IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on: 18.08.2022
Pronounced on: 25.08.2022

1. RSA-1499-2013 (O&M)

Anita G. Hawa

... Appellant

Vs.

Navtej Singh Bains

... Respondent

2. RSA-4500-2013 (O&M)

Anita G. Hawa

... Appellant

Vs.

Navtej Singh Bains

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Ms. Aashna Aggarwal, Advocate for the appellant.

Mr. Ashwani Kumar Chopra, Sr. Advocate with
Mr. B.S. Nahar, Advocate and
Ms. Gurpreet Kaur Bhatti, Advocate
for the respondent.

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ARVIND SINGH SANGWAN, J. (ORAL)

Challenge in RSA-1499-2013 is to the judgment and decree dated

16.07.2009 passed by the trial Court, vide which C.S. No.105 dated 30.07.1998 filed by the plaintiff was partly decreed, while denying the relief of specific performance of agreement to sell, the respondent-plaintiff was held entitled to damage to the tune of Rs.28.00 lacs along with interest @6% per annum from the date of institution of the suit i.e. 30.07.1998 till the date of actual payment, with costs of the suit as well as judgment and decree dated 01.02.2013 passed in C.A. No.210 dated 23.07.2009 filed by the respondent-plaintiff, challenging the findings of the trial Court, declining to grant the relief of specific performance, was allowed and the suit was decreed by granting a decree of specific performance of agreement to sell.

Challenge in RSA-4500-2013 is to set aside the judgment and decree passed by the lower appellate Court dated 01.02.2013, vide which CA No.234 dated 13.08.2009 filed by the appellant-defendant qua partly decreeing the suit, was dismissed

Brief facts of the case are that the appellant-defendant, vide agreement to sell dated 11.03.1998 qua her House No.96, Sector-8A, Chandigarh, agreed to sell it to the plaintiff for a total sale consideration of Rs.1.25 crores with a rider that if the entire sale is completed on or before 15.04.1998 i.e. two months prior to stipulated date, on the basis of power of attorney, the sale consideration will be reduced to Rs.1.10 crores, else, the sale deed was to be executed on completion of certain terms and conditions incorporated in the agreement to sell. Rs.2.00 lacs were paid as token money against a formal receipt and another amount of Rs.12.00 lacs was paid as additional amount on 11.03.1998, which was also acknowledged by the defendant vide a separate receipt executed on back of first page of the agreement to sell dated 11.03.1998.

Since terms and conditions of the agreement to sell are heavily relied upon by both the parties, it is relevant to reproduce the same as below: -

> *"1. That the total sale price of the above said property, house and plot has been fixed at Rs.1,25,00,000/- (Rupees One Crore and Twenty Five lacs only).*
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> *2. That the said purchaser had paid to the said seller a sum of Rs.14,00000/- (Rupees Fourteen Lacs only) i.e. Rs.2,00000/- (Rupees Two Lacs only) vide Bank Cheque No.308641 dated 26.02.1998 issued on Ban of Punjab Sector \-35 and Rs.12,00000/- (Rupees Twelve Lacs only) vide Pay Order No.358990 dt. 7.3.98 for Rs.12 lacs issued on Bank of Punjab, Sector-35, Chandigarh, i.e. The said amount is i.e. 10% as earnest money alongwith over One lac extra as a part payment towards the cost of the said house. The said payment has been made in favour of Mrs. Prem Hawa, for which amount the said seller hereby acknowledges the receipt in presence of marginal witnesses and the receipt of the same is given on this Agreement to Sell.*
>
> *3. That the said seller will clear all outstanding dues against the said plot and house and will get no due certificate and Permission to Sell the said house from the Estate Officer, Chandigarh alongwith clearance from the concerned Income Tax Office and handover the same to the purchaser on receipt of full payment and*

on day of registration of the said house. The seller will also inform Shri Navtej Singh Bains, as well as to Chandigarh property Consultant, regarding receipt of said NOC, minimum 10 days before the last date of execution of sale deed, for his necessary action for making balance full payment.

4. The seller has agreed to sell the said house i.e. House No.96, Sector 8-A, Chandigarh in favour of Shri Navtej Singh Bains or his firm/any company or persons nominated by him. ***If mutually agreed the seller has the option to finalise the said sale of the house on the basis of Power of Attrorney, and in that case price of the house shall be reduced from Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lacs only) to Rs.1,10,00,000/- (Rupees One Crore Ten Lacs only), if payment is made by 15th April 98****. That the expenses on account of obtaining NOC from the Estate Officer and Income Tax clearance for concerned authority shall be borne by the Seller. The expenses on account of registration/Power of Attorney shall be borne by the purchaser. If Power of Attorney is given the ITC expenses shall be borne by the purchaser and NOC's expenses of Chandigarh Estate Officer shall be borne by the Seller. If Power of Attorney is given the seller shall not be liable to pay any liability of Income Tax, Wealth Tax and Capital Gain Tax, as Mr. Navtej Singh Bains (Purchaser) has on Mrs. Prem Hawa's (Seller) behalf agreed to pay any Capital Gain Tax, Income Tax and wealth tax due on the said property later on as* *mutually agreed, hence the reduction in price from Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lacs only) to Rs.1,10,00,000/- (Rupees One Crore Ten Lacs only). Otherwise the mode of payment as decided by the seller and purchaser is as under:*

i) Earnest money of Rs.14.00 lacs (Rupees Fourteen Lacs Only) paid on 11th March, 1998 as detailed about above.

ii) That the balance payment of Rs.1,11,00,000/- (Rupees One Crore and Eleven Lacs only) will be paid by the Purchaser to the seller by 15th June 1998. In case the NOC's are received after 15th June the full balance payment towards cost of the house will be made by the purchaser within 10 working days on receipt of NOC's.

5. That the total sale price of the house i.e. Rs.1,25,00,000/- (Rupees One Crore and Twenty Five Lacs Only), including earnest money of Rs.14,00,000/- (Fourteen Lacs Only) will be paid in full by the purchaser to the said Seller at the time of execution of transfer papers/execution of sale deed, and on handing over vacant possession of the said house to the purchaser. Thereafter, both the parties shall present themselves in the office of the Sub-Registrary, Chandigarh for execution and registration of the sale deed in the Estate Officer, Chandigarh.

6. That the said Seller will hand over all the documents and papers in original pertaining to the said plot & house to the said *purchaser at the time of execution of Sale Deed/Power of Attorney.*

7. That if the purchaser will back out from this bargain, then his earnest money i.e. Rs.14.00 lacs (Fourteen Lacs Only) shall stand forfeited in favour of the said seller/transferor and if the said seller will back out from this bargain then he will pay double of the earnest money received by her to the said purchaser/transferres being the liquidated damage i.e. in this case Rs.28.00 lacs (Twenty Eight Lacs Only). The purchaser/transferee shall have the option either to accept the damages i.e. in this case Rs.28.00 lacs only or to get the said property's sale deed executed in his favour through the Court of law under the Specific Relief Act on making full payment as said above i.e. Rs.1,25,00,000/- (One Crore and Twenty Five Lacs Only) which includes earnest money of 14,00,000/- (Fourteen Lacs Only), as per the said agreement. In this case the purchaser shall have a first charge over the said plot/property.

8. That this bargain has been finalised with the best efforts of M/s Chandigarh Property Consultant, Office No.145, Sector 36-A, Chandigarh to whom both the parties seller/transferor and the purchaser/transferee shall shall pay ½% as service/commission charges separately on the total sale price. That both the parties will pay 50% of the commission charges at the time of this transaction and the balance 50% commission will be paid at the time of final payment/registration of the said property as per laid *down terms and conditions.*

9. That this deed of Agreement to Sell is made in Triplicate. Original with revenue stamp affixed will be kept by the purchaser and each copy thereof by the seller and by the said property dealers for their records and references.

10. That if any dispute will arise out of this bargain then the same shall be triable by the Chandigarh Courts only."

On account of non-performance of agreement to sell, which is pleaded by both the parties, for different reasons, as per the plaint and written statement, it is set up by the plaintiff that he had gone to Tanazia, therefore, he executed General Power of Attorney on 04.05.1998 in favour of his father Harmail Singh and mother Jaswant Kaur. It is also stated that the defendant had also gone abroad and she was given a letter dated 16.04.1998 and another communication, but no reply was given. She returned back to India on 19.06.1998 and contacted the property dealer, who was an instrument in effecting the sale. However, in absence of the permission to sell from the Estate Officer, Chandigarh and from the Income Tax Department, the sale was not executed. Father of the plaintiff came back on 27.06.1998 and was ready with the balance sale consideration of Rs.1.11 crores and after a meeting was arranged by the property dealer, it was found that the defendant is not ready with the income tax clearance certificate. Therefore, father of the plaintiff requested the defendant to get the sale deed executed through Power of Attorney as per terms and conditions of the agreement to sell on receiving Rs.1.10 crores and prepared three pay orders of Rs.19.00 lacs each but the defendant did not execute the sale deed through General Power of Attorney and the pay orders were got cancelled. Later, on 13.07.1998, defendant sent a legal notice giving 07 days time to complete the sale deed, failing which the agreement to sell will be deemed to be cancelled. Again a second notice was sent on 27.07.1998 that the agreement to sell stood cancelled. Instant suit was filed with the pleadings that the defendant is avoiding execution of the sale deed, as she failed to obtain the permission from the Income Tax Department as well as NOC from the Estate Office.

The appellant-defendant contested the suit by taking number of preliminary objections. The main objection was that the plaintiff was not ready and willing to perform his part of contract, as the agreement specifically required the defendant to obtain clearance certificate from Income Tax Department, for which the plaintiff was required to sign certain papers, but he refused to sign those documents, as a result of which, the defendant could not seek clearance certificate from the Income Tax Department and in this regard, two notices dated 13.07.1998 and 27.07.1998 were served upon him. It is also set up that the defendant is NRI and was not interested to live in India and she has only this property i.e. house in question, so, she wanted to sell the same to leave the country forever, therefore, the bargain was made with the plaintiff with a clear averment that the sale deed be executed as soon as possible and for that purpose, it was stated that if the sale deed is executed on an earlier date through Power of Attorney by 15.04.1998, by making payment, sale consideration would be reduced from Rs.1.25 crore to Rs.1.10 crore.

The plaintiff-respondent filed replication and denied the averments made in the written statement.

Thereafter, the trial Court framed the following issues: -

1. Whether the plaintiff is entitled for the relief of specific performance of the agreement to sell dated 11.3.1998, as alleged? OPP

1A. Whether the plaintiff is entitled to recovery damages to the tune of Rs.1.25 crores in the alternative? OPP

2. Whether the plaintiff is entitled to the possession of the house, as alleged? OPP

3. Whether the attorneys of the plaintiff have no locus standi to file the present suit on behalf of plaintiff? OPD

4. Whether the suit is not maintainable? OPD

5. Relief.

The plaintiff, in order to prove his case, examined PW1 Yash Dua, Assistant Manager, Bank of Punjab, Sector 35-C, Chandigarh, who produced statement of account, from where three pay orders of Rs.19.00 lacs each were prepared, PW2 Atul Kumar Soni, Clerk in the office of Estate Officer, Chandigarh, PW3 Harmail Singh Bains, GPA-father of the plaintiff, PW4 Arshpreet Singh, another official of Bank of Punjab, Sector 35, Chandigarh and the plaintiff himself appeared as PW5 and thereafter, closed the evidence apart from tendering the documents.

Defendant Prem Hawa appeared as DW1 and examined Ravinder Krishan, Advocate as DW2.

The record of the lower appellate Court as well as trial Court is already requisitioned.

While dismissing the suit, the trial Court recorded a finding under issue No.1 that it is admitted case of the parties that value of the property has increased manifold, therefore, it is not in the interest of justice to grant a decree of specific performance, which is likely to cause hardship to the defendant and partly decreed the suit qua double of the earnest money along with interest @6% per annum from the date of institution of the suit i.e. 30.07.1998 till the date of actual payment and costs of the suit and further directed the defendant to make the payment in two months. The lower appellate Court vide order dated 23.07.2009 stayed alienation of the suit property.

The plaintiff as well as the defendant filed two separate appeals before the lower appellate Court. The plaintiff prayed for grant of relief of specific performance of agreement to sell, whereas the defendant prayed for dismissal of the suit in toto. The lower appellate Court, vide impugned judgment and decree dated 01.02.2013, dismissed the appeal filed by the defendant, however, allowed the appeal filed by the plaintiff and decreed the suit.

These appeals are pending since 2013 and initially, it was ordered that the respondent-plaintiff shall not press for execution of the impugned decree, as per order dated 10.04.2013 and later, vide order dated 26.02.2014, execution of the impugned judgment and decree was stayed during pendency of the appeal and this order is operating till date and the respondent was granted permission to withdraw the amount deposited with executing Court without prejudice to his right.

Learned senior counsel for the appellant has assailed the findings of the lower appellate Court, by arguing that time was essence of the contract, as it is clear from the terms and conditions of the agreement that the plaintiff was to complete execution of the sale deed as soon as possible and even a Clause was put in the agreement that if the plaintiff want to get the sale deed executed through GPA, by making payment on or before 15.04.1998, sale price would be reduced from Rs.1.25 crores to Rs.1.10 crores, however, the purchaser-plaintiff had no money, therefore, he was not ready and willing to perform his part of the contract. Learned senior counsel has laid emphasis on Clause No.3 of the agreement, to submit that though the seller was required to clear the outstanding dues and to obtain permission to sell the house from the Estate Officer, Chandigarh, out of which NOC was duly obtained by the appellant-seller and further she was required to obtain clearance certificate from the Income Tax Department, for which the seller-appellant contacted her lawyer DW2 Ravinder Krishan, who provided Form No.37-I, which was to be signed by both the parties before applying for clearance certificate from the Income Tax Department, however, the plaintiff failed to sign the said form, therefore, she could not obtain the clearance certificate from the Income Tax Department due to own fault of the purchaser-respondent. Learned senior counsel has further referred to Clause No.4 of the agreement, to submit that since the seller-appellant was to sell the property in order to settle abroad, therefore, time was essence of the contract and the purchaser-respondent was to complete the deal within the specified time, which he failed to do, because of the fact that he was not ready with the balance amount. Learned senior counsel has also referred to

Form No.37-I issued under Rule 48 of the Income Tax Rules, 1962, to submit that same was to be submitted to the Department under the signatures of both the transferor and the transferee and since the plaintiff or his GPA failed to sign said document, said clearance could not be obtained from the Income Tax Department, as admittedly the plaintiff left India in April, 1998 and returned back in 2001.

Learned senior counsel has further referred to Ex.P18, a letter dated 10.04.1998, allegedly issued by the plaintiff to the defendant, wherein it is stated as under: -

> *"I therefore inform you to kindly expedite the matter and initiate action to obtain Income Tax Clearance as well as NOC from Estate Officer at an early date and wherever my signatures are required or where I have to give any affidavit to obtain the same, that may please be taken from me today i.e. 10^{th} or by 14^{th} as thereafter you would be leaving India as per your scheduled programme."*

Learned senior counsel submits that another letter was issued on 16.04.1998 Ex.P19 with the following averments: -

> *"Now nothing is required on my part to get the permissions from the Income Tax Department and Estate Officer, Chandigarh. Please inform immediately because I am ready with the balance sale consideration and I am always ready and willing to perform my part of agreement according to the agreement."*

It is further argued that it has come in the evidence of the plaintiff-respondent that the letter dated 10.04.1998 Ex.P18 was withdrawn, whereas the letter dated 16.04.1998 Ex.P19 was never delivered to the defendant and it was returned back in original by the postal department and the plaintiff, in cross-examination, admitted that original of Ex.P19 was received back, therefore, these notices were never served upon the defendant. On the other hand, the defendant served a legal notice dated 13.07.1998 Ex.P23 through her counsel/DW2 Ravinder Krishan on 13.07.1998, which was duly served and received by the plaintiff/his GPA, in which following averments were made: -

> ***"That my client has also obtained a No-Objection Certificate from the Estate Officer, Chandigarh for its transfer in your favour on 21.04.1998.***
>
> ***That my client was to obtain the Clearance Certificate from the Competent Authority at Delhi on Form No.37-I, which was to be signed by you also. The said form duly signed by my client was sent to you for signatures, but the same has not been received back despite our repeated requests both telephone and personally.***
>
> ***That it was made clear to you that time is the essence of agreement and is very important but you have failed to sign the said form No.37-I without which certificate cannot be obtained.***
>
> ***Now you are hereby called upon to sign the said Form No.37-I within a week of receipt of this notice at my office House No.306, Sector 9-D, Chandigarh at any time from 8.00 A.M. to 10.30 AM and 6.00 P.M. to 8.00 P.M. in case you fail to sign the***

> ***said form within a week the agreement shall stand cancelled and the advance of Rs.14.00 lacs given by you shall be forfeited without any further reference to you. Thereafter, my client shall be free to enter into any fresh agreement with any person."***

Learned senior counsel has next referred to another notice dated 27.07.1998 Ex.P24, vide which agreement to sell was cancelled. This notice was also duly served upon the plaintiff and operative part of the same reads as under: -

> ***"That my client was to obtain the Clearance Certificate from Delhi from the Competent Authority in form No.37-I which is also to be signed by you. The said form duly signed by my client was sent to you for signatures, but you have refused to sign the same, and the same has not been received back despite repeated requests both telephone and personally as well as in the earlier notice dated 13.07.1998 referred to above. It was made clear to you that the time is the essence of agreement and you were asked to sign the form 37-I within a week.***
>
> ***However, you have not done the needful even after the expiry of 15 days and it appears that you are not interested in the purchase of the said house.***
>
> ***Under the circumstances stated above and in view of the fact that you have not signed the form 37-I which is necessary for getting permission of the Competent Authority, the said agreement dated 11.03.1998 may be treated as cancelled and***

your earnest money of Rs.14.00 lacs (Rupees Fourteen Lacs) paid to my client stands forfeited in her favour."

Learned senior counsel has thus argued that before filing of the present suit, the defendant, on account of default on the part of the plaintiff, issued two notices; first directing him to clear the outstanding amount and complete the deal within a period of 01 week and after expiry of a period of one week and vide second notice, agreement to sell was cancelled, therefore, both these notices were not disclosed in the plaint filed by the respondent-plaintiff and rather in the civil suit, no declaration was sought regarding cancellation of the agreement to sell.

Learned senior counsel has further argued that it has come in the evidence of PW3 Harmail Singh Bains, GPA-father of the plaintiff that plaintiff was having a matrimonial dispute with his wife Rasbeen Kaur, who had threatened him and his son to liquidate them, therefore, his son left India in April, 1998 and he returned only in 2001. It is further submitted that the suit, which has been filed through GPA, would reflect that the plaintiff was never ready and willing to perform his part of the agreement. In support of his arguments, learned senior counsel has submitted that the plaintiff admitted that letter dated 10.04.1998 Ex.P18 was withdrawn and even letter dated 16.04.1998 Ex.P19 was never served, as originals were produced before the trial Court. The deposition made by PW3 Harmail Singh Bains reads as under: -

"The plaintiff wrote a letter dated 10.04.98 which was lateron withdrawn on the asking of the defendant vide letter dated 16.04.98. Both the letters were signed by my son and I identify

> ***his signatures. The letter was sent under UPC and Regd. Cover and message was given telephonically. The originals are Ex.P18 and Ex.P19 (objected to for mode of proof and as a hear-say evidence) and the postal receipts are Ex.P20 to P22. The notices sent by the defendant through her counsel are Ex.P23 and Ex.P24. When the suit was filed as Attorney I and my wife signed the Vakalatnama and the plaint is gined by me, because my son was not here. The defendant went back to abroad on 17/18.04.1998, after received Ex.P18 and Ex.P19. Ex.P18 was sent by hand."***

Learned senior counsel has further referred to cross-examination of this witness, which reads as under: -

> ***"I received a notice Ex.P24 on 14.07.98. I alongwith the defendant her daughter, the property dealer Col. Ahluwalia went to the office of Sh. Ravinder Krishan, Advocate after receiving the said notice because the permission from Income Tax Department was not obtained, therefore, I signed the required documents as attorney of my son for obtaining permissions under form 37(i) and 34(a). The earlier documents for the permission under form 34(a) and 37(i) which was signed by my son on 12.03.98 were destroyed, therefore, there were no need to reply notice dated 13.07.98."***

It is further submitted that in order to cover up the default on the part of the plaintiff, this witness admitted that the documents for permission under Form 34(a) and 37-I, which were signed by his son on 12.03.1998 were destroyed, therefore, there was no need to reply the notice dated 13.07.1998. With regard to his personal knowledge about the agreement to sell, this witness admitted in cross-examination that none of the documents i.e. agreement to sell, affidavit or application submitted to the Estate Officer were signed in his presence by either of the parties.

Learned senior counsel has further argued that in defence evidence, defendant Prem Hawa herself appeared as DW1 and tendered into evidence her affidavit Ex.DW1/A. In her affidavit, she stated that in the year 1998-2000, no sale deed of the property of a value over Rs.20.00 lacs could be attested by the registration authority without obtaining permission from the department in Form No.37-I. This form was duly filled and signed by her and was sent to the plaintiff for his signatures, but the same was never received back, despite repeated requests personally and telephonically. She further stated that on 13.07.1998, she served notice through her counsel Mr. Ravinder Krishan, Advocate and this notice Ex.P23 was sent through courier service, but the plaintiff did not respond to sign Form No.37-I. Thereafter, another notice dated 27.07.1998 was served on the plaintiff, which is Ex.P24, but he never came to sign Form No.37-I to obtain clearance certificate from Income Tax Department and rather refused to sign and even did not propose a draft sale deed and never purchased stamp papers for drafting the sale deed, therefore, bargain was not materialized and the sale deed was cancelled. It is also stated that the defendant is an NRI, who is settled abroad and she was having only one house, therefore, in 1997, she decided to sell the same and leave the country forever. The bargain was struck with the plaintiff with a clear intention that she will sell the house for leaving the country, therefore, the last date for finalization of the deal was fixed as 15.06.1998, as she never wanted to prolong her stay in the country, therefore, time was to be adhered between the parties in a punctual manner, whereas the plaintiff frustrated the contract by not adhering to the time schedule. Despite issuing notices, the plaintiff failed to sign Form No.37-I. It is further stated that in order to conclude the deal at an early stage, she reduced the price from Rs.1.30 crore to Rs.1.25 crore only with a clear understanding that the entire transaction will be completed before 15.06.1998 so that the defendant may leave the country. The plaintiff never paid the balance amount on or before 15.06.1998. The defendant denied that she received any letter dated 10.04.1998. At one stage, the plaintiff proposed to effect the sale on the basis of Power of Attorney at a price of Rs.1.10 crore, who offered to give total sale consideration in black money i.e. cash and the defendant refused to received the black money and cash and insisted that she should be paid money by way of bank draft in the shape of declared money and for this reason, the plaintiff never signed Form No.37-I and backed out of the bargain. She also denied having received any letter dated 16.04.1998, as she left Chandigarh on that day to go abroad and returned on 10.06.1998. This witness obtained NOC from the Estate Officer and it is the plaintiff, who is guilty of breach of the contract.

In cross-examination of this witness, a specific question was put whether she got any document signed from Navtej Singh on 11.03.1998, to which a specific answer was made that the plaintiff signed documents in respect of NOC, but did not signed on Form No.37-I for seeking permission from Income Tax Department, which was to be obtained before 15.06.1998. In further cross-examination, she stated that the plaintiff offered black money at her residence. She denied the suggestion that she never sent communication to the plaintiff before 15.06.1998 that he has not signed Form No.37-I and volunteered that she made telephone calls also for the purpose. When put question regarding receiving of letters Ex.P18 and P19, this witness denied having received any such letters from the plaintiff. In further cross-examination, this witness stated that she had signed two sets of Form No.37-I, out of which one was given to the plaintiff and other to her Advocate/DW2 and denied the suggestion that plaintiff Navtej Singh Bains signed Form No.37-I. In her lengthy cross-examination, she denied that the plaintiff has sent reply to the notice Ex.P24 and further denied that she has forged any document to create false evidence.

Learned senior counsel then relied upon the statement of DW2 Ravinder Krishan, Advocate, who reiterated that from 1998-2000, no sale deed of the property having value of Rs.20.00 lacs could be attested by the registration authority without obtaining Form No.37-I and the said form duly filled and signed by the defendant was sent to the plaintiff for signatures, but was never received back. Thereafter, on instructions of the defendant, he served a notice Ex.P23 on 13.07.1998 and another notice Ex.P24 on 27.07.1998 and thereafter, Harmail Singh, father of the plaintiff never came to him. In cross-examination, this witness stated that the defendant is known to him since 1997. This witness also stated that he got two copies of Form No.37-I signed from the defendant and handed over to her for obtaining signatures of the plaintiff. This witness denied the suggestion that Harmail Singh, GPA-father of the plaintiff came to his office on 16.07.1998 after receiving first notice Ex.P23 dated 13.07.1998 along with the defendant and on that day, earlier Form No.37-I signed by plaintiff Navtej Singh Bains was destroyed and fresh Form No.37-I was signed by Harmail Singh as attorney of the plaintiff. He also denied the suggestion that he contacted Harmail Singh to sign fresh Form No.37-I.

Learned senior counsel for the appellant has argued that the lower appellate Court failed to appreciate that time was essence of the contract, as it is admitted case of the parties that the defendant had agreed to sell the house with a clear intention to complete the transaction on or before 15.06.1998 and for that purpose, even a clause was incorporated in the agreement Ex.P16 that out of total sale consideration of Rs.1.25 crores, if the purchaser want to get finalize the sale deed on the basis of power of attorney, then the price of house will be reduced to Rs.1.10 crores. It is further submitted that this concession was given by the appellant-defendant, as she wanted to complete the transaction in a time bound manner. In this regard, learned senior counsel relied upon a judgment of the Hon'ble Supreme Court in **Coromandel Indag Products (P) Ltd. Vs. Garuda Chit and Trading Co. P. Ltd. and another, 2011 (4) RCR (Civil) 677,** to submit that it is held that Section 55 of the Contract Act, 1955 provides that time is essence of the contract and if the vendor was in dire need of money and decided to sell the property to meet immediate need of creditors, intention of the parties should be to treat time as essence of the contract, which can be determined from the intention and conduct of the parties from terms and conditions of the agreement. Learned senior counsel has also relied upon another judgment of the Hon'ble Supreme Court in **Saradamani Kandappan Vs. S. Rajalakshmi and others, 2011 (12) SCC 18,** wherein similar view has been taken that the law that time was not essence of the contract was evolved long years back, when prices were stable and inflation was unknown, but in the present scenario, there is a galloping increase in the price of immoveable property and market value of the property is no longer stable or steady, therefore, there is need to re-visit the principle that time is not essence of the contract.

Learned senior counsel has submitted that since the parties have agreed to complete the transaction on or before 15.06.1998 and even agreed that if the transaction is completed by way of power of attorney till 15.04.1998, the defendant will further reduce the sale consideration from Rs.1.25 crores to Rs.1.10 crores, to show that time was essence of the contract and the same was not appreciated by the lower appellate Court. It is further submitted that the plaintiff was never ready and willing to perform his part of the contract. It is also submitted that the very fact that neither the plaintiff nor his father-GPA came forward to sign Form No.37-I to get the Income Tax Clearance Certificate, itself shows that they were not having the requisite amount of Rs.1.25 crore as declared money or white money and that is why they were putting pressure on the defendant to accept the amount in cash, to which she refused. It is next argued that earnest money was paid through bank draft and even if case of the plaintiff through GPA is seen, he had set up a case that he prepared three demand drafts of Rs.19.00 lacs each i.e. total Rs.57.00 lacs, would reveal that the plaintiff never had the balance amount with him in his bank to conclude the contract on or before 15.06.1998 and that is why the plaintiff was avoiding signing Form No.37-I.

It is further argued that the plaintiff could not dispute the fact that at the relevant time, it was mandatory requirement of the Income Tax Department to get clearance from the Department in Form No.37-I for effecting the transaction above Rs.20.00 lacs, which the plaintiff never completed. It is also submitted that two letters Ex.P18 & P19 were set up by the plaintiff, out of which letter Ex.P18 was withdrawn by him, as it has come in the statement of PW3 Harmail Singh, GPA-father of the plaintiff. It has come in evidence of the plaintiff that letter Ex.P19 in original was returned and never delivered to the defendant. Learned senior counsel has referred to Ex.P23 dated 13.07.1998, to submit that this notice was duly received by the plaintiff, as it has come in the statement of his GPA-father Harmail Singh, however, no action was taken. Thereafter, on 27.07.1998, the appellant-defendant sent another legal notice, vide which agreement to sell was cancelled.

Learned senior counsel has next argued that since the time was essence of the contract and the appellant in clear and unequivocal terms has agreed to sell the house with stipulation that she will reduce the price of the house from Rs.1.25 crores to Rs.1.10 crores, if the payment is made prior to the stipulated date through GPA and after serving notice dated 13.07.1998 Ex.P23, vide which one week more time was given to the plaintiff after the expiry of time as per stipulated date i.e. 15.06.1998, the defendant, vide another notice dated 27.07.1998 Ex.P24, cancelled the agreement to sell, therefore, the suit, without seeking declaration to set aside cancellation of agreement to sell, is not maintainable. Learned senior counsel has referred to a judgment of the Hon'ble Supreme Court in **I.S. Sikandar (D) by LRs Vs. K. Subramani and others, 2013 (15) SCC 27,** to submit that when a suit praying for a decree of specific performance, is filed against the defendant without seeking a declaration with respect to termination of the agreement to sell, vide a notice issued by the defendant, rescinding the contract, whether suit is maintainable in law, the Hon'ble Supreme Court has held that once the plaintiff failed to perform his part of the contract within the extended period in the notice and the agreement to sell was terminated, as per notice, relief prayed for by the plaintiff for specific performance for execution of the said agreement to sell, which becomes non-existing, is not maintainable. With regard to another point, as to whether the decree can be granted in conformity with sub-section 1 & 2 of Section 20 of Specific Relief Act, it is held by the Hon'ble Supreme Court that once the agreement to sell was terminated and no declaratory relief was sought regarding termination of the agreement to sell in original, therefore, the suit for specific performance is not maintainable. This judgment was followed by the Hon'ble Supreme Court in subsequent judgments in **Kalawati (D) through LRs and others Vs. Rakesh Kumar and others, 2018 (2) RCR (Civil) 125, Mohinder Kaur Vs. Sant Paul Singh, 2019 (4) RCR (Civil) 784** and **G.T. Girish Vs. Y. Subba Raju (D) by LRs and another, 2022 (2) Scale 151.**

Learned senior counsel has further argued that once the trial Court has refused to grant relief of specific performance and directed to return Rs.28.00 lacs i.e. double of the earnest money paid by the plaintiff under the contract, approach of the lower appellate Court directing the defendant to execute the sale deed relating to the agreement to sell, without appreciating the conduct of the parties and question whether interference would promote the interest of justice, is erroneous. In **G.T. Girish**'s case (supra), the Hon'ble Supreme Court has observed as under: -

> *"90. The second defendant has raised a contention that since the first defendant has repudiated the contract and as the plaintiff has not prayed for a declaration that the repudiation was bad, the Suit would not lie. Reliance is placed on the judgment of this Court in **I.S. Sikandar (Dead) by Lrs. v. K. Subramani and others, (2013) 15 SCC 27**. In the said judgment, we find that this Court has taken the view that when the vendor has cancelled the agreement, it is incumbent upon the vendee to seek a declaration that the cancellation was illegal. This is what the Court has held:*
>
> > *"Para 36. Since the Plaintiff did not perform his part of contract within the extended period in the legal notice referred to supra, the Agreement of Sale was terminated as per notice dated 28.03.1985 and thus, there is termination of the Agreement of Sale between the Plaintiff and Defendant Nos. 1-4 w.e.f. 10.04.1985.*
> >
> > *Para 37. As could be seen from the prayer sought for in the original suit, the Plaintiff has not sought for declaratory relief to declare the termination of Agreement of Sale as bad in law. In the absence of such prayer by the*

Plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit schedule property on the basis of Agreement of Sale and consequential relief of decree for permanent injunction is not maintainable in law."

91. The said view has been followed in the judgment of this Court reported in ***Mohinder Kaur v. Sant Paul Singh, (2019) 9 SCC 358****. We do not however need to rest our decision to non-suit the plaintiff on this score in view of our finding that the agreement dated 17.12.1982 should not be enforced."*

The Hon'ble Supreme Court in this case set aside the judgment of the lower appellate Court and prayer for a decree of specific performance was dismissed, however, an amount of Rs.20.00 lacs in lump sum was directed to be paid to the plaintiff.

It is further submitted that at the time of agreement to sell, only 10% of the earnest money was paid by the plaintiff i.e. Rs.14.00 lacs as against the total sale consideration of Rs.1.25 crore, therefore, the lower appellate Court erred in granting decree of specific performance. Learned senior counsel has relied upon a judgment of the Delhi High Court in **Dulal Chand Nandi (deceased) through LRs Vs. Kiran Bala Mehru and another, 2018 SCC OnLine Del 10259,** in which, while considering the case, where 10% of the total sale consideration was given, it was observed that granting a decree of specific performance at a belated stage will become a cruel joke and will result in injustice and declined the grant of a decree of specific performance. The operative part of the judgment reads as under: -

> *"44. In **Saradamani Kandappan v. S. Rajalakshmi**, the Supreme Court had noticed that the principle of time not being the essence of the contract in relation to immovable property is not inflexible, owing to the changes in the economy and the increase in prices. The observations of the Supreme Court are apt in the context of the present case and are set out herein below:*
>
> > *"36. The principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market value of immovable properties were stable and did not undergo any marked change even over a few years (followed mechanically, even when value ceased to be stable). As a consequence, time for performance, stipulated in the agreement was assumed to be not material, or at all events considered as merely indicating the reasonable period within which contract should be performed. The assumption was that grant of specific performance would not prejudice the vendor defendant financially as there would not be much difference in the market value of the property even if the contract was performed after a few months. This principle made sense during the first half of the twentieth century, when there was comparatively very little inflation, in India. The third quarter of the twentieth century saw a very slow but steady increase in prices. But a*

drastic change occurred from the beginning of the last quarter of the twentieth century. There has been a galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds. Market values of properties are no longer stable or steady. We can take judicial notice of the comparative purchase power of a rupee in the year 1975 and now, as also the steep increase in the (2011) 12SCC 18 value of the immovable properties between then and now. It is no exaggeration to say that properties in cities, worth a lakh or so in or about 1975 to 1980, may cost a crore or more now.

37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and "non-readiness". The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable *properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and received rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees."*

45. In this case, the court noticed that by paying merely 10% sale price specific performance is granted, it will become a `cruel joke' and result in injustice."

Learned senior counsel has argued that the agreement to sell was executed 24 years ago and as on today, value of the property in Chandigarh has increased manifold, therefore, the Court is to see the circumstances of the case and conduct of the parties and the trial Court has rightly granted refund of double of the earnest money along with interest @6% per annum from the date of institution of the suit i.e. 30.07.1998 till the date of actual payment. Learned senior counsel, in support of his arguments, has relied upon a judgment of the Hon'ble Supreme Court in **Nanjappan Vs. Ramasamy and another, 2015 (2) RCR (Civil) 224,** wherein the similar view has been taken. The operative part of the judgment reads as under: -

> *"12. Under Section 20 of the Specific Relief Act, grant of specific performance of contract is discretionary. Though the decree for specific performance is discretionary, yet the court is not bound to grant such a relief merely because it is lawful to do so. But the discretion of the court is not arbitrary, but sound and reasonable, guided by judicial principles of law and capable of correction by a court of appeal and should be properly exercised keeping in view the settled principles of law as envisaged in Section 20 of the Act. The jurisdiction of decreeing specific performance is a discretion of the court and it depends upon facts and circumstances of each case. The court would take into consideration circumstances of each case, conduct of the parties, recitals in the sale agreement and the circumstances outside the contract have to be seen.*
>
> *13. In **Sardar Singh vs. Smt. Krishna Devi & Anr., (1994) 4 SCC 18**, this Court observed that as the court has to see the totality of the circumstances, conduct of the parties and respective interests under the contract while granting/refusing such relief."*

Learned senior counsel has also relied upon judgment in **Jayakantham and others Vs. Abaykumar, 2017 (2) RCR (Civil) 104,** to submit that it is held by the Hon'ble Supreme Court that while granting or declining the relief of specific performance, the Court is to consider facts and circumstances of a case and the circumstances given in Section 20 of Specific Relief Act are only illustrative and not exhaustive and non-performance of an agreement, if causes no hardship to the plaintiff, it is discretion of the Court to order refund plus some additional amount to balance the equity. In this judgment, the Hon'ble Supreme Court, while considering the fact that agreement to sell related to the year 1999, declined the prayer for grant of a decree of specific performance of agreement and Rs.50.00 lacs in lieu of specific performance was granted.

Learned senior counsel has also argued that the trial Court has rightly declined prayer of the specific performance, while granting alternative relief of refund of double of the earnest money and even the defendant is ready to pay Rs.50.00 lacs to the plaintiff over and above Rs.28.00 lacs, as granting of decree of specific performance is not only going to cause any hardship to the plaintiff, is not a circumstance in favour of the plaintiff, who was never ready with the balance white money to get the sale deed executed. It is further argued that the plaintiff was never a genuine buyer and as per his own conduct, as reflected from his statement and statement of his GPA that he wanted to make profit, as he was insisting to get the sale deed through GPA on the reduced price by making the payment in cash, for which the appellant had refused. It is next submitted that it has come in the evidence that the plaintiff was having a matrimonial dispute with his wife and he was threatened by his in-laws, as a divorce petition was filed in Chandigarh in 2001, whereas the plaintiff travelled to Tanzania in May, 1998 and did not come back till 2011 i.e. till the time, he got divorce and that is why he gave GPA in favour of his father and mother, who were also not in a position to execute the sale deed and to pay the balance sale consideration in white money.

It is next argued that on account of non-signing of Form No.37-I by the plaintiff or GPA, income tax clearance certificate could not be sought by the defendant, though she got NOC from the Estate Office, Chandigarh for the sale of house, therefore, readiness on the part of the plaintiff is not proved. It is further submitted that when two notices Ex.P23 and P24 were served on the plaintiff through his father/GPA-PW3 Harmail Singh, same were never replied and never challenged in the suit, therefore, the suit without seeking a declaration qua cancellation of the agreement to sell is not maintainable.

Learned senior counsel has also relied upon **Bachhaj Nahar Vs. Nilima Mandal and another, 2009 (1) RCR (Civil) 855,** to submit that it has been held by the Hon'ble Supreme Court that conduct of the plaintiff is very crucial in a suit for specific performance and where the plaintiff failed to provide any document of the communication, which shows that he called upon the defendant to perform its obligation, it cannot be held that the plaintiff was willing to perform his obligation under the contract. The Hon'ble Supreme Court in this case set aside the decree of specific performance and directed refund of the amount along with interest @6% from the date of filing of the suit till the payment of the refund.

In reply, learned senior counsel for the respondent has argued that the plaintiff was always ready and willing to perform his part of the contract and condition in the agreeing to sell to reduce the sale price from Rs.1.25 crore to Rs.1.10 crore was only to facilitate the defendant as per language of the agreement to sell itself. It is further argued that to show his bonafide, readiness and willingness, the plaintiff prepared three demand drafts of Rs.19.00 lacs each, total Rs.57.00 lacs, which were not accepted by the defendant. It is also argued that plaintiff/PW5 Navtej Singh Bains deposed that he had signed the documents at the time of execution of the agreement to sell, therefore, argument of the defendant that Form No.37-I was not signed, is not correct.

It is further submitted that as per terms and conditions of the agreement to sell Ex.P16, it is defendant, who was to get NOC from the income tax department by making reasonable efforts and the default, if any, is with the defendant. It is next submitted that even as per statement of DW2 Ravinder Krishan, Advocate, though this fact is refuted that PW3 Harmail Singh visited his office with fresh signed Form No.37-I for obtaining clearance certificate from the Income Tax Department on 15.07.1998, but it has come in the statement of PW3 that he signed Form No.37-I on 15.07.1998. Learned senior counsel has referred to a judgment of the Hon'ble Supreme Court in **Narinderjit Singh Vs. North Star Estate Promoters Ltd., 2012 (3) RCR (Civil) 168,** wherein it is held that mere escalation of price of the land itself is no ground to deny the relief of specific performance, when the seller has neither pleaded hardship nor produced any evidence to show that it will be inequitable to order specific performance of the agreement. It is also held that readiness and willingness is to be decided in view of facts and circumstances relevant to the intention and conduct of the parties concerned.

Learned senior counsel has further referred to **Ramathal Vs. Maruthathal and others, 2017 (4) RCR (Civil) 287,** wherein the Hon'ble

Supreme Court held that where the sale deed is not executed due to fault of the seller, then escalation of the price cannot be a ground for denying the relief of specific performance. It is also held in this judgment that there is no presumption as to time being essence of the contract and the Courts may infer that it is to be performed within a reasonable time taking into consideration terms and conditions of the contract, nature of the property and other surrounding circumstances, therefore, question whether time is essence of the contract would depend upon facts and circumstances of each case and therefore, prayed for dismissal of appeals.

In reply, learned senior counsel for the appellant submitted that the plaintiff failed to prove that letter dated 10.04.1998 Ex.P18 as well as letter dated 16.04.1998 Ex.P19 were ever served on the defendant. In fact, it has come in the statement of GPA-father of the plaintiff that letter Ex.P18 was withdrawn, whereas letter Ex.P19 was returned back in original, therefore, readiness and willingness shown by the plaintiff is not proved on record.

In view of the above pleadings and arguments, following substantial questions of law arise in these appeals: -

1. Whether the respondent-plaintiff proved that he was ready and willing to perform his part of the contract?
2. Whether the time was essence of the agreement, especially when there was a clause that the defendant has agreed to reduce the price from Rs.1.25 crores to Rs.1.10 crores, if the payment is made at an earlier date, then the stipulated date?
3. Whether under Section 20 of the Specific Relief Act, decree of

specific performance will create hardship to the defendant?

4. Whether the lower Appellate Court rightly exercised its discretion in reversing findings of the trial Court, which declined the relief of specific performance, without recording a finding that the same are perverse?

5. Whether the suit for possession by way of specific performance of the agreement is maintainable, when prior to filing of the same, defendant cancelled the agreement and no declaration for setting aside the cancellation is prayed for by the plaintiff?

After hearing learned counsel for the parties and on re-appreciation of entire evidence, I find merit in these appeals, for the following reasons: -

(a) **Firstly**, it is proved on record that the plaintiff though may be willing, but was not ready to perform his part of the contract, as firstly; he failed to sign Form No.37-I for seeking clearance certificate from Income Tax Department, as proved from the evidence. **Secondly**, the candid stand of the defendant is that the plaintiff was offering black money i.e. cash instead of declared money i.e. through bank transaction, for which she was not agreeing, as she was to wind up the business and go abroad to settle with her husband, therefore, the plaintiff failed to prove that he was ready with the balance money in white. **Thirdly**, as per agreement to sell, Rs.14.00 lacs were paid as earnest money and later on, it has come in the statement of PW5 Harmail Singh Bains, GPA-father of the plaintiff that he got prepared three demand drafts of Rs.19.00 lacs each, total Rs.57.00 lacs and the total amount offered to the defendant was Rs.71.00 lacs as against Rs.1.25 crores. This was the precise reason that the plaintiff never came forward to sign Form No.37-I for seeking clearance certificate from Income Tax Department.

Fourthly, it is also admitted case of the parties that at the relevant time, from 1998 till 2001, it was the legal requirement to get the clearance certificate from Income Tax Department in Form No.37-I, if the sale price is more than Rs.20.00 lacs and the plaintiff could not prove that he ever signed that document, so as to enable the defendant to get the clearance certificate from Income Tax Department. **Fifthly,** in statement of PW3 GPA of the plaintiff, both the original letter dated 10.04.1998 Ex.P18 and letter dated 16.04.1998 Ex.P19 are produced on record, which itself proved these were never received by defendant as these letters remained in possession of plaintiff/GPA and therefore, at no point of time, the plaintiff ever communicated to the defendant about his readiness and willingness. Rather in cross-examination, PW3 admitted that Ex.P18 was cancelled and Ex.P19 was returned in original. **Lastly,** PW3 Harmail Singh Bains, GPA of the plaintiff, in cross-examination, as reproduced above that on receiving notice dated 13.07.1998, he contacted DW2 Ravinder Krishan, Advocate and signed requisite document and earlier form signed by his son/plaintiff was destroyed. This falsifies the entire case of the plaitniff as PW3 statd that after expiry of stipulated date i.e. 15.06.1998 and on receiving notice of cancellation, he came forward to sign Form No.37-I on behalf of the plaintiff and nothing has come on record that prior to this, the plaintiff ever signed Form No.37-I, which was alleged cancelled. Therefore, the trial Court rightly granted the decree of refund double of the earnest money i.e. Rs.28.00 lacs along with interest @6% per annum from the date of institution of the suit i.e. 30.07.1998 till the actual payment is made, instead of granting a decree of specific performance and the lower appellate Court has failed to appreciate the same, while reversing the findings of the trial Court. Accordingly, **question of law No.1** is answered in favour of the appellant-defendant.

(b) The lower appellate Court failed to appreciate that time was essence of the contract between the parties. As per agreement to sell dated 11.03.1998, the stipulated date was fixed as 15.06.1998 i.e. about three months, with a rider that as against total sale consideration of Rs.1.25 crores, if the entire sale price is paid before 15.04.1998 i.e. two months before the stipulated date, on the basis of Power of Attorney, then the sale consideration will be reduced to Rs.1.10 crores. This clause in the agreement to sell itself shows that both the parties agreed that time was essence of the contract, as the defendant was to wind up and leave the country permanently, therefore, in view of judgments of the Hon'ble Supreme Court in **Coromandel Indag Products (P) Ltd.**'s case (supra) and **Saradamani Kandappan**'s case (supra), as per Section 55 of the Contract Act, time was essence of the contract strictly agreed between the parties and the plaintiff failed to get the sale deed executed on or before the stipulated date and the lower appellate Court erred in granting a decree of specific performance, without recording a finding that discretion exercised by the trial Court in either perverse or is going to cause hardship to the plaintiff, who was not ready to perform his part of agreement. It is held by the Hon'ble Supreme Court in these judgments that time is essence of the contract and if the vendor is in dire need of money and decided to sell the property to meet immediate need, intention of the parties should be seen, if time is essence of the contract, which may be determined from the intention and conduct of the parties. Accordingly, **question of law No.2** is answered in favour of the appellant-defendant.

(c) While exercising its discretion under Section 20 of Specific Relief, Act, the trial Court granted the alternative relief of refund of double of the earnest money. It is case of the parties that price of the property has gone high manifold during the intervening period and the lower appellate Court failed to appreciate that it is discretion of the trial Court to grant/or not specific performance under Section 20 of Specific Relief Act and once the trial Court exercised its discretion in favour of the defendant, the lower appellate Court, while passing the impugned judgment and decree, did not make out any special circumstance as to why the same is being reversed. Reliance is placed on the judgment of the Hon'ble Supreme Court in **Nanjappan**'s case (supra) and **Jayakantham**'s case (supra), as in both cases, the Hon'ble Supreme Court has declined to grant relief of specific performance, considering that the Courts, on its discretion, can order refund of the amount plus some additional amount to balance the equity. It is also held that the Court can see the circumstances of the case and conduct of the parties as well as the fact that value of the property has increased very fast in the urban areas. Accordingly, it is held that the lower appellate Court has wrongly reversed the well reasoned findings recorded by the trial Court, who declined relief of specific performance, while exercising the discretion under Section 20 of the Specific Relief Act and **questions of law No.3 & 4** are answered in favour of the appellant-defendant.

(d) The defendant proved that she served first legal notice on 13.07.1998 Ex.P23, which was duly received by GPA-father of the plaintiff, in which it was stated that the defendant has got NOC from the Estate Office, Chandigarh on 21.04.19998, but the plaintiff failed to sign Form No.37-I. Therefore, the plaintiff was given one week time to do the needful for getting the agreement to sell completed, failing which the same will be cancelled. In cross-examination, PW3 Harmail Singh Bains, GPA-father of the plaintiff admitted having received this notice. Another notice

Ex.P24 was served upon the plaintiff on 27.07.1998 through DW2 Ravinder Krishan, Advocate, vide which the agreement to sell was cancelled, as the plaintiff failed to perform his part of the contract, as noticed above. Prior to filing of the present suit, which was instituted on 30.07.1998, the defendant cancelled the agreement to sell, therefore, in view of judgments of the Hon'ble Supreme Court in **I.S. Sikandar**'s case (supra), **G.T. Girish**'s case (supra), **Mohinder Kaur**'s case (supra) and **Kalawati (D) through LRs**'s case (supra), the suit for possession by way of specific performance of agreement to sell was not maintainable, as the plaintiff never sought a declaration that cancellation of agreement to sell be also set aside. Accordingly, **question of law No.5** is also answered in favour of the appellant-defendant.

(e) On re-appreciating of the pleadings and evidence on record, conduct of the plaintiff apparently reflects that he was not ready and willing to perform his part of the contract, as same was delayed, therefore, in view of judgment of the Hon'ble Supreme Court in **Bachhaj Nahar**'s case (supra), the trial Court rightly exercised its discretion to refund double of the earnest money along with interest @6% per annum from the date of filing of the suit i.e. 30.07.1998 till the date of actual payment.

(f) Though there is no dispute with regard to judgments of the Hon'ble Supreme Court in **Narinderjit Singh**'s case (supra) and **Ramathal**'s case (supra), relied upon by learned senior counsel for the respondent-plaintiff, however, on facts, the same are distinguishable, as in both these cases, it was the seller, who failed to execute the sale deed due to his own fault, therefore, the Hon'ble Supreme Court held that mere escalation of price cannot be a ground for denying the relief of specific performance. In the instant case, it is the plaintiff-purchaser, who failed to get the terms and conditions of the agreement to sell completed, despite the time being essence of the contract and rather failed to sign Form No.37-I for seeking clearance certificate from the Income Tax Department, despite the notice Ex.P23 was issued by the defendant, which was followed by another notice of cancellation of agreement to sell Ex.P24.

(g) Conduct of the plaintiff can also be looked into from the fact that it has come in the statement of PW3 Harmail Singh Bains, GPA-father of the plaintiff that the plaintiff was having a matrimonial dispute with his wife Rasbeen Kaur, who had even threatened him and his son to liquidate and he left India in April, 1998 and returned only in 2001, therefore, at the relevant time, when the plaintiff himself was not present in India and he was pursing his part of the contract through his GPA, who could not prove readiness and willingness on the part of the plaintiff, therefore, the findings recorded by the lower appellate Court are reversed.

(h) The agreement to sell was executed on 11.03.1998 and as on today, a period of about 24 years has lapsed. The defendant is in possession of the house in dispute and because of high escalation of the prices of the properties, it is not justifiable to pass a decree of specific performance, as ordered by the lower appellate Court and rather it is justifiable to uphold the decree of the trial Court, directing to refund double of the earnest money along with interest @6% per annum from the date of filing of the suit i.e. 30.07.1998 till the date of actual payment.

In view of the reasons recorded above, RSA No.1499 of 2013 is allowed and judgment and decree dated 01.02.2013 passed by the lower appellate Court is set aside and that of the trial Court is restored and RSA No.4500 of 2013 is also disposed of in same terms.

However, in order to keep balance of equity, it is directed that the defendant will pay double of the earnest money i.e. Rs.28.00 lacs along with interest from the date of filing of the suit i.e. 30.07.1998 till 30.07.2022, which comes to Rs.68,32,000/- [Rs.28.00 lacs (double of the earnest money) plus Rs.40,32,000/- (interest thereon upto 30.07.2022)] and additionally, the appellant-defendant will pay Rs.50.00 lacs to the plaintiff, total of which comes to Rs.1,18,32,000/-

The total amount of Rs.1,18,32,000/- (Rupees One Crore Eighteen Lacs and Thirty Two Thousand Only) be paid by the defendant to the plaintiff within a period of three months from today, failing which the plaintiff can recover the said amount, in accordance with law, along with interest @6% per annum.

However, if any amount is deposited by the defendant with the executing Court or withdrawn by the plaintiff in terms of stay order dated 26.02.2014, the same will be adjusted with proportionate interest.

[ARVIND SINGH SANGWAN]
JUDGE

25.08.2022
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No