

GOBIND RAM

v

GIAN CHAND

SEPTEMBER 27, 2000

[V.N. KHARE AND S.N. PHUKAN, JJ.]

*Specific Relief Act, 1963: Section 20.*

*Decree for specific performance—Grant of—Held, the grant of decree is not automatic but is one of discretion of the Court on fair, just and equitable consideration—Court should meticulously consider the facts and circumstances and motive behind the litigation.*

*Decree for specific performance—Grant of—Agreement to sell—Non-execution of sale deed due to escalation in prices of real estates—Suit for specific performance—Allowed by the Trial Court and High Court—On appeal, held it would be inequitable and unjust to deny the decree which was allowed by the Courts below when no undue or unfair advantage was taken by the party—However, to mitigate the hardship of seller, purchaser is directed to deposit a further sum as compensation.*

**Appellant agreed to sell the disputed property to respondent for certain consideration and earnest money was paid to the appellant. Subsequently, on failure to execute the sale deed within the stipulated period, respondent filed a suit for specific performance of contract which was decreed by Trial Court. On appeal, High Court holding that appellant tried to wriggle out the contract because of escalation in prices of real estate properties, dismissed the appeal with a direction to the respondent to deposit a further sum of Rs. 1,00,000. Hence the present appeal.**

**On behalf of the appellant it was contended that instead of decree for specific performance compensation may be awarded.**

**Dismissing the appeal, the Court**

**HELD: 1. Grant of a decree for specific performance of contract is not automatic and is one of discretion of the Court and the Court has to consider whether it will be fair, just and equitable Court is guided by principle of justice,**

**A** equity and good conscience. The Court should meticulously consider all facts and circumstances of the case and motive behind the litigation should also be considered. [446-B-C]

*Parakunnam Veetill Josaeph's Son Mathew v. Nedumbara Kuruvila's Son and Others*, AIR (1987) SC 2328, relied on.

**B**

*Damacherla Anjaneyulu and Anr. v. Damacheria Venkata Sesaiah and Anr.*, AIR (1987) SC 1641, distinguished.

**C** 2. In the instant case, High Court had given clear finding that the appellant tried to wriggle out of the contract between the parties because of escalation in prices of real estate properties. Thus, the respondent is entitled to get a decree as he has not taken any undue or unfair advantage over the appellant. It will be inequitable and unjust at this point of time to deny the decree to the respondent after two Courts below have decided in favour of the respondent. Further, respondent has deposited the balance of the consideration in the Trial Court and also the amount in the High Court, as directed. However, to mitigate the hardship to the appellant respondent is directed to deposit a further sum of Rs. 3,00,000. [446-E, F, G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 443 of 1994.

**E**

From the Judgment and Order dated 20.12.91 of the Delhi High Court in R.F.A. No. 50 of 1977.

Sudhir Chandra Agarwal, Ashwani Kumar, Achintaya Diwedi and P.D. Sharma for the Appellant.

**F**

P.N. Misra, Ms. Kumud Lata Das, R.M. Patanaik, A. Kumar Yadav and B. Swain for the Respondent.

The Judgment of the Court was delivered by

**G**

**PHUKAN, J.** This appeal by special leave is directed against the judgment of Delhi High Court dated 20th December, 1991 passed in RFA No. 50 of 1977.

**H** We may briefly state the undisputed facts. The appellant agreed to sale the disputed property situated at Lajpat Nagar (IV), New Delhi for a consideration of Rs. 16,000 to the respondent and accordingly on 24th January,

1973 an agreement to sale was executed and a sum of Rs. 1000 was paid as earnest money to the appellant. Respondent filed the suit for specific performance of the contract as the appellant failed to execute the sale deed within time. On 6/10/1976 the suit was decreed and the respondent deposited balance consideration of Rs. 15,000 in the Trial Court. The appeal filed by the appellant in the High Court was also dismissed by the impugned judgment dated 20th December, 1991. However, to mitigate the hardship to the appellant and as the respondent agreed to pay more sum, High Court directed the respondent to deposit a further sum of Rs. 1,00,000 which was to be released to the appellant on giving possession of the suit property. The said sum was also deposited in the registry of the High Court by the respondent and it is being kept in interest bearing fixed deposit. The appellant has filed the present appeal and that is how the parties are before us.

We have heard learned senior counsel for the parties. Only contention urged before us by the learned senior counsel for the appellant is that instead of decree for specific performance, compensation may be awarded.

At the time of issuance of notice in the special leave petition, learned senior counsel for the appellant offered to pay Rs. 1,16,000 to the respondent to cancel the contract and get out of the decree. The respondent after his appearance before this court offered another sum of Rs. 50,000 so as to make the total consideration of Rs. 1,50,000. In view of the above position leave was granted. When the matter came up before us another attempt was made for a settlement, which failed. At that time learned senior counsel for the respondent on instruction made an offer that respondent would pay further sum of Rs. 1,50,000 as consideration.

Learned senior counsel for the appellant has relied on this court's judgment in *Damacherla Anjaneyulu and Another v. Damacherla Venkata Seshaiyah and Anr.*, AIR (1987) SC 1641. On the facts of that case the court recorded the finding that in case of grant of a decree of specific performance hardship would be caused to defendant and therefore compensation was granted. Facts of present case are different.

Next decision on which learned senior counsel for the appellant relied is in *Parakunnan Veetill Joseph's Son Mathew v. Nedumbara Kuruvila's Son and Ors.*, AIR (1987) SC 2328. We may extract the relevant portion of the said judgment:

"Section 20 of the Specific Relief Act, 1963 preserves judicial discretion to Courts as to decreeing specific performance. The Court should

A meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff.”

B

It is the settled position of law that grant of a decree for specific performance of contract is not automatic and is one of discretion of the Court and the Court has to consider whether it will be fair, just and equitable. Court is guided by principle of justice, equity and good consensus. As stated in *P. V. Joseph's Son Mathew* (supra) the court should meticulously consider all facts and circumstances of the case and motive behind the litigation should also be considered.

C

High Court considering the facts of this case and observed as follows:

D

“We are conscious of the fact that the defendant has been in possession of the said quarter for the last several decades and logical consequence of affirming the Judgment of the trial court would mean considerable hardship to him, at the same time the conduct of the defendant does not justify any further indulgence by the court. We have no doubt that the defendant has tried to wriggle out of the contract between the parties because of the tremendous escalation in the prices of real estate properties all over the country and in Delhi, in particular in the last few years.”

E

In view of the above clear finding of the High Court that the appellant tried to wriggle out of the contract between the parties because of escalation in prices of real estate properties, we hold that the respondent is entitled to get a decree as he has not taken any undue or unfair advantage over the appellant. It will be inequitable and unjust at this point of time to deny the decree to the respondent after two courts below have decided in favour of the respondent. While coming to the above conclusion we have also taken note of the fact that the respondent deposited the balance of the consideration in the Trial Court and also the amount in the High Court, as directed. On the other hand appellant as held by the High Court tried to wriggle out of the contract in view of the tremendous escalation of prices of real estate properties. However, to mitigate the hardship to the appellant we direct respondent to deposit a further sum of Rs. 3,00,000 within 4 months from today with the registry of this Court and the amount shall be kept in Short Term Deposit in

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H

a nationalised bank. While giving the above direction we have taken note of the offer made to us on behalf of the respondent. This amount is to be paid to the appellant on giving his possession of the suit property to the respondent within 6 months from the date of the deposit of the above amount. The appellant shall also be entitled to withdraw the amount already deposited in the Trial Court and the amount of Rs. 1,00,000 which has been kept in Interest bearing fixed deposit in the registry of the High Court. A  
B

With the above modification of the judgment of the High Court, appeal is dismissed. However, on the facts and circumstances. of the case parties are directed to bear their own cost.

S.V.K.I.

Appeal dismissed. C