

**THE HON'BLE SMT. JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI**

CIVIL MISCELLANEOUS APPEAL No.132 OF 2023

JUDGMENT:- (Per Hon'ble Justice Moushumi Bhattacharya)

The appeal arises out of an order passed by the III Additional District Judge, Sangareddy on 09.11.2022 in an Interlocutory Application filed by the appellant/plaintiff under Order XXXIX Rules 1 and 2 of The Code of Civil Procedure, 1908 for grant of a temporary injunction restraining the respondents (defendants in the Suit) from alienating/creating any mortgage/charge/Agreement of Sale in favour of third parties. The appellant/plaintiff prayed for the restraint on the petition schedule property pending disposal of the Original Suit.

2. The appellant/plaintiff filed the Original Suit for specific performance of an Agreement of Sale dated 12.02.2019 and for a direction on the defendants/respondents for executing a registered Sale Deed in favour of the appellant/plaintiff and for the plaintiff depositing the agreed balance amount of Rs.84,00,000/-.

3. The impugned order dismissed the appellant's application for temporary injunction. The Trial Court also vacated the order of *status quo* granted in favour of the petitioner on 07.12.2021.

4. The appellant/plaintiff is hence before this Court and prays for continuation of the order of *status quo* with regard to the alienation of the suit schedule property together with a direction on the respondents from changing the nature and character of the suit schedule property.

5. The brief facts which are relevant to the present appeal are as follows:

The plaintiff/appellant and the defendants/respondents entered into an Agreement of Sale cum Memorandum of Understanding on 12.02.2019 wherein the respondent No.1 was described as the “Vendor” and the appellant/plaintiff as the “Vendee” in respect of the suit schedule property. The Agreement records that the plaintiff/appellant was to make payment of the total sale consideration of Rs.92,00,000/- and that the respondent No.1 has already received a sum of Rs.6,50,000/- from the appellant and that the plaintiff promises to pay the balance sale consideration amount of Rs.85,50,000/- at the time of registration of the property.

6. According to counsel for the appellant, the appellant paid a sum of Rs.8,00,000/- out of Rs.92,00,000/- (the total sale consideration)

and failed to pay the balance consideration since the property was conveyed to the respondents by M/s. BHEL Employees Model Mutually Aided Co-operative House Building Society Limited on 15.05.2021 without notice to the appellant.

7. Counsel for the respondents submits that the appellant refused to pay the balance sale consideration of Rs.84,00,000/- despite a notice sent by the respondents on 27.09.2021. The respondents' notice on 27.09.2021 and the appellant's reply to the same dated 13.10.2021 are on record.

8. The impugned order shows that the primary reason for refusing the interlocutory relief to the appellant/plaintiff, is the appellant's (plaintiff's) failure to show readiness and willingness to pay the balance sale consideration to the respondents in terms of the Agreement of Sale. The impugned order further takes into account the fact of the petitioner getting the registered Sale Deed within 45 days of the respondent No.1 obtaining the Conveyance Deed from M/s. BHEL Employees Model Mutually Aided Co-operative House Building Society Limited. The Court accordingly found that the petitioner was unable to establish a *prima facie* case for interim relief.

9. The fact that the respondent No.1 obtained the conveyance of the suit schedule property from M/s. BHEL Employees Model Mutually Aided Co-operative House Building Society Limited on 15.05.2021 allegedly without the appellant's knowledge becomes irrelevant in view of the subsequent events. The subsequent events would include the respondents' notice to the appellant on 27.09.2021 recording that the respondents were constrained to cancel the Agreement of Sale, dated 09.02.2019 in view of the appellant not coming forward to register the property within the stipulated period of time. The second subsequent event is the appellant's reply dated 13.10.2021 to the respondents' notice whereby the appellant made a categorical statement that the appellant would pay the balance consideration and register the property within 7 days from the date of receipt of the reply.

10. It is evident that the appellant failed to take the required the 7 days stated in the said reply for making payment of the balance sale consideration. This would be evident from the fact that the appellant filed the Original Suit before the Trial Court after two months i.e. on 07.12.2021.

11. Apart from the above, the Agreement of Sale records that the appellant/plaintiff/vendee was to pay the balance sale consideration at the time of registration of property. The hand written endorsement on the Agreement states that only 45 days would be given for registration of the property after the Sale Deed is given to the respondent No.1.

12. There is also no evidence that the appellant took steps to register the property within the 45 days on payment of the balance sale consideration to the respondent No.1 (vendor).

13. Section 16(c) of The Specific Relief Act, 1963 (for short, 'the Act') sets out one of the personal bars to relief where specific performance of a contract cannot be enforced in favour of a person who fails to prove that he/she has performed or has always been ready and willing to perform the essential terms of the contract which was to be performed by that person other than the terms the performance of which has been prevented or waived by the defendant. Section 16(c) of the Act in 2018 by which the previous expression "*who fails to aver and prove*" was changed to "*who fails to prove*" w.e.f. 01.10.2018. The Amendment is significant since the earlier requirement of a plaintiff both having to aver as well as prove readiness and willingness was

changed to the post-amendment position of only the requirement to prove readiness and willingness on the part of the plaintiff/person to perform the essential terms of the contract of which the plaintiff seeks specific performance.

14. The Amendment can thus be interpreted as follows.

15. The omission on the part of a person who seeks specific performance of a contract, to specifically aver or plead readiness and willingness in the plaint or petition would not be fatal to the claim for specific performance if the person is able to prove by documentary evidence or otherwise that the person was ready and willing to perform the essential terms of the contract at all material times from the date of execution of the contract to the date of the decree/decision. This would be evident from the word “always” in Section 16(c) of the Act.

16. The import of the 2018 amendment to Section 16(c) of the Act was explained in a recent decision of Supreme Court in *C.Haridasan v. Anappath Parakkattu Vasudeva Kurup and others*¹. A Division Bench of the Kerala High Court in *Asha Joseph v. Babu C. George and*

¹ 2023(1) ALD 259 (SC)

*others*² also dwelt on the amendment and agreed that it is sufficient if the plaintiff only proves his/her readiness and willingness to perform the essential terms of the contract.

17. *Nathulal v. Phoolchand*³ is not relevant for the issue before the Court. In *Asha Joseph v. Babu C. George and others* (supra) the Kerala High Court specifically found readiness and willingness on the part of the plaintiff.

18. In the present case, there is no doubt that payment of the balance sale consideration was an essential term of the contract since the parties agreed that the property would have to be registered within 45 days from the date of conveyance of the property in favour of the respondent No.1. Since the property was conveyed on 15.05.2021, the appellant was required to make payment of the balance amount at least by 30.06.2021 which admittedly was not done.

19. The appellant has not also proved before this Court by action or by documentary evidence that the specific finding given by the Trial Court with regard to the appellant's readiness and willingness was erroneous.

² 2022 SCC Online Kerala 1822

³ (1969) 3 SCC 120

20. The above reasons persuade us to agree with the view taken by the Trial Court and accordingly to hold that the appeal lacks merit.

21. C.M.A.No.132 of 2023 along with I.A.No.1 of 2023 are accordingly dismissed.

22. We request the Trial Court to expedite the hearing of the appellant's Suit and decide all issues, if already framed including the question of forfeiture of the amount of Rs.6,50,000/- / Rs.8,00,000/- by the respondents.

23. There shall be no order as to costs.

Miscellaneous Applications, if any, pending in this appeal shall stand closed.

JUSTICE MOUSHUMI BHATTACHARYA

JUSTICE M.G.PRIYADARSINI

Date: 12.06.2024
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Date: 12.06.2024
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