



2024:DHC:8577



\$~J-6

* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Judgment pronounced on 29.10.2024**+ **O.M.P. 6/2022 & I.A. 11979/2022 (Stay)****RUDRA BUILDWELL PVT LTD.**

.....Petitioner

Through: Mr. Tanmay Mehta, Advocate, along with Mr. Akshat Gupta, Ms. Sakshi Tikmany and Mr. Yash Gaur, Advocates.

versus

REALWORTH INDIA PVT LTD.

.....Respondent

Through: Mr. Sandeep Sethi, Senior Advocate along with Ms. Gauri Rasgita, Mr. Saket Sikri, Mr. Guneet Sidhu, Mr. Radharaman Rajoriya, Mr. Manish Kharbanda, Ms. Ritika Vohra, Ms. Ekta Gupta, Mr. Satyam Vidharthy, Mr. Dinesh Moorjani, Mr. Naman Joshi, Mr. Aryan Verma, Mr. Girish Ahuja, Mr. Gunav Gujral, Ms. Amber Tickoo and Mr. Gurpreet Bagga, Advocates.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT**

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') assails an arbitral award dated 12.04.2022, whereby the arbitral tribunal has refused to grant specific performance of an agreement to sell dated 30.12.2009 (hereafter *the agreement*) and directed the respondent to make a payment of Rs.



10,37,63,684/- to the petitioner within four weeks from the date of the award while rejecting all other claims and counterclaims raised by the parties.

FACTUAL MATRIX

2. The respondent became the owner of property bearing number '7C, Doctor's Lane, Gole Market, New Delhi 110001' admeasuring 549.36 sq. yards having ground floor, first floor and the roof (the *property*) pursuant to a sale deed dated 29.11.2006. Subsequently, the respondent entered into an agreement to sell dated 30.12.2009 (hereinafter "*the agreement*") in respect of the concerned property with the petitioner. This agreement lies at the centre of the controversy in the present case.

3. While the respondent admittedly received the sale consideration of Rs. 5 crores, as specified under the agreement, it failed to comply with the obligation under the agreement to either repay an amount of Rs. 5,52,50,000/- *in lieu* of the sale consideration within 72 days of signing the agreement or execute a sale deed within 75 days of signing the agreement. Subsequently, the petitioner initiated arbitration to resolve the dispute/s, wherein the petitioner sought specific performance of the agreement. During the arbitral proceedings, the parties took varying stands regarding the scope of the said agreement and the real nature of the transaction between the parties.

4. The arbitral award dated 12.04.2022 (hereinafter "*the impugned award*") rejects the claim of the petitioner for specific performance and instead directs the respondent to refund the sale consideration to the petitioner along with interest. Hence, the present petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

5. Mr. Tanmay Mehta, learned counsel for the petitioner, has made the



2024:DHC:8577



following submissions:-

- i. Firstly, it is contended that certain material submissions made before the learned Arbitrator have been wholly discarded in the award. It is pointed out that it was emphasised before the learned Arbitrator that once 100% payment has been made, there is no discretion available to the learned Arbitrator as far as the grant of specific performance is concerned, as held by the Supreme Court in the case of ***Leeladhar (Dead) Through Legal Representatives v. Vijay Kumar (Dead) Through Legal Representatives and Others***, (2020) 19 SCC 336, sought to be relied upon.
- ii. Secondly, it is contended that the passage of time does not afford an adequate justification to deny specific relief in a situation where 100% payment has already been made by the vendor, as held by the Supreme Court in ***Ferrodous Estates (Pvt.) Ltd. v. P. Gopirathnam (Dead) and Others***, 2020 SCC OnLine SC 825.
- iii. Thirdly, it is contended that the Arbitrator ought to have taken note of the provisions of the Agreement, in particular, Clause 2 and Clause 11 thereof, which, specifically, provided that the option to the vendor to refund the amount was available only for a period of 72 days from the date of signing of the Agreement and after that, the vendor did not have this option of seeking to resist specific performance of the Agreement and refunding the sale consideration amount.
- iv. Fourthly, it is contended that the fact that the property value has been appreciated has no bearing on the matter, keeping in mind that the vendor has already paid 100% consideration at the time of signing the Agreement itself. In this regard, reliance is placed on ***Ferrodous***



2024:DHC:8577



Estates (Pvt.) Ltd. v. P. Gopirathnam (Dead) and Others(supra).

- v. Lastly, it is contended that the only defence put forth by the respondent in the arbitral proceedings to resist the petitioner's claim for specific performance is that the transaction in question was, in fact, of a different nature, viz. in the nature of security for a loan. It is pointed that having disbelieved the respondent's version regarding nature of the transaction, there was no possible impediment in grant of specific performance.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

6. In reply, Mr. Sandeep Sethi, learned senior counsel for the respondent has submitted that the learned Arbitrator has applied the correct legal test in assessing whether specific performance could have been granted or not in the facts and circumstances of the case.
7. It is submitted that the learned Arbitrator has rightly taken note of all the attendant facts and circumstances. The learned Arbitrator returned a finding that the *bonafides* of both the parties could not be said to be established. The learned Arbitrator further rightly takes into account the amount of delay that was occasioned on the part of the claimant in initiating arbitration and seeking specific performance.
8. On an overall conspectus, it is submitted that the Arbitral Tribunal rightly exercised its discretion in not granting specific performance.
9. He further submits the stand of the petitioner as regards possession of the property, was ambivalent to say the least. He points out that although the agreement records that the petitioner/claimant was put in possession immediately upon execution of the Agreement to Sell, the petitioner not only



2024:DHC:8577



took an ambivalent stand in this regard in its own petition under Section 9 of the Arbitration and Conciliation Act, 1996, and even in the arbitral proceedings, the petitioner claimed damages for deprivation of possession from the date of the execution of the Agreement itself. He submits that this was also a relevant factor that had a vital bearing in the arbitrator refusing to grant specific performance. He submits that impugned award also rightly takes into account the passage of time for the purpose of assessing whether specific performance was warranted.

10. He strenuously contends that the attendant circumstances surrounding the Agreement to Sell coupled with the fact that the persons who have allegedly paid 100% consideration chose to sit silent for inordinately long period of time, gives an insight as to the real nature of the transaction.

11. He further submits that there is no patent illegality in the impugned award, and that the view taken in impugned award cannot be faulted. He further submits that the reasons which impelled the learned Arbitrator to refuse specific performance are also implicit from the documents and circumstances referred to in the impugned award. He further relies upon the judgment of Supreme Court in **OPG Power Generation Private Limited v. Enxio Power Cooling Solutions India Private Limited & Anr.**, 2024 INSC 711.

12. In rejoinder, Mr. Mehta, learned counsel for the petitioner has emphasized that the findings on the aspects sought to be highlighted by Mr. Sethi for justifying the denial of the grant of specific performance has been negated in the impugned award itself. In this regard, he draws attention to the findings as regards the Section 138 proceedings under the Negotiable Instruments Act and the findings as regards the respondent's alleged version



2024:DHC:8577



regarding the real nature of the transaction.

13. Further, he points out that the respondent has not challenged the findings rendered in the impugned award against the respondent by filing independent proceedings under Section 34 of the Arbitration and Conciliation Act, 1996.

14. He further submits that handing over of possession at the time of the execution of the Agreement is irrelevant inasmuch as the grant of possession is inherent in the relief of specific performance sought by the petitioner. He further submits that the judgment in the case of ***OPG Power Generation Private Limited v. Enxio Power Cooling Solutions India Private Limited & Anr.*** (supra) has been misconstrued by the learned counsel for the respondent.

ANALYSIS & CONCLUSION

Specific relief is a discretionary remedy

15. While the remedy of specific performance is available under the Specific Relief Act, 1963, it is a settled position in law that granting such a relief of specific performance lies entirely in the discretion of the Court. Section 20 of the Specific Relief Act, 1963 (prior to the 2018 amendment) stipulates that the court is not bound to grant the relief of specific performance merely because it is lawful to do so but in terms of discretion guided by soundness, reasonability and judicial principles.

16. Since the agreement to sell is dated 30.12.2009, the subsequent amendment to the specific relief act, whereby Section 10 of the amended Act makes it mandatory to grant specific relief, would not be applicable in the present case since the same only has prospective application. The Supreme Court in ***Katta Sujatha Reddy and Another v. Siddamsetty Infra Projects***



Private Limited and Others (2023) 1 SCC 355 has affirmed this position by holding that since the 2018 amendments to the Specific Relief Act were not a mere procedural enactment but also envisaged substantive principles, the same would only apply prospectively. It has been observed by the Supreme Court as follows:

“53. From the aforesaid decision, it is clear that when a substantive law is brought about by amendment, there is no assumption that the same ought to be given retrospective effect. Rather, there is a requirement for the legislature to expressly clarify whether the aforesaid amendments ought to be retrospective or not.

54. In the light of the aforesaid discussion, it is clear that ordinarily, the effect of amendment by substitution would be that the earlier provisions would be repealed, and amended provisions would be enacted in place of the earlier provisions from the date of inception of that enactment. However, if the substituted provisions contain any substantive provisions which create new rights, obligations, or take away any vested rights, then such substitution cannot automatically be assumed to have come into force retrospectively. In such cases, the legislature has to expressly provide as to whether such substitution is to be construed retrospectively or not.

55. In the case at hand, the amendment act contemplates that the said substituted provisions would come into force on such date as the Central Government may appoint, by notification in the Official Gazette, or different dates may be appointed for different provisions of the Act. It may be noted that 01.10.2018 was the appointed date on which the amended provisions would come into effect.

56. In view of the above discussion, we do not have any hesitation in holding that the 2018 amendment to the Specific Relief Act is prospective and cannot apply to those transactions that took place prior to its coming into force.”

17. There can hardly be any cavil with the proposition that the court/ arbitrator must exercise its discretion in a manner which is not arbitrary but guided by sound reason, and it is for the court/ arbitrator to decide on a case-to-case basis, whether the relief of specific performance is to be granted.



This position is now quite well settled and has been reiterated in a catena of decisions of the Supreme Court as well as this Court, including in *Mademsetty Satyanarayana v. G. Yelloji Rao* (1965) 2 SCR 221; *Ramesh Chandra Chandiok v. Chuni Lal Sabharwal* (1971) 2 SCR 573; *Ajit Prashad Jain v. NK Widhwani* AIR 1990 Del 42; *Nanak Builders and Investors Pvt. Ltd. v. Vinod Kumar Alag* AIR 1991 Del 315; *Laxman Tatyabe Kankate and Anr v. Taramati Harishchandra Dhatrak* (2010) 7 SCC 717; *Gobind Ram v. Gian Chand* AIR 2000 SC 3106 and *V. Muthusami (dead) by LRs v. Angammal and Others* AIR 2002 SC 1279.

18. In *Dilip Bafna v. K.S. Vasudeva* 2007 SCC OnLine Kar 181, it has been observed as under -

“15. In view of the pronouncement of the Apex Court that even discretionary reliefs which are to be granted by the Courts could be the subject-matter of arbitration and the Arbitrator also has the same powers as that of the Court in the matter of exercising discretion, the contention that jurisdiction to decree specific performance being discretionary and has to be exercised by a Court alone and such matters cannot be referred to arbitration is without any substance. The relief being discretionary, if the parties approach a Civil Court that discretion has to be exercised by the Court. The said discretion cannot be arbitrary. It should be sound and reasonable, guided by judicial principles. This is the substantive law of the land as contained in Section 20 of the Specific Relief Act, 1963. Section 28(1)(a) of the Act, expressly provides, that the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force. Therefore, if such matters are referred to Arbitrator, the Arbitrator also can exercise such discretion and his discretion should also be sound and reasonable and guided by judicial principles.”

19. While exercising its discretion, the Court/ arbitrator is required to, *inter-alia*, assess the “readiness and willingness” of the parties to perform their end of the obligations under the agreement. This subsumes taking note of the conduct of the parties. In *Shenbagam and Others v. KK Rathinavel*



2024:DHC:8577



2022 SCC OnLine SC 71, it has been specifically held by the Supreme Court as under:

“30. In evaluating whether the respondent was ready and willing to perform his obligations under the contract, it is not only necessary to view whether he had the financial capacity to pay the balance consideration, but also assess his conduct throughout the transaction.”

20. In the said case, the Supreme Court also took note of the judgment in the case of ***JP Builders v. A Ramadas Rao*** (2011) 1 SCC 429 in which it was observed by the Supreme Court that “readiness” refers to financial capacity and “willingness” refers to the conduct of the plaintiff wanting the performance. The judgment in ***Shenbagam*** (supra) also takes note of the judgment of the Supreme Court in ***Atma Ram v. Charanjit Singh*** (2020) 3 SCC 311 where it was held that delay in filing a suit, specifically one for mandatory injunction, is indicative of inconsistent behaviour of the plaintiff.

21. In the present case, three aspects of the petitioner’s conduct stand out and were rightly taken note of by the Arbitral Tribunal in assessing whether the petitioner is entitled to specific performance. These are (i) inordinate delay by the petitioner in initiating proceedings for seeking specific performance and the efflux of time (ii) ambivalent stand of the petitioner with regard to the possession of the premises. (iii) the conduct of the petitioner as regards the transaction between the parties.

Inordinate delay and efflux of time

22. The impugned award holds as under:-

“20. B. It is equally pertinent to note that the respondent had an option to pay an amount of Rs.5,52,50,000 to the Claimant and rescind the Agreement, provided the same was done within a period of 72 days from execution of the Agreement. Despite such period having elapsed, there was no correspondence from the Claimant regarding the same, pertaining to further course of action.



2024:DHC:8577



XXX

XXXX

XXX

21. *Efflux of time:-*

A. Furthermore, the Claimant was unable to demonstrate any correspondence with the Respondent, wherein it had asked the latter to execute the sale deed, upon such period of 75 days having elapsed.

B. The statement of claim avers that repeated reminder were issued without furnishing any particulars or leading any evidence to support such a plea.”

23. Thus, the Arbitral Tribunal has taken note of the manner in which the petitioner dragged its feet in seeking to enforce its right under the agreement, and not taking timely and effective steps with regard thereto.

24. In the case of **Rajesh Kumar v. Anand Kumar and Others** 2024 SCC OnLine SC 981, the Supreme Court has taken note of a catena of judicial pronouncements in which it has been held that where the suit for specific performance was instituted at the fag end of the period of limitation, the same would be an inhibiting factor in grant of specific performance. In reaching this conclusion, the Supreme Court took note of the judgments in the cases of **K.S. Vidyanadam v. Vairavan** (1997) 3 SCC 1, **Azhar Sultana v. B. Rajamanis** (2009) 17 SCC 27, **Saradamani Kandappan v. S. Rajalakshmi** (2011) 12 SCC 18 and **Atma Ram v. Charanjit Singh** (supra).

25. In **K.S. Vidyanadam** (supra) it has been held as under:-

“10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time-limits stipulated in



the agreement for doing one or the other thing by one or the other party. That would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time-limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the court by both Sections 10 and 20. As held by a Constitution Bench of this Court in Chand Rani v. Kamal Rani [(1993) 1 SCC 519]: (SCC p. 528, para 25)”

26. In case of **Azhar Sultana** (supra) it has been held as under:-

“28..... The court, keeping in view the fact that it exercises a discretionary jurisdiction, would be entitled to take into consideration as to whether the suit had been filed within a reasonable time. What would be a reasonable time would, however, depend upon the facts and circumstances of each case. No hard-and-fast law can be laid down therefor. The conduct of the parties in this behalf would also assume significance.”

27. In case of **Saradamani Kandappan**(supra) it has been held as under:-

“this Court held that every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring time limits stipulated in the agreement. The courts will also frown upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for one or two years to file a suit and obtain specific performance.”

28. In case of **Atma Ram** (supra) it has been held as under:-

“9. No explanation was forthcoming from the petitioner for the long delay of three years, in filing the suit (on 13-10-1999) after issuing a legal notice on 12-11-1996. The conduct of a plaintiff is very crucial in a suit for specific performance. A person who issues a legal notice on 12-11-1996 claiming readiness and willingness, but who institutes a suit only on 13-10-1999 and that too only with a prayer for a mandatory injunction carrying a fixed court fee relatable only to the said relief, will not be entitled to the discretionary relief of specific performance.”

29. The impugned award rightly took note of the implication flowing from the conduct of the parties as noticed in para 20 and 21 of the impugned award;



the same is also mandated in terms of the legal position as laid down in the aforesaid cases.

30. As regards efflux of time, in **Satya Jain Through LRs and Others v. Anis Ahmed Rushdie Through LRs and Others** AIR 2013 SC 434, the Supreme Court has held as under:-

“38. The ultimate question that has now to be considered is: whether the plaintiff should be held to be entitled to a decree for specific performance of the agreement of 22-12-1970?

39. The long efflux of time (over 40 years) that has occurred and the galloping value of real estate in the meantime are the twin inhibiting factors in this regard. The same, however, have to be balanced with the fact that the plaintiffs are in no way responsible for the delay that has occurred and their keen participation in the proceedings till date show the live interest on the part of the plaintiffs to have the agreement enforced in law.

*40. The discretion to direct specific performance of an agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles. The parameters for the exercise of discretion vested by Section 20 of the Specific Relief Act, 1963 cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. It must however be emphasised that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance. Such a view has been consistently adopted by this Court. By way of illustration opinions rendered in *P.S. Ranakrishna Reddy v M.K. Bhagyalakshmi* and more recently in *Norinderjit Singh v. North Star Estate Promoters Ltd.* 16 may be usefully recapitulated.*

41. The twin inhibiting factors identified above if are to be read as a bar to the grant of a decree of specific performance would amount to penalising the plaintiffs for no fault on their part; to deny them the real fruits of protracted litigation wherein the issues arising are being answered in their favour. From another perspective it may also indicate the inadequacies of the law to deal with the long delays that, at times,



occur while rendering the final verdict in a given case, The aforesaid two features, at best, may justify award of additional compensation to the vendor by grant of a price higher than what had been stipulated in the agreement which price, in a given case, may even be the market price as on date of the order of the final court.”

31. The aforesaid judgment has been relied upon in **Shenbagam** (supra) and it has been held therein as under:

“From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time-limits stipulated in the agreement for doing one or the other thing by one or the other party.”

32. In **Shenbagam** (supra), relying upon **Satya Jain** (supra) and **K.S. Vidyadnam** (supra), it has been observed as under:-

“37. In the context of the discretion under Section 20 of the Specific Relief Act, several decisions of this Court have considered whether it is appropriate to direct specific performance of a contract relating to the transfer of immovable property, especially given the efflux of time and the escalation of prices of property. In Satya Jain v. Anis Ahmed Rushdied, this Court held:

“39. The long efflux of time (over 40 years) that has occurred and the galloping value of real estate in the meantime are the twin inhibiting factors in this regard. The same, however, have to be balanced with the fact that the plaintiffs are in no way responsible for the delay that has occurred and their keen participation in the proceedings till date show the live interest on the part of the plaintiffs to have the agreement enforced in law.

40. The discretion to direct specific performance of an agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles. The parameters for the exercise of discretion vested by Section 20 of the Specific Relief Act, 1963 cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the



experienced judicial mind can perceive without any real difficulty. It must however be emphasised that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance.

[...]

41. The twin inhibiting factors identified above if are to be read as a bar to the grant of a decree of specific performance would amount to penalising the plaintiffs for no fault on their part; to deny them the real fruits of a protracted litigation wherein the issues arising are being answered in their favour.”

33. Thus, the impugned award rightly takes into account the aspects referred to in para 22 of the award, in reaching the conclusion that specific performance is not warranted in the facts and circumstances of the case.

The petitioner’s ambivalent stand as regards possession and other aspects of the conduct of the parties

34. It is noticed that Clause 2 of the Agreement to Sell between the parties reads as under:-

“2. The vendor has handed over/delivered the actual, physical, and vacant possession of the said property to the Vendee at the time of the signing of the present agreement. However, the Vendor and Vendee have mutually agreed that the Vendee shall lock the first floor and the entrance to the roof and shall keep the key of the said lock with himself. Further the Vendor shall only be entitled to depute its junior staffs in order to shift its furniture from ground floor of the said property within a period of 75 days from the date of signing of this agreement.”

35. In the petition filed by the petitioner under Section 9 of the A&C Act, it was again the stand of the petitioner that the respondent handed over the actual physical and vacant possession of the suit property to the petitioner in terms of Clause 2 of the aforesaid agreement to sell and that the respondent company was only permitted to shift its furniture from the ground floor of the



2024:DHC:8577



suit property within a period of 75 days from the date of agreement i.e. 30.12.2009 and/or before 15.03.2010. It has been specifically averred in the Section 9 petition as under:-

“13. That, needless to say, as per the terms and conditions of the Agreement dated 30.12.209 and in compliance thereof, the respondent company handed over and delivered the actual, physical and vacant possession of the suit Property to the petitioner company. However, as agreed mutually, the respondent company was permitted to shift its furniture from the Ground Floor of the said property within a period of 75 days from the date of the Agreement, i.e. 30.12.2009 and on or before 15.3.2010. Copy of the Letter of handing over of possession is annexed herewith and marked as ANNEXURE P/5.

18. That very recently the respondent in most mala fide and illegal manner stopped the employees of the petitioner company to enter into the premises and tried to restrain them to freely move in the suit property. When the petitioner company tried to discuss the matter with the respondent, the Director of the respondent company, i.e. Mr. Matang Sinh the same has been either ignored or refused on one pretext or the other.

20. That admittedly the petitioner is having the absolute and complete possession of Ground, First and Roof of Property No. 7-C, Doctor's Lane, Gole Market, New Delhi 110001 and the entire property is in the possession and control of the petitioner and the respondents have only permission to take out their belongings from the Ground Floor of the premises and despite lapse of the agreed period, they have not removed their belongings in complete manner from the Ground Floor of the aforesaid property.”

36. The primary prayer sought in the Section 9 petition was to restrain the respondent from creating any third party right or alienating the property in question.

37. However, in the statement of claim before the Arbitral Tribunal, one of the claims raised was in the following terms:-

It is further prayed that Compensation @ 18% p.a. on Rs. 5 crore be also awarded in favour of the claimant from 30.12.2009 till the date of handing over the actual physical possession by the respondent to the claimant.”



38. It is thus evident from the same that there is an ambiguity/ ambivalence in the stand of the petitioner as regards possession of the property. The impugned award also takes note in para 4 as under:-

“4. The Claimant contends that it is entitled to vacant and peaceful possession of the Property. The Claimant also contends that it is entitled to compensation at 18% p.a. on the total consideration already paid on 30.12.2009, till the actual physical possession of the Property is handed over.”

39. The above aspect was inherently one of the aspects, which weighed with the learned Arbitrator. In fact, the learned arbitrator, taking into account the totality of circumstances, has observed in paragraph 12 of the Award as under:-

“At the outset, it is important to highlight that the conduct of both the parties has not been edifying. While the Claimant had initially concealed certain transactions made with the Respondent and certain events leading to the execution of the Agreement, the Respondent had tried portraying different versions of events, in its defense, as per its whims and fancies.”

40. As held in a catena of judgments, the conduct of the parties has a bearing on the issue of ‘willingness’ of a party to adhere to the terms of the agreement to sell. Also, any ambiguity in the stand of the parties is a factor that can legitimately weigh with a Court or the Tribunal in refusing to grant specific performance. In **P. Sudhakar Reddy v. M. Chalapathi Reddy** 2006 SCC OnLine AP 862, it has been, *inter alia*, specifically averred as under:-

“But in view of the objections made by the defendant in the cross-examination it is difficult to arrive at a conclusion as to whether the agreed land to be sold by the defendant was either 8200 sq. yards or 2050 sq. yards. The pleadings are not specific, clear but they are ambiguous. Therefore, in the absence of any clear pleadings, the plaintiff is not entitled for the discretionary relief of specific performance.”



(emphasis supplied)

41. The Supreme Court in **Lourdu Mari David v. Louis Chinnaya Arogiaswamy** (1996) 5 SCC 589, held as under:

“2. It is settled law that the party who seeks to avail of the equitable jurisdiction of a court and specific performance being equitable relief, must come to the court with clean hands. In other words the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief.”

42. Relying on the aforesaid decision, the Supreme Court in **Silvey v. Arun Varghese** (2008) 11 SCC 45 held as under :-

“14.it was noted that the conduct of the defendant cannot be ignored while weighing the question of exercise of discretion for decreeing or denying a decree for specific performance. The High Court has, after analysing the factual position, come to the conclusion that the defendants were really not ready to perform their obligation in terms of the contract and had taken a false plea in the written statement.”

43. It was in the light of the circumstances surrounding the transaction, the efflux of time, the laches on the part of the petitioner, that the learned sole Arbitrator was compelled to observe that the conduct of both the parties have been not edifying. As held in a catena of judgments, some of which have been referred to hereinabove, this aspect has a vital bearing on whether the discretionary relief of specific performance is to be granted or not. In **Shenbagam** (supra) it has been held as under:-

36. Even assuming that the respondent was willing to perform his obligations under the contract, we must decide whether it would be appropriate to direct the specific performance of the contract in this case. In Zarina Siddiqui v. A. Ramalingam¹³, a two -judge Bench of this Court while dealing with a suit for specific performance of a Contract regarding the sale of immovable property observed that the remedy for



specific performance is an equitable remedy and Section 20 of the Specific Relief Act confers a discretion on the Court. The Court held:

"24. It is well settled that remedy for specific performance is an equitable remedy. The court while granting decree of specific performance exercises its discretionary jurisdiction. Section 20 of the Specific Relief Act specifically provides that the Court's discretion to grant decree of specific performance is discretionary but not arbitrary. Discretion must be exercised in accordance with sound and reasonable judicial principles."

44. On an overall conspectus, the award renders a categorical finding that grant of specific performance would be inequitable in the facts and circumstances of the present case, and would unfairly benefit the claimant. It is observed in the award as under :-

"22A. In any event, it is pertinent to note that the valuation of the Property is over 25 Crores as per the report submitted by the valuer appointed by the Tribunal based upon the monthly rent determined by the valuer. It is a stand-alone bungalow on a 549.36 sq. yard (-4950 sq. ft.) plot, barely a kilometre away from Connaught Place and situated across the busy Gole Market, thereby having massive commercial value too. However, the sale consideration is merely Rs. 5,00,00,000. Directing specific performance in relation to sale of the Property in such circumstances would be unequitable and would unfairly benefit the Claimant, while harping the Respondent. Therefore, in light of the Hon'ble Supreme Court's decision in Shenbagam (Supra) and the parameters laid down there as enumerated above the relief of specific performance cannot be granted. Consequently, I decline the relief of specific performance claimed by the Claimant.

B. However, it is a matter of record that the Claimant had transferred the sale consideration, amounting to Rs. 5,00,00,000 to the Respondent in full, as on 01.01.2010. It would be unfair to merely direct the Respondent to return the same, as over 12 years have elapsed since then. I thus consider it appropriate to direct the Respondent to return the said amount with interest @ 6% p.a., within a period of 45 days from the date of receipt of this Award. In the event, the Respondent does not comply with the terms of this Award within such timeline, it shall be liable to pay interest @ 12% p.a. on the amounts due under this Award, from the date of this Award, until the date of full payment."



Judgments relied upon by the learned counsel for the petitioner:

45. Learned counsel for the petitioner has relied upon the judgment of the Supreme Court in the case of *Leeladhar (Dead) through legal representatives v. Vijay Kumar (dead) through legal representatives and Others* 2020 (19) SCC 336, to contend that where 100% payment has been made, there is no discretion available to the learned Arbitrator, and that specific performance is bound to be granted. The said submission is misconceived. A perusal of the judgment in *Leeladhar* (supra) reveals that in the facts of the said case, there were no aggravating/impeding circumstances, such as those taken note of in the impugned award. Moreover, the judgment cannot be read as an authority for the proposition that other relevant factors in assessing whether grant of the specific performance is warranted or not (such as, the conduct of the parties), are to be altogether disregarded. As observed in *Shenbagam* (supra) - continuous “readiness and willingness” has to be demonstrated by the plaintiff/claimant; ‘readiness’ refers to the financial capacity and ‘willingness’ refers to conduct of the parties seeking specific performance.

46. Likewise, reliance by the learned counsel for the petitioner in case of *Ferrodous Estate Pvt. Ltd. v. P. Gopirathnam and others* 2020 SCC OnLine SC 825 to contend that the passage of time has no relevance in the present case is also misconceived. The said judgment cannot be said to be laying down an inflexible rule that quantum of payment initially paid by the vendee/purchaser would outweigh all other considerations.



View Taken by the Arbitral Tribunal is an eminently possible view

47. It is important to bear in mind that while scrutinising the impugned award in these proceedings, this Court is not exercising appellate jurisdiction. The award has to be examined through the prism of Section 34 of the A&C Act, and it is too well settled to need any iteration that the view taken by an arbitral tribunal would pass muster as long as it is a possible view to take.

48. From an overall consideration of the matter and particularly taking into account the aspects enumerated above, it cannot be said that the view taken by the learned Arbitrator is an impossible view to take, which, as noticed, is the settled yardstick for determining whether an arbitral award is liable to be set aside.

49. Learned counsel for the respondent rightly relied upon the judgment in the case of *OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited & Anr.*, 2024 INSC 711 wherein it was held as under:-

“146. Otherwise also, as is clear from the award, the claimant had challenged the recital in the minutes i.e., regarding its liability for liquidated damages and customs duties, by claiming that it was economically coerced into making such admission. Circumstances, proven on record, indicated that (a) soon after the meeting dated 19 April 2018, the claimant had sent a denial of its liability; and (b) later, on 26 May 2018, the appellant(s) herein had made an offer of Rs. 3 crores to Enexio towards full and final settlement of all its claim. In these circumstances, based on the evidence led by the parties, the tribunal was well within its remit to conclude that the claimant was not liable in respect of those items which formed part of the counterclaim. Such conclusion, which is based on proven circumstances, is a plausible view and cannot be termed perverse. Hence, it is not amenable to interference in a challenge under Section 34 of the 1996 Act. In our view, therefore, the learned Single Judge of



2024:DHC:8577



the High Court erred in law while interfering with the arbitral award.”

(emphasis supplied)

50. In the present case, the petitioner’s contentions involve re-appreciation of intricate factual aspects, and undertaking a full scale, merit based review of the award, virtually tantamounting to exercising appellate jurisdiction. This is not permissible in these proceedings.

51. In the circumstances, this Court finds no merit in the present petition and the same is consequently dismissed. The pending application is also disposed of.

SACHIN DATTA, J

OCTOBER 29, 2024/r, dn