D/L.32.
May 21, 2025.
MNS.

SAT No. 100 of 2025
+
CAN 1 of 2025

Ajit Kumar Ghosh
Vs.
Smt. Kamala Dasgupta and others

Mr. Ayanabha Bhattacharya,
Ms. Dipanwita Ganguly

… for the appellant.

1. Learned counsel for the appellant, in his usual fairness, submits that, although not pointed out by the Additional Stamp Reporter, there was a deficit court-fee, going by the court-fees paid in the first appellate court. However, such deficit court-fees have since been deposited. The printout of an acknowledgement in that regard is filed in court and be kept on record.

2. Accordingly, we observe that the court-fees have been paid in full.

3. Insofar as the defect in the decree signing date furnished in the preamble of the memorandum of appeal of both the courts below is concerned, leave is granted to the learned Advocate-on-record to rectify such defects in the preamble of the appeal by deleting the dates of the decrees.

4. Insofar as the third defect is concerned, the matter be sent down to the trial court for effecting the necessary rectification to the decree of the trial court. However, prior to the records being so sent down, we take up the

appeal for hearing under Order XLI Rule 11 of the Code of Civil Procedure.

5. The present second appeal has been preferred against a judgment of affirmance, thereby dismissing the plaintiff's suit for specific performance of an agreement for sale.

6. Learned counsel for the appellant contends that in terms of the agreement-in-question, two portions of the property were to be sold to the appellant; whereas a part of the property, comprised of Schedule - B in the suit, was sold and consideration money therefor was paid, regarding the other part, that is, Schedule - A, the balance consideration was not paid within three months as mentioned in the agreement.

7. However, learned counsel for the appellant argues that by sale of a part of the property in favour of the appellant, coupled with the handing over of possession of the entire property comprised not only of the Schedule - B property, but also Schedule – A of the property, there was a part performance of the agreement and as such, the finding of the learned first appellate Judge that time was the essence of contract ought to be reversed.

8. Learned counsel, in support of his contention that time was not the essence of contract, cites the case of *Balasaheb Dayandeo Naik (dead) through LRS and others* Vs. *Appasaheb Dattatraya Pawar* reported at *(2008) 4 Supreme Court Cases 464*.

9. It is further contended that the observation of the learned first appellate Judge, to the effect that there was inordinate delay in initiation of the proceeding before the trial court, was not correct since the cause of action of the suit arose first within the limitation period from institution of the suit.

10. Also, the appellant assails the observations of both the courts below that the appellant failed to prove the readiness and willingness to perform the sale under the contract.

11. Upon hearing learned counsel for the appellant, we find that the ratio in the case of *Balasaheb Dayandeo (supra)* is contextually distinguishable from the present case.

12. In paragraph 15 thereof, the Supreme Court held that it is true that the defendant in his written statement has made a bald claim that the time was the essence of contract. However, the Supreme Court proceeded to observe that even if the Supreme Court accepts the recital in the agreement of sale (Exhibit 18) that the sale deed has to be executed within a period of six months, there is an express provision in the agreement itself that on failure to adhere to the time, the earnest money will be forfeited. In such circumstances and in view of the recital pertaining to forfeiture of the earnest money it was held to be clear that time was never intended by the parties to be of essence.

13. As opposed to the said case, in the agreement-in-question in the instant case, there is a specific provision that the balance consideration was to be paid within three months from the execution of the agreement. Coupled with that, it was also stipulated that if the balance consideration was not paid within the said period, there would be no compulsion on the original owner to sell the property to the appellant.

14. Thus, whereas in the cited judgment, the sanction for non execution of the document within the time limit stipulated therein was merely forfeiture of the earnest money and not non-performance of the agreement, in the present agreement at hand, the clear outcome of non-payment within the stipulated period was that there would not remain any compulsion on the owner to sell the property to the appellant.

15. Thus, in the present agreement, from its clauses themselves, it is clear that time was the essence of the contract, as rightly observed by the learned first appellate court.

16. The appellant has also sought to argue that part performance was undertaken since a part of the property, which was the subject-matter of the agreement, was sold to the appellant and the possession of the entire property was handed over to the appellant.

17. However, we are unable to agree with such submission of the appellant.

18. Since in the schedule of the agreement itself, the executant/original owner clearly mentioned that it was the intention of the original owner to sell the subject property in two parts, the sale of one of the parts cannot be mixed up with the other so as to grant the benefit of part performance with regard to one of the parts (covered by Schedule-A property) by dint of performance of the other part (by sale of Schedule –B property). Since the property was segregable into parts as per the schedule of the agreement, the performance was also segregable accordingly. Hence, although the Schedule –B property was sold in due compliance of the agreement, the same does not mitigate or alleviate the rider that the balance consideration for transfer of the rest of the property was to be paid within three months from the execution of the agreement.

19. Insofar as the handing over of possession is concerned, the possession of A schedule was handed over merely in furtherance of the agreement and did not mitigate in any manner the mandatory requirement of the appellant to pay the balance consideration amount within three months.

20. Thus, we do not find that the observation of the first appellate court in that regard can be faulted either.

21. Insofar as the concurrent findings of both the courts below that the appellant has failed to prove his readiness and willingness in terms of Section 16 of the 1963 Act, we do not find any palpable reason furnished before us to

differ with such finding. It was a plausible view taken by both the courts below, thereby precluding us from interfering with the same substituting our own views for the same.

22. In view of the above observations, we are of the considered opinion that no substantial question of law has been made out for admission of the appeal.

23. Accordingly, SAT No. 100 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

24. Consequentially, CAN 1 of 2025 stands disposed of as well.

25. There will be no order as to costs.

(Uday Kumar, J.) (Sabyasachi Bhattacharyya, J.)