. The interest rate prescribed by Reserve Bank of India (RBI) has no relevance since the interest was granted keeping in view of escalation of price of property in the open market.

13. The plaintiff's grievance was only to the extent of grant of interest at 12 % per annum on the balance amount. Plaintiff filed the present appeal aggrieved by grant of 12 % interest per annum only. There is no grievance with regard to direction to deposit of Rs.19,00,000/- within three (3) months from the date of decree.

14. It is unfortunate that in the present appeal, I.A.No.1 of 2017 (C.C.C.A.M.P.No.15 of 2017) was filed by the plaintiff/appellant seeking suspension of entire decree including depositing of Rs.19,00,000/- and interest

thereon. In the present appeal, when the grievance is not in respect of depositing of balance sale consideration i.e., Rs.19,00,000/-, how the appellant/ plaintiff can seek relief of suspension of deposit of Rs.19,00,000/- is not explained. Such a relief was sought beyond scope of main appeal. This shows that there is clearly abuse of process of Court in seeking interim orders dated 07.03.2017 in I.A.No.1 of 2017 (C.C.C.A.M.P.No.15 of 2017).

15. Learned counsel for appellant submitted that till date Rs.19,00,000/- balance sale consideration has not been deposited, as per the decree of the trial Court. This Court do not find any reason for extending further time to plaintiff/appellant for the purpose of depositing the said balance sale consideration of Rs.19,00,000/-. Further, this Court does not find any reason to interfere into the findings of the trial Court with regard to grant of interest.

16. In the result, the appeal is dismissed confirming the judgment and decree dated 22.06.2016 in O.S.No.406 of 2008 on the file of the XIII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad. There shall be

no order as to costs. Miscellaneous petitions, if any,
pending, shall stand closed.

M.LAXMAN, J

Date: 29.11.2022
GVR