

2023:PHHC:139819

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-3028-2011 (O&M)

Reserved on: 21.09.2023

Pronounced on: 02.11.2023

UMA SHARMA

...Appellant

VERSUS**BALESHWAR DAYAL & ANR.**

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Shailendra Jain, Senior Advocate with
Mr. Munish Kumar, Advocate and
Ms. Navneet Kaur, Advocate
for the appellant.

Mr. Sukhandeep Singh, Advocate for
Mr. Lokesh Sinhal, Advocate
for the respondents.

VIKRAM AGGARWAL, J

This is defendant's appeal against the judgment and decree dated 17.05.2011 passed by the Additional District Judge, Faridabad vide which the appeal filed by the respondents-plaintiffs was allowed, judgment and decree dated 16.03.2010 passed by the Additional Civil Judge (Senior Division), Faridabad was modified and the suit for specific performance filed by the respondents-plaintiffs was decreed. For the sake of convenience, parties shall be referred as per their original status.

2. The plaintiffs instituted a suit for specific performance of agreement to sell dated 04.12.1994 stated to have been executed by the defendant vide which she agreed to sell a plot measuring 171.18 sq. yds. (fully described in the plaint) situated in the premises known as "TCC Complex", Sector-10, Faridabad (hereinafter referred to as 'the disputed plot'). It was averred that the said agreement to sell had been executed by

the defendant vide which she had agreed to sell the disputed plot to the plaintiffs @ ₹1400/- per sq. yds. The possession was handed over at the time of execution of the agreement to sell. ₹50,000/- was paid as earnest money by way of a cheque dated 04.12.1994. A receipt-cum-agreement was executed in this behalf. A further sum of ₹25,000/- in cash was paid on 17.12.1994 and a receipt was executed. ₹25,000/- was again paid on 20.12.1994 and again a receipt was executed. Both receipts were duly signed by the defendant and were handed over to the plaintiffs.

2.1 It was averred that plaintiff No.2 was the son of plaintiff No.1 and was carrying on his business of sale of steel in the disputed plot under the name and style of “Anil Steel”. An RCC Hall and an office had also been constructed from where he was operating his business. It was averred that the plaintiffs had been requesting the defendant to get the sale deed registered but she kept on putting off the same. Later on, the defendant disclosed the fact that she herself had not got the sale deed executed in her favour from the original owner of the disputed plot and accordingly, she requested the plaintiffs to wait till she got the sale deed executed in her favour. Plaintiff No.2, in the meanwhile, continued his business of sale of steel in the property without any objection from the side of the defendant. Since the defendant did not get the sale deed executed in their favour, the plaintiffs came to know that sale deed in her favour had been registered on 22.07.2003 but she had not given any information to them with regard to the same. She became greedy and was intending to commit breach of the agreement to sell. A notice dated 09.03.2004 was issued by plaintiff No.1 to the defendant which was duly received by her on 11.03.2004. She had been

called upon to get the sale deed executed but no response was received. Finally, on 30.03.2004, she refused to get the sale deed executed.

2.2 It was averred that plaintiff No.1 was and had always remained ready and willing to perform his part of the agreement and to pay the balance sale consideration of ₹1,40,000/-. However, the defendant was bent upon to commit breach of the agreement to sell. Under the circumstances, the suit was filed.

3. The suit was opposed by the defendant. Preliminary objections with regard to maintainability, the suit being time barred, the same being bad for non joinder and mis joinder of necessary parties, cause of action, locus standi, estoppel, the suit not having been properly valued for the purposes of court fee and jurisdiction, the plaintiffs not having approached the Court with clean hands etc. were raised. It was averred that no agreement dated 04.12.1994 subsisted between the parties and the agreement, if any, stood automatically revoked and cancelled after the expiry of stipulated period of three years. It was averred that the defendant and her husband Girish Chandra Sharma were joint owners in equal shares in respect of Industrial Plot No.3 measuring 1008 sq. yds. alongwith the construction and the superstructure situated at Sector-10, TCC Complex, Faridabad vide two registered sale deeds dated 14.10.2002 and 18.11.2003. They had purchased the plot No.3 by way of agreement to sell dated 25.10.1994 and finally on 05.12.1994 when the entire payment was made to the vendor and the defendant and her husband were put in actual physical possession of the plot. Thereafter, the plaintiff No.1 approached the defendant and her husband in December 1994 and paid a sum of ₹50,000/- with an assurance that he would purchase 171.18 sq. yds. out of the plot No.3 and would pay a further

sum of ₹1,40,000/- on or before 25.12.1994 and would get the sale deed executed. It was agreed that on failure to pay the said amount, the earnest money would stand forfeited and the bargain would stand cancelled. A formal receipt was executed and signed by the defendant at the instance of plaintiff No.1 on 04.12.1994 but the balance payment of ₹1,40,000/- was not made on or before 25.12.1994. In order to get the receipt dated 04.12.1994 treated as an agreement to sell, they got the same entered in the register of a stamp vendor without the knowledge of the defendant or her husband by playing a fraud on them.

3.1 It was also averred that since the balance sale consideration had not been paid by 25.12.1994, the amount of ₹50,000/- stood automatically forfeited. It was also averred that plaintiff No.1 had been permitted to continue as a tenant in the disputed plot and even the rent of ₹4,000/- per month as had been agreed was not paid. The defendant reserved her right to file an eviction petition and institute other legal proceedings against plaintiff No.1 in accordance with law. On merits also, a similar stand was taken.

4. From the pleadings of the parties, the trial Court framed the following issues:-

- “1. Whether defendant executed an agreement to sell dated 4.1.2.1994 as alleged? OPP*
- 2. Whether plaintiff is ready and willing to perform his part of agreement? OPP*
- 3. Whether suit is not maintainable? OPP*
- 4. Whether plaintiff is in possession in of the premises in question as tenant under the defendant? OPP*
- 5. Whether suit filed by the plaintiff is barred by limitation? OP*

6. *Whether plaintiff has no locus standi to file the present suit? OPD.*

7. *Whether plaintiff is estopped from his own act and conduct to file the present suit? OPD*

8. *Whether suit is bad for want of non affixation of adequate court fee? OPD*

9. *Relief.”*

5. Thereafter on 05.12.2006, an additional issue was also framed:-

“Whether receipt dated 4.12.1994 is false and fabricated as alleged? OPD”

6. The trial Court came to the conclusion that the agreement to sell had duly been executed. It was, however, held that since the balance sale consideration had not been paid within the stipulated time i.e. by 25.12.1994, the relief of specific performance could not be granted. The trial Court, however, ordered refund of ₹1,00,000/- paid to the defendant. With regard to limitation, it was held that the suit was not barred by limitation.

7. An appeal was filed by the plaintiffs which was allowed by the first Appellate Court and a decree for specific performance was passed. The first Appellate Court came to the conclusion that time was not the essence of the contract since the defendant had accepted payments beyond 25.12.1994. It was also held that the suit was not barred by limitation.

8. Aggrieved by the aforesaid decision, the present appeal has been preferred by the defendant.

9. I have heard learned counsel for the parties and have perused the record, a copy of which was duly furnished by learned counsel representing the plaintiffs.

10. Mr. Shailendra Jain, learned senior counsel representing the appellant-defendant strenuously urged that first the trial Court erred in ordering the refund of earnest money and then the first Appellate Court erred in decreeing the suit. Learned senior counsel referred to the agreement Ex.P1 and submitted that the balance sale consideration had to be paid by 25.12.1994 which was admittedly not paid. It was submitted that the first Appellate Court wrongly returned a finding that payments of ₹25,000/- were accepted twice by the defendant after 25.12.1994 which is factually incorrect. Learned senior counsel contended that it had also been proved on record that no legal notice had been issued by the plaintiffs and under the circumstances, there was no justification for instituting the suit in 2004. Learned senior counsel submitted that the suit was clearly barred by limitation. It was contended that even if the defendant was not the owner of the property on the date of the execution of the agreement to sell, it did not extend the limitation for the filing of the suit and that the plaintiff should have filed the suit within a period of three years after 25.12.1994. Learned senior counsel referred to the evidence led on the record of the case and submitted that even the amount of ₹50,000/- alleged to have been paid vide receipts Ex.P2 and P3 was in fact not paid and the receipts are forged and fabricated documents as has been held by the expert examined by the defendant. In support of his contentions, learned senior counsel placed reliance upon the judgments of Hon'ble Apex Court in ***Civil Appeal No.147-148 of 2001 titled as Man Kaur (Dead) by LRs. Vs. Hartar Singh Sangha decided on 05.10.2010; Ahmmadsahab Abdul Milla (dead) by proposed LRs. Vs. Bibijan and others 2009(5) SCC 462 and Fatehji and Company and another Vs. L.M. Nagpal and others 2015 (8) SCC 390.***

Learned senior counsel also placed reliance upon a judgment of this Court passed in ***RSA No.1533 of 2009 titled as Rachhpal Singh and others Vs. Pushpa and others decided on 20.04.2009***. He further placed reliance upon a judgment of Andhra Pradesh High Court in ***Second Appeal No. 1379 of 2008 titled as S. Kanaka Durga Manikyhamba and others Vs. Ramapragada Surya Prakasa Rao and others decided on 17.11.2009***.

11. On the other hand, learned counsel representing the plaintiffs submitted that there is no illegality or infirmity in the findings returned by the first Appellate Court. It was submitted that the plaintiffs had always been ready and willing to perform their part of the agreement and it was the defendant who had not performed her part of the agreement. Learned counsel submitted that under the circumstances, the first Appellate Court rightly came to the conclusion that the suit for specific performance deserved to be decreed. Learned counsel referred to the oral and documentary evidence led on the record of the case.

11.1 It was also submitted that the plaintiffs are in possession of the disputed plot. Learned counsel contended that an eviction petition had been filed by the defendant against the plaintiffs which was also dismissed holding that there was no relationship of landlord and tenant and that even the appeal had been dismissed.

11.2 Learned counsel contended that time was not the essence of the contract and that the date and time i.e. 25.12.1994 had been mentioned with regard to payment of balance sale consideration and not for execution of the sale deed. Learned counsel submitted that there were concurrent findings of both the Courts below in this regard and that they are not liable to be interfered with.

11.3 With regard to limitation, it was submitted that the first Appellate Court rightly came to the conclusion that the cause of action arose in the year 2003 since the sale deeds in favour of the defendant had been executed in 2002 and 2003 vide Ex.D1 and Ex.D2 as a result of which, the suit could not have been filed before that.

12. I have given my thoughtful consideration to the submissions made by learned counsel for the parties.

13. Before advertng to the merits of the appeal, it would be essential to observe that that the requirement of framing of a substantial question of law in second appeal in terms of the provisions of Section 100 of the Code of Civil Procedure and as had been laid down in various pronouncements by the Hon'ble Apex Court including ***Hero Vinoth (minor) versus Seshammal 2006 (5) SCC 545***, was subsequently held to be not there by the Hon'ble Apex Court. It was held that in the States of Punjab and Haryana, it is the provisions of the Punjab Courts Act, 1918 which would be applicable and, therefore, Section 100 CPC would not hold the field and, accordingly, there would be no requirement of framing substantial questions of law in second appeal. With regard to the States of Punjab and Haryana, it was so held in ***Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors. 2019 (3) R.C.R. (Civil)*** and ***Satyender and Ors. Versus Saroj and Ors. 2022 (12) Scale 92*** respectively.

13.1 It was further held in the judgment of ***Satyender and others Versus Saroj and others*** (supra) that though the requirement of formulation of a substantial question of law is not necessary, yet Section 41 of the Punjab Courts Act requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having

the force of law or the Courts below had failed to determine some material issue of law or custom or usage having the force of law. It was held that what was, therefore, important was still a “question of law”. It was also held that a second appeal was not a forum where the Court would re-examine or re-appreciate questions of fact settled by the trial Court and the Appellate Court. While holding so, the judgment in the case of ***Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors.*** (supra) was also considered.

14. Reverting to the facts of the present case, the execution of the receipt/agreement to sell dated 04.12.1994 Ex.P1 is admitted. Whether it was a receipt or an agreement to sell or a receipt-cum-agreement to sell would be immaterial since an agreement to sell can even be oral. The fact remains that receipt of ₹50,000/- on 04.12.1994 was admitted. It was also admitted that on receipt of balance sale consideration of ₹1,40,000/-, the sale deed was to be executed. Once the balance sale consideration was ₹1,40,000/-, the receipt of subsequent amount of ₹25,000/- on 17.12.1994 and further sum of ₹25,000/- on 20.12.1994 will also be deemed to have been admitted as has rightly been held by the Courts below. Though the defendant took a stand that these two amounts had not been received, she was not able to prove the same. Experts from both sides gave opinions in favour of their own clients and the Courts below, therefore, rightly discarded their opinion and relied upon the testimony of the witness-Dinesh who appeared as PW4 and who was a witness to the subsequent receipts Ex.P2 and P3. He duly deposed that he had signed the receipts. Though he also admitted that he was closely related to the plaintiffs, but in the absence of any evidence to the contrary, there would be no reason to doubt the

testimony of the said witness. Even otherwise, as observed before, the balance sale consideration was stated to be ₹1,40,000/- meaning thereby that a sum of ₹1,00,000/- had been received.

14.1 Once the execution of the agreement to sell stands proved, the question which would arise would be whether the plaintiffs had been ready and willing to perform their part of the agreement or not. If one goes through the pleadings and the oral and documentary evidence, the answer would be in the negative. Another thing which would have to be considered is whether time was the essence of the contract or not. Here the answer would be in the affirmative.

14.2 In so far as the issue of readiness and willingness is concerned, it is an admitted position that no notice was ever served by the plaintiffs on the defendants calling upon them to execute the sale deed and they only filed a suit in the year 2004 i.e. 10 years after the execution of the agreement to sell. The oral version that they kept on requesting the defendant to get the sale deed executed is not acceptable. No action was taken by the plaintiffs for execution of the sale deed and they kept on sleeping over the matter till the institution of the suit in the year 2004. This clearly shows that they were not ready and willing to perform their part of the agreement.

14.3 Normally in an agreement for sale of immovable property, time is not the essence of the contract unless it so appear from the intention of the parties. A bare perusal of the agreement to sell Ex.P1 shows that the balance amount was to be paid positively upto 25.12.1994. The word “positively” would mean that time was the essence of the contract. The finding of the first Appellate Court that payments of ₹25,000/- on two occasions was accepted after this date is erroneous as admittedly, the said payments had

been made on 17.12.1994 and 20.12.1994 respectively which is before 25.12.1994 and not beyond 25.12.1994. The first Appellate Court wrongly observed that since these payments had been made after the stipulated date i.e. 25.12.1994, time would not be essence of the contract. The first Appellate Court did not notice that the date was 25.12.1994 and not 15.12.1994. The date 15.12.1994 was for the payment of ₹1,00,000/- and the balance was to be paid by 25.12.1994. In the case of ***Ahmmadsahab Abdul Milla (dead) by proposed LRs. Vs. Bibijan and others*** (supra), the Hon'ble Apex Court was seized of an issue and the question before the Hon'ble Apex Court was whether the expression "date" used in Article 54 of the Schedule to the Limitation Act, 1963 (for short 'the Limitation Act') was suggestive of a specified date in the Calender. The Hon'ble Apex Court held that the expression date fixed for the performance was a crystallized notion. It was held that when a date is fixed, it means that there was a definite date fixed for doing a particular act and, therefore, there was no question of finding out an intention from the other circumstances. It was held that whether the date was fixed or not, the plaintiff had noticed that performance had been refused and the date thereof was to be established with reference to materials and evidence to be brought on record. It is, therefore, clear that in the present case also, once the sale deed was to be executed by 25.12.1994, time would be the essence of the contract and it cannot be contended that time was not the essence of the contract. The intention of the parties was very clear. The contention that the date was fixed for the payment of money and not for execution of sale deed is devoid of merit. In any case, the sale deed was to be executed after the payment of entire money only and not before that and, therefore, the date 25.12.1994

would be very relevant which both the Courts did not consider. This is an important question of law which arises in the present appeal.

15. Another question of law which would arise would be whether the suit was barred by limitation. The trial Court decided issue No.5 which was with regard to limitation against the defendants but did not give any clear-cut findings. The first Appellate Court gave specific findings that since the defendant was herself not an absolute owner of the disputed plot on the date of execution of the agreement to sell and sale deeds in her favour were executed on 14.10.2002 and 18.11.2003 respectively (Ex.D1 and Ex.D2), the suit would not be barred by limitation as the limitation would be three years from the accrual of cause of action. It was held that the cause of action had accrued to the plaintiffs on execution of sale deeds in favour of the defendant. In the considered opinion of this Court, this finding is erroneous. As has been held in the preceding paragraphs, time was the essence of the contract. Once 25.12.1994 had passed, the cause of action accrued to the plaintiffs. The fact that the sale deed had not been executed in favour of the defendant by them would not be relevant. In so far as the plaintiff is concerned, he could have filed a suit within a period of three years from 25.12.1994 and limitation would not be extended since the defendant was not the owner of the disputed plot. The Hon'ble Apex Court was considering one such issue in the case of *Fatehji and Company and another Vs. L.M. Nagpal and others* (supra), though in that case, the issue was of rejection of plaint on the ground of limitation. Specific performance in that case had been claimed of a written agreement of sale dated 02.07.1973. The sale deed was to be executed by 02.12.1973. Extension of time was sought by subsequent letters by the defendants to enable them to

obtain the permission of lessor and the last extension of six months expired on 01.02.1977. It was held that the fact that the plaintiffs were put in possession of the property agreed to be sold on the date of agreement itself would not make any difference with regard to the limitation and the mere fact that the defendants had not obtained permission which was to be obtained prior to the performance of the contract would not lead to the inference that no cause of action for filing the suit would arise. The plaint was, therefore, rejected on the ground of limitation. What can be gathered from the said judgment is that merely because the defendant did not have title of the disputed plot would not extend the limitation for filing of the suit for specific performance and that the plaintiff would be bound to file the suit within a period of three years from 25.12.1994. Filing a suit in the year 2004 just because sale deeds in favour of the defendant were executed in 2002 and 2003 respectively would not bring it within limitation. In view of the limitation provided under Article 54 of the Limitation Act, the limitation would start running immediately after 25.12.1994 and, therefore, the suit filed in 2004 would be barred by limitation.

15.1. In a very recent judgment dated 22.09.2023 passed by the Hon'ble Apex Court in ***Sabbir (Dead) through LRs Vs. Anjuman (since deceased) through LRs. (Civil Appeal No.6075 of 2023)***, an agreement to sell had been executed on 31.07.1975. The vendors were to apply for permission to sell the property within eight days of the execution of the agreement to sell and upon permission being received, the same was to be intimated to the vendees and the sale deed was to be executed within 15 days from receipt of such intimation. The vendors did not apply for permission to sell which led to the filing of a suit for specific performance by the vendees

on 01.01.1981. The suit was decreed by the trial Court on 08.03.1982. The appeal was allowed by the First Appellate Court vide judgment dated 09.05.1984. This decision was reversed by the High Court on 02.04.2010 as a result of which, the matter reached the Hon'ble Apex Court. The Hon'ble Apex Court remanded the matter to the High Court and the High Court again allowed the appeal vide judgment dated 18.07.2018, reversing the findings of the First Appellate Court. The matter again reached the Hon'ble Apex Court. The issue before the Hon'ble Apex Court was again that of limitation. The case of the vendees was that the suit would not be barred by limitation since the vendors had to apply for permission which they never did. The Hon'ble Apex Court held that since there was a stipulation in the agreement to sell that the vendors would apply for permission for sale of property within eight days and would, therefore, communicate to the vendees within a period of 15 days from the receipt of permission, it would be immaterial whether the permission had been applied for or not because the initial onus was on the vendors to apply for permission but once no intimation had been given, the vendees had the right to move the Court for getting the sale deed executed as also for possession. It was held that from the 9th day onwards, the onus would shift on the vendees and, therefore, a right had accrued to them. It was held that the vendees could not take a plea that they would be entitled to indefinitely wait till the vendors informed them about the permission. It was observed that since no notice was given by the vendees to the vendors for five and a half years, they had not discharged their obligations under the agreement to sell. It was, therefore, held that the suit would be barred by limitation. The findings of the Hon'ble Apex Court read as under:-

“10. Having considered the matter, the Court finds that the Impugned Judgment cannot be sustained. The true typed copy of the ATS dated 31.07.1975 has been brought on record by the learned counsel for the appellants. Clause 3 thereof stipulates that the appellants within 8 days from that date, for sale of the property, would apply for permission before the District Magistrate, Saharanpur, Uttar Pradesh and upon the same being granted shall communicate it to the respondents through registered post. Thereafter, it was stipulated that within 15 days from such intimation, the respondents shall get the Sale Deed executed either in their favour or in favour of a person of their choice and the expenses would be borne by the respondents. Further, Clause 4 stipulated that in case the appellants did not apply for permission within the stipulated time ‘or’ after getting permission, did not inform the respondents and get the deed executed in favour of either the respondents or anyone of their choice then the respondents would have the right to get the sale of the property in question executed in their favour through the Court, and also take possession through the Court. A conjoint and harmonious reading of the relevant Clauses clearly indicates that the onus was on the appellants to apply within 8 days for permission and upon the permission being received, to intimate to the respondents, whereafter the respondents had to get the Sale Deed executed within 15 days. It was clarified that in the event of failure to do so i.e., either of not applying for permission ‘or’ not intimating the respondents upon receipt of permission, the respondents had the right to move the Court for getting the sale executed as also for possession. Thus, from the ninth (9th) day onwards, the onus would shift on the respondents, if within 8 days the appellants had not even applied for permission. Since the

consequences of non-performance of the duty cast upon the appellants of applying within 8 days or non-intimation of permission having been granted, in either contingency, a right accrued to the respondents to move Court.”

11. In this background, the respondents cannot take the plea that they would be entitled to indefinitely wait till the appellants informed them about the permission. As soon as the first eight days expired, the respondents had to show due diligence by being vigilant and conscious of their rights and were required to act promptly. There being no notice given to the appellants by the respondents for five and a half years to indicate the reason why they kept waiting or that despite their willingness to comply with their portion of the obligations under the ATS, the appellants had not discharged their obligations under the ATS and why the respondents should not move before the Court for enforcement of the ATS, as contemplated thereunder, coupled with the fact that in the entire plaint, there is not even a whisper with regard to the respondents having ever called upon the appellants or given notice to them that they were ready and willing to pay the balance amount and get the Sale Deed executed, in our considered view does not aid the respondents. We see nothing on the record to fathom a valid or justifiable reason for the respondents to have waited for five and a half years before instituting the suit.

12. From perusal of the plaint on the record it, transpires that there is a statement in Paragraph No.6 that till the month of October, 1980, the original respondent (since deceased) and her husband (now, as Legal Representative) had asked the appellants to execute the Sale Deed and then an eviction notice was served on the original respondent (since deceased) and

*her husband (now, as Legal Representative) and his brother. It has further been stated that this was after the respondents asked the appellants to execute the Sale Deed within 15 days after taking permission. Thus, nowhere it has been even indicated, in clear terms, that the respondents were ready and willing to pay the balance amount and get the Sale Deed executed in their favour. In view thereof, from their own pleadings in the plaint, even after five and a half years, there being no averment that the respondents were ready and willing to perform their obligations under the ATS and pay the balance/remaining amount is enough for the suit of the respondents to be dismissed on the ground of limitation alone. The ATS is dated 31.07.1975 and the suit was filed on 01.01.1981. The limitation for filing a suit for specific performance, as per Article 54 of the Schedule to The Limitation Act, 1963 is 3 years 'from the date fixed for performance or if no such date is fixed, when the plaintiff has notice that the performance is refused.' In **Ghewarchand v Mahendra Singh, (2018) 10 SCC 588**, it was observed that when deciding upon the question of limitation, it is mainly required to see the plaint allegations and how the plaintiff has pleaded the accrual of cause of action for filing of the suit. Apropos limitation, this Court observed, in **Basawaraj v Land Acquisition Officer, (2013) 14 SCC 81** as under:*

'12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause

hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, p. 266:

“605. Policy of the Limitation Acts.— The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.”

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See *Popat and Kotecha Property v. SBI Staff Assn.* [(2005) 7 SCC 510], *Rajender Singh v. Santa Singh* [(1973) 2 SCC 705: AIR 1973 SC 2537] and *Pundlik Jalam Patil v. Jalgaon Medium Project* [(2008) 17 SCC 448: (2009) 5 SCC (Civ) 907].)’
(emphasis supplied)”

16. In the considered opinion of this Court, this judgment would squarely apply to the facts of the present case and under the circumstances, it is held that both the Courts below erred in deciding the issue of limitation in

favour of the plaintiffs and against the defendant. It is, therefore, held that the suit was barred by limitation.

17. In view of the aforementioned facts and circumstances, the present appeal is allowed. The judgments passed by the Courts below are set aside and the suit filed by the plaintiffs is dismissed.

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: 02.11.2023
mamta

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No