
Before Swatanter Kumar, J

RAM DASS—*Appellant*

versus

RAM LUBHAYA—*Respondent*

RSA No. 1962 of 97

19th March, 1998

Specific Relief Act, 1877—S.20—Scope of—Discretion of Court to decline specific performance—Alternative claim for damages—Whether such alternative claim disentitles from seeking specific performance.

Held that, the very language of Section 20 spells out and indicates the wide discretion that is vested in the Court of competent jurisdiction to grant or decline to grant a relief of specific performance for transfer of immoveable property. The guiding principles for determination of such controversies have been consistently cogitated by various Courts but to a common end. The common weal sought to be achieved is to avoid resultant undue hardship to one party while avoiding undue gain to the other by mere lapse of time attributable to erring party. A party first fails to perform its part of the agreement later contests litigation on frivolous basis then that party cannot be permitted to raise a plea in equity that value of the property has increased disproportionately resulting in an undue advantage to the plaintiff in a suit. Resultantly it would be fair to deny specific performance against such a party.

(Para 8 & 10)

Further held, that an alternative prayer by a plaintiff in a suit cannot be construed as a waiver or abandonment of the main relief in the suit. An alternative prayer is a relief which is claimed by the party if the party is found to be not entitled to the principle of main relief claimed in the suit.

(Para 9)

G.S. Gandhi, Advocate, *for the Appellant.*

R.S. Ghuman, Advocate, *for the Respondent.*

JUDGMENT

Swatanter Kumar, J

(1) Provision of Section 20 of the Specific Relief Act vests jurisdiction in the Court to decline specific performance even on equitable just and fair grounds. The very ambit and scope of powers conferred upon the Court which spring

from this provision is the basic question that falls for determination in the present case. Before adverting myself to answer legal contentions raised on behalf of the either side in this Regular Second Appeal, it will be necessary to refer to the basic facts giving rise to this appeal.

(2) Ram Lubhaya plaintiff in the suit respondent herein had failed a suit for specific performance and possession on the basis of an agreement to sell dated 6th August, 1990. According to the case pleaded by the respondent it was stated that the appellant had entered into an agreement to sell regarding 8 kanals of land forming part of khewat No. 50, khatoni No. 52, Khasra No. 35//14 (8-0) situated in the area of village Hussainpur, Tehsil Nawanshahr. The agreed total sale consideration was Rs. 50,000 out of which Rs. 12,700 had been paid to the appellant as earnest money at the time of execution of the agreement dated 6th August, 1990 and the balance amount was payable at the time of execution of the sale deed, time for which was provided to be on or before 30th April, 1991. The respondent claims that on that day he was present before the office of the Registrar for getting the sale deed registered and for paying the balance consideration but the appellant did not turn up. The respondent had also served notice dated 23rd April, 1991 and 10th May, 1995 making reference to the terms of the agreement to sell aforesaid and showing ready and willingness on the part of the respondent to fulfill his contractual obligation. On these facts the respondent had claimed specific performance of the contract and alternative had claimed damages to the extent of Rs. 50,000.

The suit was contested by the defendants. Appellant Ram Dass had denied the execution of the agreement in question and pleaded that he had raised some loan from the respondent and in lieu thereof got some papers signed from them and consequently the alleged agreement was on fabricated agreement and the agreement is not fair in law as it is a result of misrepresentation and based on concealment of facts.

(3) The learned trial Court keeping the controversy between the parties into mind and the disputed facts framed the following issues:—

1. Whether the defendant executed the agreement to sell dated 6th August, 1990 in favour of the plaintiff ? OPP
2. Whether the defendant received the earnest money of Rs. 12,700 from the plaintiff and executed the receipt of the same ? OPP
3. Whether the said agreement is not entertainable in the eyes of law ? OPD.
4. Whether the alleged agreement is vague, ambiguous and indefinite ? OPD.

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5. Whether the suit is within time ? OPP
 6. Whether the plaintiff has been ready and willing to perform his part of the agreement and still ready and willing to do so ? OPP
 7. Whether the plaintiff is entitled to the specific performance of the agree-ment ? OPP.
 8. If issue No. 7 is not proved, whether the plaintiff is entitled to recover any amount from the defendant ? If so, what amount ? OPP.
 9. Relief.

(4) The parties led their evidence. Defendant had examined only one witness and did not turn up to present himself in the witness box for giving his statement inspite of various opportunities. The learned trial Court,—vide detailed judgment and decree dated 5th February, 1994 decreed the suit of the plaintiff for specific performance and granted 90 days time to pay the balance amount and for registration of the sale deed. This judgment and decree was assailed unsuccessfully by the present appellant. The first Appellant Court dismissed the appeal,—vide its judgment dated 24th January, 1997 which has been assailed in this Regular Second Appeal.

(5) The learned counsel for the appellant while impugning the judgment and decree of the learned courts below has founded his arguments on the following contentions:—

1. The learned trial Court did not give adequate opportunity to the appellant to prove his case and as such the judgment is vitiated for denial of adequate opportunity for leading evidence.
2. The learned Courts have erred and have committed jurisdictional error in decreeing the suit of the plaintiff for specific performance. The respondent herein had prayed for an alternative relief of damages and the Court should have granted the alternative relief of damages alone.

(6) Coming to the first contention raised on behalf the appellant the learned trial Court had granted adequate opportunity to the appellant to prove his case. This contention was also raised before the learned First Appellate Court and which stands adequately answered by the following conclusions of the learned First Appellate Court:—

“In this connection it is relevant to mention that when the suit was filed in May, 1991 i.e. 21.5.1991 after appearance of the defendant learned Sub Judge framed issues and thereafter plaintiff’s

evidence was started which was closed by the plaintiff on 10.6.1993. In the between it appears that on number of dates the Advocate were on strike and sometime the Officer had been transferred and new Officer had not taken over. But whatever effective date was given for evidence of the plaintiff, one or two PWS appeared to have been examined.

“Thereafter defendant evidence was started from 29.7.1993. Thereafter defendant was given adjournment for DWs for 1.9.1993, 17.9.1993, 1.10.1993, 11.10.1993, 28.10.1993, 5.11.1993, 18.11.1993, 7.12.1993, 13.1.1994, 18.1.1994 and 25.1.1994. It appears that on 25.1.1994, on the basis of undertaking give by learned counsel for the defendant on the last date, defendant having failed to produce evidence, it was agreed by learned counsel for the defendant that evidence may be closed on the next date and in accordance with this undertaking learned Sub Judge closed the evidence of the defendant on 25.1.1994. Thereafter counsel for the defendant pleaded no instructions and arguments were heard by the learned Sub Judge. Among these dates for the DWs, only one DW was examined by the defendant on 11.10.1993 who orally stated that the defenant had raised loan from the plaintiff and there was no agreement to sell of land. Now it has not been explained at all by the defendant why he himself did not appear on any dates granted for production of the DWs. His nonappearance will definitely raised an adverse inference against the defendant especially when more than 10 opportunities were gránted to the defendant to produce evidence.”

(7) Nothing has been brought to the notice of this Court during the course of hearing when the copies of the relevant record were produced by the learned counsel for the parties, which would persuade this Court to take a different view than the one which has been taken by the learned Courts below in regard to this contention. The provision of procedural law may be construed liberally to achieve the ends of justice but no party could be permitted to abuse the process of law including the process which emerges from the procedural law. The procedural law is not intended to give an edge to a party over the other by adopting delaying tactics seeking adjournment without reason and when the Court closes evidence, to take somersault to argue that the Court has not granted adequate opportunity for conclusion of evidence. Expenditious disposal is genesis of basic rule of procedural law. Procedure provided is intended to achieve the ends of justice it must do so, but expeditious disposal is equally an important limb of the Legislative intent expressed in procedural laws. The facts narrated by the learned First appellate Court are based on record and no where justifies grant of other opportunity to the

appellant to conclude the case. Consequently I have no hesitation in rejecting the first contention raised by the learned counsel for the appellant.

(8) Coming to the second contention, the learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of *Kanshi Ram vs. Om Parkash Jawal and others* (1) and *S. Rangaraju Naidu vs. S. Thiruvarakkarasu* (2). The Principles of law enunciated in these cases is the reiteration of settled principles of law. The principle of equity good conscience and fairness being very foundation for grant of relief of specific performance is the concept not introduced by judicial pronouncement but explicitly indicated by the Legislature in the provision of Section 20 of the Specific Relief Act. The very language of section 20 spells out and indicates the wide discretion that is vested in the Court of competent jurisdiction to grant or decline to grant a relief of specific performance for transfer of immoveable property. The guiding principles for determination of such controversies have been consistently cogitated by various Courts but to a common end. The common weal sought to be achieved is to avoid resultant undue hardship to one party while avoiding undue gain to the other by mere lapse of time attributable to erring party.

(9) An alternative prayer by a plaintiff in a suit cannot be construed as a waiver or abandonment of the main relief in the suit. An alternative prayer is a relief which is claimed by the party if the party is found to be not entitled to the principle of main relief claimed in the suit. The submission of the learned counsel appears to be totally contradictory to the well accepted concept of pleadings and cannot be accepted. The present suit is one for specific performance of the agreement dated 6.8.1990. The respondent served notice upon the appellant firstly on 23.4.1991 which is a date prior to the date on which the parties had agreed to execute the sale deed i.e. 30.3.1991. The appellant failed to appear before the Registrar and without any further loss of time on 10.5.1991 the respondent sent another notice describing the correct facts. Both these notices remained unreplyed and it is for the first time in the written statement that the story of the alleged loan and document being signed by misrepresentation is being put forward. No details with regard to the alleged mis-representation have been given in the pleadings. Further more which is of greater importance is that defendants led no evidence whatsoever in support of this bald allegation. The appellant did not even appear in the witness box to support his own case. The respondent had filed the suit on 23.5.1991 i.e. within a period of one year. Even during this period he had alleged that he was making efforts to get the sale deed executed out of Court. As is clear from the judgments of *Kanshi Ram* and *S. Rangaraju Naidu* the Hon'ble Supreme Court has not laid down any proposition of law but passed the orders in the facts and circumstances of that case. In the case of *Naidu* their

(1) J.T. 1996 (4) S.C. 733

(2) A.I.R. 1995 S.C. 1769

, Lordships specifically observed as under:—

“Therefore in view of the facts of this case we think that justice would be met by granting alternative relief sought for in the suit.....”

The provisions of Section 20 is an exception to the rule of grant of relief specific performance and is not a rule by itself. The framers of the provisions have themselves indicated in the proviso to Section 20 that inadequacy of consideration cannot construe an unfair advantage or hardship within the meaning of clause (a) or (b) of sub Section (2) of Section 20 of the Specific Relief Act. At this stage it may be appropriate to refer to the provisions of Section 20 of the Specific Relief Act as under:—

“Discretion as to decreeing specific performance—(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so, but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. (2) the following are cases in which the court may properly exercise discretion not to decree specific performance:—(a) where the terms of the contract or conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though no voidable gives the plaintiff an unfair advantage over the defendant ; or (b) where the performance of the contract would involve some hardship on the defendant which he did not force whereas its non-formance would involve no such hardship on the plaintiff; or (c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1. Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning or clause (b). *Explanation 2.* The question whether the performance of the contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract. (3) The court

may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance. (4) The court shall not refuse to any specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.”

(10) The jurisdiction vested in the court to decline specific performance and grant alternative relief is a jurisdiction of equity and good conscience and must be exercised in consonance of the settled principles of law. Even principles emerging from judicial verdicts which are to guide the Courts concerned while passing such a decree and which have been specifically acted upon, are still open to correction by the Court of appeal. The provisions indicate the intention of the Legislature to vest the Court with the wide discretion but still define the extent of caution with which such power should be exercised. Settled cannons of limitations on the discretion of the court have been well defined by various judicial pronouncements. Precepts of equity are accepted good in law. Reliefs in equity are founded on the principle of good in law. Reliefs in equity are founded on the principle of good conscience and grant of effective relief. The maxim *Actio de in rem verso* appears to be the underlining feature under the provisions of Section 20 of the Act. Exercise of judicial discretion does not admit a limitation extending to a prohibition for grant of relief of specific performance. It is only where the judicial conscience of the court is pricked to an extent that the Court first is able to see inequities, imbalances created against one party and in favour of other, that it would consider exercising its discretion under these provisions. The scheme of this Act clearly shows that where a contract is proved in accordance with law and party has acted without undue delay and has pursued its remedy in accordance with law with out infringing the settled canon of equity the grant of specific relief by enforcing the contract would certainly be a relief which equity would demand. The Legislative intention behind Section 20 cannot be stated to be that a party first fails to perform its part of the agreement later contests litigation on frivolous basis then that party cannot be permitted to raise a plea in equity that value of the property has increased disproportionately resulting in an undue advantage to the plaintiff in a suit. Resoluntatly it would be not be fair to deny specific performance against such a party.

(11) A lawful agreement being proved and judicial conscience of the court being satisfied the equity would demand enforcement of an agreement rather than granting an alternative relief of damages to the plaintiff. It need to be reiterated that equity must give relief where equity demands. *Equitas nuguam liti ancillatur ubi remedium potest dare* is a clear illustration which has been duly accepted by the Indian Courts. The time taken by the courts in deciding suit or appeals would normally be not permitted to work to the disadvantage of the party to the lis. Acts of the courts shall cause prejudice to none was so stated

by the Hon'ble apex Court in the case of *Atma Ram Mittal vs. Ishwar Singh Punia* (3).

(12) A person who breaches the terms of the agreement and is found erring during adjudication cannot be permitted to, sick advantage over the other party in equity. One who offends the law cannot seek the help of law. Similarly one who breaches contract and his obligation cannot be permitted to take advantage over thereof that too to the disadvantage of the other party. In the case of *M.L. Devender Singh and others vs. Syed Khaja* (4), the Court held as under:—

“The jurisdiction of the court to decree specific relief is discretionary and must be exercised on sound and reasonable grounds” guided by judicial principles and capable of correction by a court of appeal.” This jurisdiction cannot be curtailed or taken away by merely fixing a sum even as liquidated damages. It is made perfectly clear by the provision of Section 20 of the old Act (corresponding to Section 23 of the Act of 1963) so that the court has to determine, on the facts and circumstances of each case before it, whether specific performance of a contract to convey a property ought to be granted.”

(13) Similarly in the case of *Ramesh Chandra Chandiok and other vs. Chuni Lal Sabharwal and others* (5) the Hon'ble Supreme Court held that where the plaintiff upon granting of alternatives relief of damages or refund of earnest money files execution thereof, does not loses his right in law to claim specific performance and it will be no ground to decline the relief of specific performance to that plaintiff by appellate court. It was further held as under:—

“An appeal was in fact preferred and seriously pressed before the High Court on the relief relating to specific performance. This relief is discretionary but no arbitrary and discretion must be exercised in accordance with the sound and reasonable judicial principles. We are unable to hold that the conduct of the appellant which is always an important for consideration was such that it precluded them from obtaining a decree for specific performance.”

(14) Applying the above principles to the facts of the present case the court has to arrive at no other conclusion but that the courts below have rightly granted the relief of specific performance to the respondent. A concurrent finding of fact has been arrived at by the learned courts below that the present appellant has taken a false stand before the court and in fact he had failed to performance

(3) A.I.R. 1988 S.C. 2831

(4) A.I.R. 1973 S.C. 2457

(5) A.I.R. 1971 S.C. 1238

his part of the agreement inspite of due notice from the respondent. Further more the courts have also found that the respondent was always ready and willing to perform his part of the agreement. The litigation before the Courts has been prolonged for all this time by the appellant without any fruitful result. In these circumstances I am unable to see any equities in favour of the appellant and reliance placed upon the observations of the Hon'ble Supreme Court in the case of S. Rangaraju Naidu vs. Thiruvarakkarasu (supra) is misplaced one. No facts and circumstances have been brought on the record nor any evidence has been adduced to show that the case of the appellant was covered under any of the exceptions carved under sub clause (a) to (c) of Sub Section (2) of Section 20. The appellant has suffered no unfair disadvantage. No such hardship has been caused to the appellant which would justify nonperformance on his part. The appellant has also not been placed at any inequitable situation. Equities have to be balanced. It is only when totally unequitable and unjust and unfair advantage is given to one party that court has to consider such factors. The conduct of the appellant is certainly not worthy of claiming any special equities while conduct of the respondent has been to the accepted standard demanded by the equity and he has persued his remedy carefully and in the earliest point of time, while things are taken to be done in their normal course. Reference is made to *Krishna Singh vs. Krishna Devi*, (6).

(15) For the reason aforesated, I find no merit in this appeal and dismiss the same, however, without any orders as to costs.

S.C.K.

Before N. K. Sodhi & N. K. Agrawal, JJ

LALITA KUMARI,—*Petitioner*

versus

THE PRESIDING OFFICER & ANOTHER,—*Respondents*

CWP No. 7041 of 1997

18th September, 1997

Constitution of India, 1950—Arts. 226/227—Industrial Disputes Act, 1947—Ss. 25-F &—25 FFF—Claim for reinstatement for non-compliance of S. 25-F—Petitioner working for vocational training centre—Services terminated on account of closure of undertaking—Such termination does not amount to retrenchment—Compensation paid under provisions of S. 25-FFF—Termination legal & valid.

Held that the Vocational Training Centre, which was receiving 30% aid