IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2024

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

A.S.No.304 of 2021
and
CMP.No.14904 of 2021

1.T.Elumalai
2.Jayaraman ... Appellants

Versus

1.National Pharma Distributors,
Represented by its partner
S.Prakash Chand,
S/o.Sujanmal Bohra,
22/2, West Hanumar Koil Street,
Villupuram.

2.Noorjahan
3.R.Palanivel
4.Chokkalingam @ Nagappan
5.Latha
6.Rajamanickam
7.Loganathan
8.Ramu
9.Thavittammal
10.R.Ramani
11.T.Padmini
12.S.Viswanathan
13.T.K.Shanmugam
14.S.Arulmani
15.S.Vanaja
16.Dhandapani
17.V.Velusamy ... Respondents

(No relief is prayed for against respondents 3 to 17 and hence notice may be dispensed with in the application)

Appeal Suit filed Under Section 96 of the Code of Civil Procedure, praying to set aside the Judgment and decree dated 01.04.2021 made in O.S.No.9 of 2004 on the file of Principal District Court, Villupuram.

For Appellants	:	Mr. N.Suresh
For R1	:	Mr. S.Parthasarathy, Senior Counsel for Ms.A.Vinupradha
For R2	:	Mr.P.Sunil
For RR3 to 17	:	Dispensed with

ORDER

The appellants have filed this appeal to set aside the Judgment and decree dated 01.04.2021 made in O.S.No.9 of 2004 passed by the learned Principal District Judge, Villupuram.

2. Heard Mr. N.Suresh, learned counsel for the appellants and Mr. S.Parthasarathy, learned Senior Counsel for Ms.A.Vinupradha learned Counsel for the first respondent and Mr.P.Sunil, learned counsel appearing for the second respondent and perused the materials available on record.

3. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

4. The appellants are the 1st and 18th defendants in O.S.No.9 of 2004, a suit filed by the 1st respondent/plaintiff against them for the relief of specific performance and other consequential reliefs. The other respondents, defendants 2 to 17, are subsequent purchasers. The contesting defendants, D1 and D18, have preferred this appeal challenging the decree granted by the trial court in favor of the 1st respondent/plaintiff, which granted specific performance and directed them to execute the sale deed as per the sale agreement.

5. The brief facts of the case are as follows: The suit property, as described in the plaint schedule in S.No.278/1, 278/13A, and 278/14B, is a vacant land extending to 4.71 cents, which belongs absolutely to the 2nd defendant. The 1st defendant was appointed as the power agent through a power of attorney dated 22.10.1986, which authorized him to sell the said property. As the power agent, the 1st defendant offered to sell the property, and the plaintiff agreed to purchase it at the rate of Rs.2810/- per cent. The sale contract was concluded on 25.01.1990, with the total sale consideration amounting to Rs.13,23,510/-. According to the terms, the plaintiff was to pay

an advance of Rs.21,000/- to the 1st defendant, and the sale deed was to be executed by the plaintiff at his own cost on or before 30.04.1990. Meanwhile, the 1st defendant was required to obtain an Income Tax clearance certificate for the 2nd defendant. Pursuant to the sale agreement, the plaintiff paid the advance of Rs.21,000/- through a cheque on the same date. The 1st defendant received the cheque and handed over the original power of attorney, the original sale deeds, and a xerox copy of the partition deed dated 01.11.1976 to evidence the agreement, in addition to handing over possession and the documents in terms of the concluded contract of sale. The said sale agreement was entered into in the presence of witnesses C. Kannan, H. Inderchand, R. Janakaraj, and S. Rathanchand. Due to mutual confidence and trust, the agreement was not reduced to writing, and it remained an oral sale agreement. The plaintiff was always ready and willing to perform his part of the contract, having prepared a layout plan and demanding D1 to execute the sale deed in his favor, even obtaining a demand draft on 30.04.1990 for the balance price.

6. In the meantime, on 22.04.1990, the plaintiff, along with the mediators, went to the 1st defendant's house and demanded the execution of the sale deed, as the time for performance of the contract was nearing its end.

However, the 1st defendant, out of grudge and ill will, wanted the plaintiff to include him as a partner and, considering the escalating price, took advantage of the fact that there was no written agreement. The 1st defendant evaded the terms of the contract. However, the entire conversation was tape-recorded, and a notice was issued on 25.04.1990, calling upon the 1st defendant to execute the sale deed. The 1st defendant replied on 07.05.1990 with false allegations, claiming that he had requested a loan of Rs.21,000/-, which was provided by the plaintiff through a cheque, and that this amount was a loan and not an advance for the alleged agreement of sale. He also enclosed a bank cheque returning the amount with interest, which the plaintiff returned by sending a rejoinder dated 13.05.1990. However, the defendant refused to receive it, prompting the plaintiff to file a suit for specific performance, directing the defendants to execute the sale deed with a mandatory relief to obtain the Income Tax clearance certificate.

7. The 2nd defendant (Principal) remained ex parte, while the 1st defendant (Power of Attorney) contested the case by filing a written statement. He admitted that the property originally belonged to the 2nd defendant but denied the other allegations of the alleged sale agreement with the plaintiff.

8. The contention of the defendants is that the 1st defendant required a loan of Rs.21,000/-, which was given by the plaintiff by means of a cheque. Beyond this, the 1st defendant denied entering into any contract to sell the suit property to the plaintiff or receiving any advance of Rs.21,000/- from the plaintiff firm, asserting that there was no privity of contract between them.

9. The other persons said to be mediators are alleged to be brothers and henchmen of the plaintiff. With the help of S. Rathanchand, who requested the document to be delivered, the documents were handed over to him, as he is well-acquainted with the real estate office. Subsequently, he colluded with his brother, the plaintiff. Considering the theory of the contract of sale, the defendant returned the borrowed amount with interest totaling Rs. 22,000/- along with a reply notice. He also strongly denied the alleged conversation that took place at his residence on 22.04.1990 before issuing the notice, asserting that the alleged tape recording was false. He submits that he is not obligated to obtain an Income Tax Clearance certificate, nor is the second defendant; therefore, the alleged mandatory injunction is not sustainable as there is no oral sale agreement between the parties. The plaintiff is not entitled to any relief in the suit, and hence, the defendant prayed for the dismissal of the suit with compensatory costs.

10. Thereafter, the suit was ready for trial, and PW1 was examined in chief, the case was then adjourned to 12.08.1996. During the pendency of the trial, according to the plaintiff, there was a proposal to settle the issue on 11.08.1996. A compromise deed was executed between the plaintiff, S. Prakash Chand, and the first defendant in furtherance of the earlier sale agreement, as per the terms agreed upon in the presence of Panchayatars. Both parties agreed to withdraw the suit O.S.No.134 of 1990 by imposing three conditions with clear terms.

11. Accordingly, the per cent sale price was fixed at Rs.4,500/-, and the total sale consideration was set at Rs.21,19,500/-. After deducting the earlier advance of Rs.21,000/-, the balance amount was to be paid within one month, and the sale deed was to be executed at the cost of the plaintiff, with time treated as of the essence of the contract. The suit filed by the plaintiff in O.S.No.134 of 1990 was to be withdrawn as the matter was settled out of court. As per the new terms, the plaintiff was expected to comply with the terms on or before 11.09.1996. Therefore, the plaintiff issued a notice on 04.09.1996, calling upon the first defendant to obtain an Income Tax Clearance certificate and receive the balance sale consideration on or before 02.09.1996, failing which he would take appropriate steps through the Court

on 10.09.1996.

12. In response, the first defendant replied on 10.09.1996, without prejudice to his contention raised in the suit, stating that the stipulated one-month period should be strictly adhered to, as it is explicit in the agreement that time is of the essence of the contract. The balance amount was to be paid within the said one-month period, and he was ready to perform his part of the contract. However, the plaintiff evaded this by issuing a notice to obtain an Income Tax Clearance certificate, which was not a term agreed upon by the parties. As a result, the plaintiff was not prepared to abide by the terms of the contract and caused damages due to unnecessary harassment.

13. Immediately on 10.09.1996, the plaintiff filed an amendment application to amend the plaint by including the proposal of settlement agreed upon by the parties on 11.08.1996. He sought to enhance the sale consideration amount in I.A.No.681 of 1996, which was objected to by the first defendant by filing a counter-objection. After the transfer of the suit, the application was allowed by the trial court with an observation that to avoid further complications, the petition was allowed, and the amendment was carried out. Meanwhile, the first defendant filed an application to dismiss the

suit, which was dismissed as default. Subsequently, the case was transferred, and I.A.No.681 of 1996 was allowed by the court below to avoid multiplicity of proceedings and save time. The first defendant also filed I.A.No.9 of 2024 under Order XXIII Rule 3 to record the compromise and resolve the suit as per the terms of the compromise dated 11.08.1996. However, the court below did not accept this, stating that the terms of the compromise had not been complied with by both parties, and without such compliance, it could not be recorded. Accordingly, the application was dismissed.

14. Thereafter, the trial began, and on the plaintiff's side, PW1 and PW2 were examined, and Ex.A1 to A37 were marked. On the defendants' side, the 18th defendant was examined as D.W.1, and documents Ex.B1 to Ex.B4 were marked. Based on the evidence on record, the trial court framed four issues with three additional issues. Defendants D2 to D17 remained ex-parte, and the suit was contested by the 1st and 18th defendants, who were subsequent purchasers of the property. After analyzing the oral and documentary evidence, the learned trial judge decided all the issues in favor of the plaintiffs, except the issue of mandatory injunction.

15. The learned trial judge, relying on the subsequent compromise Ex.A10, concluded that the earlier oral sale agreement was confirmed in the

subsequent compromise. Therefore, the first and second defendants were bound to perform the contract, and the plaintiff was ready to perform his part of the agreement at the earliest point in time and was prepared with a demand draft for the balance amount. However, the defendants did not obtain an Income Tax Clearance certificate as required under Section 230(a) of the Income Tax Act. As a result, they were not willing to perform their part of the contract. Even after the compromise, the plaintiff expressed his readiness by sending a telegram along with the demand draft, but the defendant was not prepared to execute the sale deed by obtaining the Income Tax Clearance. Therefore, the plaintiff proved that he was always ready and willing to perform his part of the contract, and considering the terms agreed upon in the compromise Ex.A10 and the surrounding circumstances, time was not treated as of the essence of the contract.

16. However, since the plaintiff proved his readiness and willingness, he is entitled to the relief of specific performance. As the new act came into force, the mandatory injunction to obtain the Income Tax Clearance certificate became infructuous, and the suit was decreed on 01.06.2006. Accordingly, the relief of specific performance was granted.

17. Challenging the findings of the trial court, the 1st and 18th defendants have preferred this appeal, relying on the following grounds:

> *"i. The Court below is not correct in conducting the trial of the suit in the face of Ex.A10 dated 11.08.1996 viz., the compromise arrived at between the plaintiff and the appellant / 1st defendant herein.*
>
> *ii.The Court below is not correct in holding that Ex.A10 cannot be considered and compromise cannot be recorded on the ground that other defendants had not signed, but unfortunately the Court below had overlooked the fact while Ex.A10 came into existence at that time the defendants 1 and 2 and plaintiff alone were parties to the suit and other defendants are not party to the suit.*
>
> *iii.The Court below is not correct in holding that in respect of I.A.No.9/2004 after the dismissal of the same on 25.11.2019, no revision was preferred and hence the order passed would be a resjudicata and 1st defendant is estopped from agitating on the basis of the same, but unfortunately the Court below has overlooked that as against the same a revision has been filed in CRP.883/2020 before this Court and this Court had also issued notice and the same is pending before this Court.*
>
> *iv. The Court below is not correct in holding that the defendant should have received the balance sale consideration on the basis of Ex.A10 and ought to have come forward to execute the sale deed in favour of the plaintiff, without taking into consideration the admitted fact that the plaintiff was not ready to pay the balance sale consideration by imposing a non existing condition therein for payment of balance sale consideration.*
>
> *v. The Court below ought to have seen that as such the present suit has no cause of action and the cause of action in the suit is allegedly founded on the basis of an alleged oral agreement and hence the Court below ought not to have decreed the suit for specific performance on the basis of a fresh and novated contract.*

vi. The Court below ought to have seen that the plaintiff has been never ready and willing to perform his part of the contract and hence the Court below ought to have dismissed the suit.

Vii.The Court below ought to have seen that when the 1st defendant had not been conferred with the power to execute any agreement to sell the whole of the property in favour of plaintiff, the Court below is not correct in decreeing the suit as prayed for by the plaintiff.

Viii. The Court below ought to have seen that as per section 62 of the Indian Contract Act if the parties to the contract agree to substitute a new contract for it or to rescind or to alter it, original contract need not be performed and as such the Court below ought to have seen the suit based on the cause of action of the original contract is liable to be dismissed.

ix. The Court below ought to have seen that the plaintiff was deliberately paying with the litigation only to make the defendants to agree to his dictates and as such equitable remedy of specific performance ought not to have been granted in favour of plaintiff.

x. The Court below ought to have seen that even as per Ex.A10 the plaintiff as per clause 1 and 2 therein, the plaintiff had to comply with his requirement of paying balance sale consideration within one month from the date of agreement and condition imposed therein is plain and clear and the same has to be complied with a adumbrated therein and as such non payment of the same by giving some lame excuse disentitles the plaintiff from getting any relief.

xi. The Court below is not correct in overlooking Ex.B1 without making any reference about the same and hence findings is perverse and the same is liable to be interfered with by this Court.

Xii. The court below ought to have seen that the plaintiff's intention is clearly exhibited that he is never willing to perform his part of the contract.

Xiii. The Court below is not correct in brushing aside the judgement cited on behalf of 1st defendant reported in ***AIR***

1993 Supreme Court 1742 equal to 1993(1)SCC 519 Chandrani Vs. Kamalrani *wherein it was clearly held that even if there was a condition in the agreement that ITC should be produced by the vendor before executing the sale deed the same cannot bind at all and it is the duty of vendee to pay the entire consideration and to get the sale deed executed and it cannot be combined with the registration of the same and in the light of the law laid down by Supreme Court, the Court below ought to have dismissed the suit.*

Xiv. The Court below ought to have seen that the plaintiff is not ready and willing to perform his part of the contract clearly establishes in view of his specific stand taken under Ex.A11 and Ex.A16 in the notice and the rejoinder to the reply wherein he had clearly pleaded that unless the income tax clearance certificate is produced he will not pay the balance sale consideration.

xv. The Court below ought to have seen that the contract under Ex.A10 having been executed during the pendency of the suit and the parties wanted the adherence to the conditions to be essential condition, the Court below ought to have dismissed the suit.

Xvi. The Court below is not correct in decreeing the suit for specific performance by giving a finding on the one hand that the 1st defendant has no right to defend the case in the absence of the principal's wish and on the other hand totally ignoring the essential recitals in the power of attorney deed.

Xvii. The court below has not framed required issues and as such the Court below is not correct in decreeing the suit in favour of plaintiff.

Xviii. The Court below ought to have seen that the plaintiff has suppressed material facts and approached the Court below with unclean hands and hence he is not entitled to the relief of specific performance.

Xix. The Court below ought to have seen that the plaintiff having come forward with a false case that the suit property is in his possession and enjoyment the Court below ought to have denied the relief of specific performance."

18. The learned counsel for the appellant submitted that even assuming there was a compromise between the parties, the plaintiff is not entitled to the relief of specific performance because he was not willing to perform his part of the agreement. Moreover, he did not prove his readiness and willingness. Indeed, the plaintiff approached the court without clean hands, suppressing the real facts and, with ill motives, called upon the defendant to enter into a compromise during the pendency of the trial, filling up the lacuna by amending the prayer with the help of the alleged terms of the compromise deed Ex.A10. To avail of the remedy of specific performance under Section 6(c) of the Specific Relief Act, a person who wants to enforce specific performance of a contract must aver and prove that they have performed or have always been ready and willing to perform the essential terms of the contract according to its true construction.

19. To support his contention, the learned counsel for the appellants submitted the following authorities reported in ***(i) 2016(6) CTC 172, (ii) 1993 (1) SCC 519, (iii). 2011 (8) SCC 601, (iv) 2009 (4) CTC 842, (v) CDJ 2014 MHC 1971, (vi) CDJ 2018 DHC 130, (vii) 2018 (3) SCC 658, (viii) 2011 (4) SCC 741, (ix) 2021 (2) CTC 596, (x) 2021(3) CTC 717, (xi) 2013 (5) SCC***

397 and (xii) 2023-1-LW.777.

20. The learned counsel for the appellant contended that in the present case, the plaintiff was not ready to perform his part of the contract. Even assuming that Ex.A10 is true, the time was treated as the essence of the contract. Within the one-month period, the plaintiff was not ready to perform his obligations under the contract, thereby making him not entitled to any relief. However, the learned trial judge, without properly appreciating the legal propositions and facts, erroneously granted relief to the plaintiff, which is illegal and liable to be set aside.

21. The learned counsel for the 1st respondent/plaintiff submitted that originally an oral agreement of sale was entered into between the parties. When the defendants 1 and 2 failed to comply with the terms after the issuance of a notice, the plaintiff was compelled to file a suit. During the pendency of the trial, the defendants agreed to settle the issue, and a deed of compromise was entered into between the parties. Accordingly, the sale consideration was also increased. Within the stipulated period of one month, the plaintiff expressed his readiness through notice and also sent a telegram stating that he was ready to pay the balance through a demand draft.

However, the defendants failed to obtain the Income Tax clearance certificate, thereby failing to comply with the terms. The learned trial judge rightly appreciated all the facts and concluded that the plaintiff was always ready and willing to perform his part of the agreement. Accordingly, the suit was decreed in his favor, and no interference by this Court is necessary. Hence, he prays for the dismissal of the appeal.

22. To support his contention, the learned counsel for the 1st respondents relied the following authorities. "(i). ***(1999) 3 Supreme Court Cases 573, Vidhyadgar vs. Manikrao and another,*** (ii) **2023-3 LW 289.** judgements of this Court in ***A.S.Nos.355 & 356 of 2014, V.Dhanasekaran & others Vs. A.Krishnamurthy (Died) & others, (iii) S.A.No.1078 of 2000 and CMP.No.10020 of 2000, Tiruvannamalai Karuneekar Sangam Vs. Saradambal Ammal (Died) & others. (iv) AIR 1980 ALL 225 – Rajkumar Jain Vs.Jagwati Devi, (v) 1998-7-SCC-612 – Corporation of Banglore Vs. M.Papaiah. (vi). 1974-1-SCC-675-Shikharchand Jain Vs. Digamber Jain."***

23. **Points for consideration are to be decided as follows:**

i. Whether the alleged sale agreement completed by the plaintiff is true and valid ?

ii. Whether the plaintiff is entitle to the relief of specific performance as *prayed for?*

Iii. Whether, as per Ex.A10, time was treated as the essence of the contract?

iv. Whether the plaintiff approached the Court with clean hands?

v. Whether the learned trial Judge properly appreciated the evidence of record?"

24. Admittedly, the 2nd defendant is the owner of the suit property, and the 1st defendant is a power agent. The plaintiff is a firm engaged in the real estate business, represented by its partner, S. Prakash Chand. The facts reveal that based on the oral sale agreement, the plaintiff filed the present suit, O.S.No.134 of 1990, for the relief of specific performance with a mandatory injunction against the defendants 1 and 2. The plaintiff stated that in the presence of approximately four mediators, an oral sale agreement was entered into between the plaintiff and the 1st defendant, who offered to sell the property at Rs.2,810/- per cent and agreed to execute the sale deed by 25.05.1990, with both parties required to comply with the terms on or before 30.04.1990. In the meantime, the 1st defendant was to obtain an Income Tax clearance certificate, which he failed to do. However, he handed over the original property documents as well as possession, thereby nearly concluding the terms of sale. The plaintiff was ready to pay the balance amount and informed the 1st defendant in person on 21.04.1990, within the stipulated

period, but the defendant refused. Consequently, a notice was issued within two days, but a reply with false allegations was received in May 1990, leading to the suit being filed in June 1990. Therefore, the plaintiff contends that he was always ready and willing to perform his part of the agreement. However, the alleged oral sale agreement was entirely denied by the 1st defendant, who contended that he approached the plaintiff for a loan of Rs.21,000/-, for which the cheque was given. The documents were forcibly taken by the plaintiff's brother, who was involved in the real estate business, and were illegally utilized by the plaintiff for unlawful gain. The 1st defendant also denied that possession of the suit property was given to the plaintiff. When the suit was ripe for trial, PW1 was examined in chief, and the case was adjourned to 12.08.1996. On 11.08.1996, a compromise was reached between the parties, and the compromise deed was marked as Ex.A10.

25. According to the plaintiff, the 1st defendant agreed to settle the issue, so a settlement was reached between the parties. However, the defendant contends that the terms were executed at the plaintiff's counsel's office. The defendant claims that the compromise deed was executed by the plaintiff's counsel, where he was made to sign. Subsequently, the 1st defendant also filed an application before the trial court to record the said compromise without prejudice to his defense, but the trial court did not accept

this. Therefore, both parties relied on Ex.A10, according to the plaintiff, a new sale consideration was fixed, amounting to Rs.21,19,500/-, and after deducting the earlier advance of Rs.21,000/-, the balance was to be paid within a month. The plaintiff also agreed to withdraw the present suit as settled out of court. The deed was written by one Radhakrishnan, an advocate.

26. Based on these terms, the plaintiff states that the stipulated one-month period ended on 11.09.1996. Before that, on 04.09.1996, he issued a notice expressing his readiness to pay the balance amount and requested the defendants to obtain the Income Tax clearance certificate. The 1st defendant replied on 10.09.1996 through their counsel, stating that no such condition was imposed to obtain the Income Tax clearance certificate. The defendant alleged that the plaintiff invented this new condition to evade the terms, raising objections and also claiming damages.

27. On 10.09.1996, the plaintiff filed I.A.681 of 1996 to amend the pleadings and the prayer based on the terms of the Ex.A10 compromise. This application was contested by the respondent, but to avoid further complications, the trial court allowed it.

28. The defendants also filed an application to record the compromise, but the learned trial Judge did not agree to record it, stating that both parties were not inclined to record the compromise, which is mandatory. Hence, it was dismissed, be that as it may.

29. The point to be decided is that whether the agreement was a continuation of the previous one or whether the earlier agreement was replaced by the subsequent execution (Ex.A10)? also whether the plaintiff was always ready and willing to seek relief as he prayed for? The plaintiff contended that he was always ready and willing to perform his part of the agreement, which is essential to award the equitable remedy, as it is a discretionary relief. The plaintiff is duty-bound to prove that he was always ready and willing to fulfill his part of the agreement.

30. Considering all the evidence, as well as the conduct of the plaintiff, the alleged earlier agreement was oral, and a notice was issued calling upon the defendants to obtain the income tax clearance certificate. The plaintiff stated that he was ready to pay the balance sale price, but the defendants denied this, claiming that it was only a loan and not an advance payment.

While the trial was ongoing, P.W.1 again called upon the defendants to enter into a compromise, resulting in the execution of Ex.A10. The recitals of the compromise indicate that the sale price was increased, and the earlier amount of Rs.21,000/- was treated as an advance and deducted from the new price, with one month set as the time to perform the terms of the agreement. The terms of the compromise in Tamil are extracted as follows:

> i. உபய கட்சிகள் எவ்வாறு இருந்த போதிலும் நிலத்தின் மதிப்பு செண்ட் ஒன்றுக்கு ரூபாய் 4500/- என்று முடிவு செய்து ஆக மொத்த கிரைய தொகை 2119500/- என்று முடிவு செய்துள்ளோம்.
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> ii. மேற்படி கிரைய தொகையை ஏற்கெனவே கொடுத்த அட்வான்சு ரூபாய் 21000/- பொக மீதி தொகையை இன்றிலிருந்து ஒரு மாத காலகெடுவுக்குள் 2வது நபர் செலுத்தி அவர் செலவில் கிரையம் செய்து கொள்ள வேண்டியது, இதில் காலக்கெடு மிக முக்கியமான அம்சமாகும்,
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> iii. 2வது நபர் தாக்கல் செய்துள்ள விழுப்புரம் சார்பு நீதிமன்ற வழக்கு எண்.134/90ஐ உபய பார்ட்டிகள் செலவென்னியில் கோட்டுக்கு வெளியில் பைசல் ஆகிவிட்டதாக குறிப்பு எழுதி வாபசு பெற்றுக்கொள்ள பஞ்சாயத்தார்கள் வேண்டியது."

31. Subsequently, within the one-month period, a notice was issued

again, calling upon the defendants to obtain the Income Tax clearance certificate. As discussed earlier, the plaintiff was particularly concerned with obtaining the Income Tax clearance certificate, but this was denied by the defendants through an elaborate written statement. Thereafter, the alleged Ex.A10 compromise deed came into force, indicating that the plaintiff was insistent on the income tax clearance certificate. However, upon reviewing the entire terms of the Ex.A10 compromise, which was prepared by his advocate, there is no condition imposed on the defendants to obtain the income tax clearance certificate. The plaintiff, being a businessman involved in real estate, should have been aware that the defendants had already denied any such condition to obtain the income tax clearance certificate. If the plaintiff truly wanted the income tax clearance certificate, he should have included this condition in the terms of the Ex.A10 compromise, but he failed to do so.

32. Furthermore, as per clause (2) of Ex.A10, time was treated as the essence of the contract, with both parties required to perform their obligations within the one-month period. However, the learned trial Judge's observation that time was not the essence of the contract is erroneous. Time should be treated as the essence and must be complied with by the parties. On 04.09.1996, within the stipulated period, the plaintiff issued a notice calling

upon the defendants to obtain the Income Tax certificate, which was a non-existent condition in the Ex.A10 compromise. This indicates that the plaintiff was not ready to perform his part of the agreement within the given period. Therefore, the contract was already rescinded by the defendants through the reply notice marked as Ex.A19. The defendants provided a suitable reply and expressed that the plaintiff was not entitled to any relief. Immediately, on 10.09.1996, the plaintiff filed an affidavit before the Court to amend the pleadings, which clearly shows that the plaintiff was attempting to fill the lacuna in his case.

33. The plaintiff had initially claimed that there was an oral agreement between the parties, but when this was strongly denied by the defendants, the plaintiff, with ill intent, to fill up lacunas called upon the defendants to enter into a compromise during the trial. Thereafter, he failed to comply with the terms and issued a notice claiming that he was ready to perform his part and insisted that the defendants obtain the income tax clearance certificate, which was not a condition in the Ex.A10 compromise. The subsequent amendment of the pleadings by inserting the terms of Ex.A10 clearly implicates that the plaintiff did not approach the Court with clean hands and was abusing the process of law for unlawful gain. Therefore, the plaintiff is not entitled to

specific relief under Section 16 of the Act, which is mandatory to avail this remedy.

34. Ultimately, the plaintiff was not ready and willing to perform his part of the agreement, as evidenced by his conduct and the notice issued. The trial Court erroneously concluded that the plaintiff is entitled to the remedy by granting relief, and this decision is liable to be set aside. Accordingly, the questions of law 1 to 5 are answered.

35. Moreover, the trial Judge also failed to frame proper issues, particularly regarding Ex.A10, the alleged deed of compromise. The findings given by the learned trial Judge are liable to be set aside, and the issues are properly framed and answered. In toto, the plaintiff is not entitled to avail the relief.

36. In view of the above discussion, the findings given by the Principal District Court, Villupuram, in O.S.No.9 of 2004 dated 01.04.2021, are set aside, and the suit is dismissed with exemplary costs of Rs.50,000/- for abusing the process of law.

37. Accordingly, this Appeal Suit is allowed. Consequently, the

connected miscellaneous petition is closed. No Costs.

12.09.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation:Yes/No
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To

1.The Principal District Judge, Villupuram.

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

T.V.THAMILSELVI, J.

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A.S.No.304 of 2021
and
CMP.No.14904 of 2021

12.09.2024