

LALIT KUMAR JAIN AND ANR. v. JAIPUR TRADERS CORPORATION PVT. LTD.

APRIL 24, 2002

[R.P. SETHI AND P. VENKATARAMA REDDI, JJ.]

*Specific Relief Act, 1963—Sections 27 and 31—Equitable Relief—Entitlement of—On facts, vendor filing suit for cancellation of sale document and physical possession of property on the ground that vendee committed breach of contract of sale and the contract stood rescinded—Trial court dismissing the suit—However, High Court decreed the suit—On appeal, held, since on facts of the case and conduct of the vendor, recession of contract by vendor not justified, he is not entitled to equitable relief—Order of High Court set aside.*

**Respondent-company executed sale deed in favour of appellants. Part of the consideration was paid before the Sub-Registrar at the time of registration of sale deed and the balance amount was to be paid in two instalments. However, before the registration, the Income Tax Certificate (ITC) was cancelled and registration of the property was stopped till fresh certificate was issued by the Income Tax Officer (ITO). Later on, the Officer restored the certificate. Respondent issued several notices to the appellants for payment of balance sale price. Appellants averred that one of the Directors of the respondent-Company agreed not to demand the balance price unless the fresh clearance certificate was obtained and also a settlement was arrived at and sum of Rs. 5,000 was paid to the said Director. Respondent in the final notice stated that the Director had no authority to give any assurance or make any commitment of behalf of the respondent-Company without any resolution of the Board of Directors. Appellant then averred that the respondent was legally bound to complete the formalities pertaining to registration and to deliver the sale deed before they could ask for the balance sale money. Thereafter, Sub-Registrar issued notice to the respondent for furnishing ITC for registrar of the sale deed. Respondent requested the Sub-Registrar to return document without registration, as the sale deed was no longer effective. Sub-Registrar refused to register the document, as ITC was not produced. But the District Registrar directed the Sub-Registrar to register the sale deed. Income Tax Officer also sent the copy of the clearance certificate to the Sub-**

**A Registrar and formalities of registration of sale deed were completed.**

Meanwhile, respondent filed suit under Section 31/27 of the Specific Relief Act for cancellation of sale deed. Trial Court held that the appellants did not commit breach of contract in not paying the balance price before the registration of sale deed and the respondent had no right to rescind the contract and also that the contract was neither voidable nor terminable by the respondent and, therefore, section 27 or 31 of the Specific Relief Act was not attracted. Respondent then filed appeal before the High Court, which was allowed.

**B**

**C** In appeal before this Court appellants contended that the requirements of section 31 or 27 are not attracted and that rescinding of executed contract on account of non-payment of balance sale consideration does not arise as the title passed to the appellants with the registration of document and delivery of possession since though the formalities of registration were completed four years later, the registration must be deemed to have related back to the date the sale deed was executed.

**D**

Respondent contended that there was no general rule that mere registration of the document without reference to other circumstances would operate to transfer the title. The clause in the sale deed prohibited transfer or assignment by the vendor till the balance money was paid; that the respondent was well justified in rescinding the contract before the actual registration of the document and the theory of dating registration to the date of sale cannot be invoked by the appellants.

**E**

Allowing the appeal, the Court

**F** HELD: 1. High Court failed to address itself to certain factors which disentitles the respondent to equitable relief before reversing the order of Trial Court. If the alleged recession or termination of contract is not justifiable on facts or having regard to the conduct of the respondent, the equitable relief under section 27 or 31 of the Specific Relief Act, 1963 has to be denied to the respondent. [455-C, D-E]

**G**

2.1. The respondent cannot on the one hand withhold the production of I.T.C., which was essential for registration, and on the other hand take the stand that appellants committed breach of contract. [456-C, D]

**H** 2.2. High Court did not advert to the agreement or understanding

arrived at between the Director of the Respondent-Company and the appellants by which demand for the payment of balance sale consideration was deferred till all the formalities are finally completed on the settlement of dispute. It may be an imprudent act on the part of the Director, going by the tenor of agreement, but, in the absence of any allegations of collusion or misrepresentation, the Court cannot disregard the agreement embodied in the letter which was believed by the trial court. The reversal by the High Court of the trial court's finding on this aspect is unwarranted and is vitiated by non-consideration of the relevant material on record. [458-A-C]

2.3. Unexplained delay of three years in filing the suit after the exchange of notices in September, 1973 is another factor which disentitles the respondent to the equitable relief under Section 27/31 of the Specific Relief Act. [458-D]

3. If the above facts and circumstances are cumulatively considered, the plaintiff has no legitimate ground to seek equitable remedy. Though the conduct on the part of the defendants is not above board, the conduct of the plaintiff, who has sought equitable remedy, should be kept uppermost in the mind of the Court. The plaintiff seeking equitable remedy cannot approach the Court with unclean hands or be guilty of laches. Irrespective of the conduct of the defendants, it must be held that the plaintiff has, for various reasons disentitled himself to the relief of cancellation of instrument and for recovery of possession from the defendants, that too after the property was substantially developed. [458-E, H; 459-A, B]

[On recording a finding that the suit was rightly dismissed by the Trial Court and setting aside the judgment of High Court, the Court directed payment of a sum of Rs. 40 lakhs to the respondent in view of the offer made and undertaking given by the appellants-defendants to that effect.]

[459-C, F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2957 of 1997.

From the Judgment and Order dated 5.7.96 of the Allahabad High Court in F.A. No. 346 of 1980.

Rakesh Diwedi, E.C. Agrawala, Shail Kr. Garg, Vijay Garg and Alok Kr. Agarwal for the Appellants.

Sudhir Chandra, Trideep Pais, Achintya Dwivedi and Jayant Bhushan

A for the Respondent.

The Judgment of the Court was delivered by

B P. VENKATARAMA REDDI, J. By the impugned judgment, the High Court at Allahabad allowed the first appeal filed by the respondent-plaintiff, decreed the suit and ordered that the plaintiff should be put in physical possession of the suit properties and the indenture (sale deed) dated 22.2.1971 should be deemed to be void and cancelled and therefore be delivered up to the plaintiff-vendor. A decree was also granted for a sum of Rs. 95,000 being the value of properties wrongfully demolished and sold, after adjustment of C Rs. 55,000 received by the plaintiff towards the sale consideration. The suit was ostensibly filed under Section 31 of the Specific Relief Act for cancellation of indenture dated 22.2.1971 and also for physical possession of the property in dispute and for recovery of Rs. 95,000 being the value of property wrongfully demolished after adjusting an amount of Rs. 55,000. The Trial D Court dismissed the suit. At the same time, it granted a decree in favour of the plaintiff for a sum of Rs. 1,45,000 representing the balance sale consideration.

The facts giving rise to the suit and the appeal are these :

E The plaintiff-Company executed a sale deed on 22.2.1971 in favour of the defendants in respect of an oil mill located at Khurja in UP State with the structures, open land, machinery and fixtures, lease-hold rights in the land etc. for a consideration of Rs. 2 lakhs. A sum of Rs. 50,000 was to be paid before the Sub-Registrar at the time of registration and it was stipulated in the sale deed that the balance amount will be paid in two instalments falling F on 15.3.1971 and 30.4.1971. It was further stipulated that the transferee shall not be entitled to deal with, sell, transfer or assign the property sold, till such time as the entire balance sale price of Rs. 1.50 lakhs was paid to the transferor. A sum of Rs. 50,000 was accordingly paid to the transferor on the date of registration. Possession was admittedly handed over to the defendants. The G respondent-plaintiff produced the income tax clearance certificate on the date of registration i.e. 22.2.1971. However, before the formalities of registration viz., copying out the deed was completed, the Sub-Registrar received a communication from the Income Tax Officer that the I.T.C. was cancelled and therefore the Sub-Registrar should stop registration of the property till a fresh certificate was issued by him. Therefore, the Sub-Registrar did not take H further steps in the matter. Moreover, the sale deed was impounded on the

ground of insufficient stamp and it was sent to the District Registrar for adjudication. By an order dated 4.1.1972, the Income Tax Officer revoked his earlier order and restored the certificate issued by him earlier. On appeal by plaintiff, the Commissioner of Income Tax directed the Income Tax Officer to issue a fresh I.T.C. instead of validating the earlier one. On 13.6.1972, a fresh I.T.C. was issued. The document which was sent for assessment of deficient stamp duty was received back by the Sub-Registrar on 3.5.1973. When there was a notice from the Sub-Registrar in August 1973 to furnish the I.T.C. for the purpose of registration, the plaintiff in its reply dt. 28.8.1973 maintained that the document was no longer effective as the contract stood rescinded on account of the breach committed by the defendants in declining payment of balance sale price. Sub-Registrar was requested to return the document without registration. The Sub-Registrar, by his order dated 19.9.1973, refused to register the document as ITC was not produced. An appeal was filed against the said order by the appellants-defendants before the District Registrar. On 16.10.1973 the appellants also filed a civil suit impleading the respondent, Sub-Registrar and also the I.T.O. for a direction that I.T.C. should be issued and the Sub-Registrar should register the sale deed. On 3.7.1976, the suit out of which the present appeal arises was filed seeking the relieves as stated above. In that suit, a disclosure was made as to obtaining the fresh I.T.C. On 24.12.1976, the District Registrar allowed the appeal and directed the Sub-Registrar to register the sale deed. In view of this subsequent event, the Income Tax Officer also sent a copy of I.T. clearance certificate to the Sub-Registrar. The formalities of registration of sale deed were then completed on 28.12.1976. The suit filed by the appellants therefore became infructuous. The appellants amended the plaint in the present suit questioning the legality of the order of Dy. Registrar and the consequential action of Sub-Registrar in registering the sale deed. On 27.08.1979, offer was made to pay the balance consideration by issuing a notice but the respondent refused to accept payment taking the stand that the matter was sub-judice. The suit in question was dismissed on 2.5.1980 subject to the direction as to the payment of balance of sale money. The money was deposited in court thereafter. The first appeal to the High Court filed by the respondent herein was allowed by the impugned judgment dated 5.7.1996.

It is now necessary to advert to certain other events that happened between the date of presentation of sale deed for registration and the date of filing of the suit including the exchange of correspondence. On 16.3.1971, plaintiff issued notice to defendants to pay Rs. 50,000 towards the first instalment specified in the indenture of sale. The defendants expressed their

- A willingness to pay the amount provided that the plaintiff obtained a fresh ITC. On 12.1.1972, a second notice was issued from the plaintiff's side informing the defendants that they have illegally withheld the payment due under the terms of sale for which they were liable to pay interest and further protesting against the demolition of portions of building and sheds and disposing of the building material and machinery. This was replied to by the
- B defendants stating that in the absence of valid Income Tax Clearance Certificate the sale deed could not be delivered after due registration and therefore they were not liable to pay the balance sale price. Moreover, the defendants referred to the fact that one of the Directors of the plaintiff-Company by name Raj Kumar Meattle agreed not to demand the balance unless the fresh clearance
- C certificate was obtained and other formalities connected to the sale were fulfilled. The alleged settlement took place on 17.1.1972 on which date a sum of Rs. 5,000 was paid to the said Director. One more fact, which according to the defendants justified the withholding of payment, was the suit filed by one Seth Shanti Lal questioning the validity of the sale. In the concluding
- D para it is stated : "I would request you not to stick to your unreasonable demand for the balance money and let the clear picture emerge. I again assure you that the balance will be paid the moment these formalities are complied". A third notice was issued by the plaintiff on 25.5.1973. By that time it may be noted that a fresh ITC was issued to the plaintiff and the document which was impounded for assessment of deficient duty was received
- E back in the office of the Sub-Registrar, Khurja. By the notice dated 25.5.1973, the plaintiff found fault with the defendants in declining payment of balance money on the ground of cancellation of ITC and alleged that the defendants committed breach of contract by wrongfully withholding the payment and also demolishing and dealing with the property quite contrary to the prohibition
- F contained in the sale deed. The plaintiff then gave last opportunity 'to make the balance sale price together with interest at the rate of one per cent per month within a period of 15 days upon which the requisite certificate under Section 230-A of the Income Tax Act will be produced'. The defendants were further warned that in case of failure to make the payment, the contract of sale dated 22.2.1971 will stand rescinded and the defendants will be liable
- G to restore the possession of all the properties covered by the sale deed and to compensate the plaintiff for the damage done to the properties. The defendants sent a reply reiterating that there was a clear agreement on 17.6.1971 arrived at on the intervention of plaintiff's Director Shri Raj Kumar Meattle and the payment of Rs. 5,000 made pursuant to such agreement. The defendants once again referred to the suit filed by Seth Shanti Lal Jain
- H imploding both the plaintiff and the defendants. The defendants also called

upon the plaintiff to bear the amount of Rs. 2,980 on account of extra stamp expenses. In the concluding para it is stated, "I hope you will wait for the payment till the formalities are completed and the suit of Seth Shanti Lal is decided finally". A month later, i.e. on 3.7.1973, the 4th and final notice came to be issued by the plaintiff. In that notice it was stated that Shri Raj Kumar Meattle had no authority to give any assurance or make any commitment on behalf of the plaintiff-Company, that too without any resolution of the Board of Directors. The plaintiff offered to give credit to the additional stamp duty said to have been paid by the defendants of Rs. 2,980. The defendants were then informed of the dismissal of the suit filed by Shanti Lal Jain for default. Moreover, the plaintiff took the stand that the suit of Shanti Lal Jain was a frivolous suit and that the pendency of the suit ought not to be a ground to withhold the payment. The plaintiff was even willing to waive the claim for interest and handover the requisite certificate under Section 230-A of the Income Tax Act, provided that balance consideration of Rs.1.50 lakhs subject to adjustment of Rs. 5,000 and the excess stamp duty, was paid to it within 15 days. The defendants were warned that if they failed to make the payment as aforesaid within the stipulated time which is of essence, the contract of sale dated 22.2.1971 shall stand rescinded in which case the defendants will have to restore all the properties to it within 15 days thereafter. On 19.7.1973, the defendants sent a reply through their lawyers wherein it was asserted that the plaintiff was legally bound to complete the formalities pertaining to registration and to deliver the sale deed before they could ask for the balance sale money. Further, the plaintiff was notified that the demand of balance money even before the suit of Seth Shanti Lal was finally decided, was unjustified. An assurance was given that the entire balance amount will be paid when all the formalities are completed and the title was proved in the pending litigation. The plaintiff was called upon to produce the ITC before 3.9.1973 as per the requisition made by the Sub-Registrar. Thereafter, the plaintiff sent a letter on 28.8.1973 to the Sub-Registrar stating that the defendants committed breach of contract of sale and therefore, the contract stood rescinded. The Sub-Registrar was informed that the document was no longer effective and the question of registration of that document on the production of ITC as required in his letter did not arise at all. The Sub-Registrar was requested to return the document without registration. It appears that the suit of Seth Shanti Lal Jain which was filed on 7.4.1971 was finally dismissed on 10.4.1978. It was dismissed for default earlier and restored.

The Trial Court held that the defendants did not commit breach of the contract in not paying the balance price before the registration of the sale

A deed and the plaintiff had no right to rescind the contract. In fact, there was no rescission because the plaintiff did not send specific intimation of rescission of contract with effect from a particular date. The learned trial Judge further held that the contract was neither voidable nor terminable by the plaintiff and therefore Section 27 or 31 of the Specific Relief Act was not attracted. According to the trial court, the sale was complete and title passed irrespective of non-payment of balance sale price. The following were the circumstances relied upon by the Trial Court for reaching the conclusion that no breach was committed by the defendants and the plaintiff was not entitled to put an end to the contract are :-

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1. The plaintiff got the I.T.C. cancelled by setting up his relative by name Shri R.K. Meattle to file a complaint;
  2. After the certificate was restored on 4.1.1972, the plaintiff instead of filing the order of I.T.O., challenged that order on the ground that fresh certificate should have been issued, for which there was no bona fides on the part of the plaintiff. Moreover, the factum of restoration or issuance of fresh clearance certificate was not intimated to the Sub-Registrar;
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3. The plaintiff having knowledge of the fact that the document has not been registered for want of I.T.C. was not justified in making demand for payment of balance money;
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4. On the intervention of Shri R.K. Meattle - one of the Directors of the plaintiff-Company, a binding agreement came into being according to which the terms of the contract as to the payment of balance money got altered. The undertaking given by Shri R.K. Meattle on 17.8.1971 was binding on the plaintiff and in fact the plaintiff acted according to that undertaking by not demanding the payment for about a year; and
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5. On account of the suit filed by Seth Shanti Lal Jain in the year 1971 claiming to be the co-owner of the properties, there was a bona fide doubt in the mind of the defendants as regards title and that is the reason why a commitment was made by the plaintiff through its Director, Shri R.K. Meattle.
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6. In the circumstances of the case the time for payment stipulated in the sale deed cannot be regarded as the essence of the contract.

H The learned trial Judge observed thus :-

“In fact, it was a breach of the contract from the side of the plaintiff, who deliberately did not manage the affairs in such a way that the clearance certificate may be produced before the Sub Registrar, Khurja, at an earliest and the registration of the document could be completed. It appears to me that the plaintiff was only interested in the payment of balance sale consideration of Rs. One lac fifty thousand and he was not interested in the registration of the document. The circumstances and conduct of the plaintiff are as such which go against the plaintiff and show that it was the plaintiff on whose account the document could not be registered. The non payment on the stipulated dates by the defendants was justifiable because the time was not the essence of the contract.”

The High Court was of the view that under the contract title to the property would pass only on the payment of the entire sale consideration, that the Trial Court committed an error of law by holding that time was not essence of the contract and title had passed even before the payment of balance money. The High Court then observed that Section 47 of the Registration Act does not come to the aid of the defendants because the contract was terminated for valid reason before the document was registered. Referring to the suit of Seth Shanti Lal Jain, the High Court observed that the defendants having enjoyed property after taking possession should have made the payment first and sue the plaintiff for indemnification, if necessary. Referring to the alleged agreement entered into between Shri R.K. Meattle and the defendants, the High Court observed that the alleged agreement was not believable. The High Court then observed that the appellant should have made the payment at least after the final notice sent in July, 1973, wherein it was mentioned that I.T.C. was procured and the sale deed could be got registered on payment of balance money. The High Court was therefore of the view that the defendants failed to fulfil the contractual obligation on their part and therefore the contract was voidable and could be repudiated by the plaintiff. The appeal was therefore allowed and the suit was decreed.

It is the contention of the appellants that the requirements of either Section 31 or 27 are not attracted to the present case and therefore the suit itself is misconceived. It is contended that the rescission of executed contract on account of non-payment of balance sale consideration does not arise as the title passed to the appellants with the registration of document and delivery of possession. Though the formalities of registration were completed on 24.12.1976, the registration, by virtue of Section 47 of Indian Registration

A Act must be deemed to have related back to the date the sale deed was executed i.e. 22.2.1971. Therefore, the so-called rescission for the alleged breach of the terms of the contract subsequent to its execution has no legal sanctity. The only remedy of the plaintiff was to recover the balance sale price for which a statutory charge is provided in respect of the property. It is pointed out that the view taken by the High Court that the payment of balance money on the stipulated dates was a condition precedent for passing the title is erroneous in law. The restriction against sale, transfer or assignment offends Section 10 of the Property Act; moreover, such a condition does not detract from the irrevocable nature of sale transaction. It is submitted that the contract is neither voidable nor terminable by the plaintiff and therefore the conditions requisite for seeking relief under Section 27 or 31 of the Specific Relief Act are not attracted. The plaintiff could not unilaterally put an end to the contract under Section 39 of the Contract Act on the ground that the defendants refused to perform the promise to pay the balance money within the stipulated time as Section 39 is wholly inapplicable to the contract which was complete and which had been acted upon. In any case, it is submitted that there was no breach of the contractual terms by the appellant and there was ample justification for non-payment of balance sale price within the time stipulated in the sale deed or in the notice issued by the plaintiff. Reliance in this connection is based on the findings of the Trial Court.

E On the other hand, it is contended on behalf of the respondents (defendants) that there was no general rule that mere registration of the document without reference to other circumstances would operate to transfer the title. The clause in the sale deed prohibiting transfer or assignment by the vendor till the balance money was paid spells out an intention to make the passing of title conditional on payment thereof. In any case, it is submitted that the plaintiff was well justified in rescinding the contract in the year 1973 before the actual registration of the document and therefore the registration does not impart any sanctity to the purported sale. Section 47 of the Registration Act has no application in this fact situation and the theory of dating back cannot be invoked by the defendants. The refusal to pay the balance sale consideration on the ground of pendency of suit of Seth Shanti Lal and the alleged agreement with one of the Directors of the plaintiff-Company is wholly untenable and amounts to refusal to perform the contract within the meaning of Section 39 of the Contract Act. The contract, it is submitted, is voidable on account of persistent refusal by the defendants to pay the balance sale consideration even after the notice was given by the plaintiff making the time the essence of contract. Having thus clarified the

legal position, the learned senior counsel for the respondents have taken us through the correspondence and the findings of the High Court in support of his argument that the plaintiff was amply justified in putting an end to the contract when it became apparent that the defendants were in no mood to fulfil the essential promise under the contract. Finally, the learned senior counsel contended that the conduct of the defendants was most reprehensible. Having taken possession and started enjoying the property soon after the execution of the sale deed and even gone to the extent of demolishing the structures, failed to pay the balance money. On these grounds, the judgment under appeal is sought to be supported by the learned counsel for the respondents.

We are of the view that the High Court failed to address itself to certain crucial factors which disentitles the plaintiff to equitable relief. The High Court reversed a well considered judgment of trial court without adverting to the reasoning of trial court except in a cursory manner. In the view we are taking, it is not necessary for us to dilate on various legal issues debated before us. We shall proceed on the basis that in law the plaintiff could annul the contract of sale before the act of registration got completed and title passed to the appellants. We shall further assume that the plaintiff in fact rescinded the contract with effect from the date of expiry of the time stipulated in the 4th and final notice dated 3.7.1973. If such rescission or termination of contract is not justifiable on facts or having regard to the conduct of the plaintiff, the equitable relief under Section 27 or 31 of the Specific Relief Act has to be denied to the plaintiff, no further question arises for consideration. In such a case, the appellants' plea has to be accepted and the suit is liable to be dismissed.

Before we proceed further, we would like to make it clear that it is not our endeavour to re-appreciate the evidence on record and to disturb the findings of fact, had they been arrived at on a consideration of all the relevant matters and the evidence on record. Let us now take stock of those relevant and important aspects. The first aspect which needs to be adverted to is the conduct of the plaintiff vis-a-vis the production of Income Tax clearance certificate. On a petition filed by the nephew of one of the Directors of plaintiff-Company, the ITC was cancelled when the document was about to be registered. This fact was admitted by Shri B.D. Meattle, Director of the plaintiff-Company, who was examined as a witness for the plaintiff. The finding of the trial court is that the complaint was filed at the instance of the plaintiff. This part of the finding of the trial Court is based on probabilities,

A though not positive evidence, coupled with the fact that the circumstances in which the nephew filed the petition were not explained by the plaintiff's witness. The second aspect which evoked adverse comments of the trial Court is the fact that after the ITC was restored by the Income Tax Officer, the plaintiff challenged the order of the ITO contending that it was an illegal order and a fresh certificate should have been issued. This move on the part of the plaintiff was evidently meant to delay the process of registration and casts any amount of doubt on the bona fides of plaintiff. Moreover, even after obtaining a fresh certificate pursuant to the order passed by the higher authority, the plaintiff did not make the defendants or the Sub-Registrar aware of this fact for more than a year. It was only in the letter dated 3.7.1973, an indication was given that the certificate under Section 230(A) of Income Tax Act was available. What is more surprising is that the plaintiff returned the certificate to Income Tax Office on 10.9.1974 (vide paras 34 and 35 of trial Court's judgment). These facts noticed and commented upon by the Trial Court were not at all adverted to by the High Court. The plaintiff cannot on the one hand withhold the production of I.T.C. which was essential for registration and on the other hand take the stand that the defendants committed breach of contract.

The other important aspect which did not receive due consideration from the High Court is the agreement or understanding arrived at between the Director of the plaintiff-Company - Shri R.K. Meattle and the defendants on 12.8.1971. By that time, a suit was filed by one Shri Shanti Lal Jain claiming rights over the suit schedule property. The plaintiff and the defendants in the present suit were also impleaded therein. At that juncture, informal agreement was reached. The agreement couched in the form of a letter reads as follows:

Dear Sir,

Yesterday Shri R.K. Meattle, a Director of your firm came to us and requested to pay a sum of Rs. 5,000 against the arrears of the sale deed executed by your firm in our favour for the expenses to get the dispute decided so that formality of sale deed may be completed soon with the assurance that your firm will not claim further any amount, out of arrears till all the formalities are finally completed.

Yours faithfully

(Raj Kr. Poddar)  
(Lalit Kumar Jain, Khurja)

Yes, this is our proposal and  
our firm agrees on this settlement  
(Sd) 12.8.1971  
Director  
For Jaipur Trading Corp. (P) Ltd.

The commitment made in this letter was construed by the trial Court as a change in the terms of the contract by reason of which the demand for the payment of balance sale consideration was deferred till all the formalities were completed and the litigation was settled. The contention that Shri R.K. Meattle acted without authority and therefore the commitment made by him was not binding on the plaintiff-Company was not accepted by the Trial Court. The High Court reversed this finding on the ground that no prudent person would agree to such arrangement which had the effect of postponing the demand of balance sale price till the dispute was settled and/or the formalities of registration were completed. The High Court observed that in the absence of proper authorisation by the Company, the alleged undertaking was not believable. Whether the alleged agreement is true and binding is no doubt primarily a question of fact. But for the fact that the High Court overlooked certain material factors which have vital bearing in arriving at a finding on this point, this Court would not have thought of probing into a factual aspect. The averments in the plaint and the material portion of the deposition of the plaintiff's witness were not adverted to while reaching a finding in this regard. In the plaint, the factum of sending Shri R.K. Meattle to the defendants and Shri R.K. Meattle signing the letter are admitted. But, what is stated in the plaint is that Shri Meattle was not authorised to do so. When we come to the deposition of Shri B.D. Meattle examined as P.W.1, a version was put forward that the letter was got forcibly written by the defendants. If that is so, and if the private limited company having two Directors at the relevant point of time (R.K. Meattle and B.N. Ahuja) did not approve of the action of R.K. Meattle, why did the plaintiff keep silent for nearly two years without questioning the authority of Shri Meattle? This question remained practically un-answered. Shri B.D. Meattle merely stated that the defendants had no money and therefore they sought time. It is needless to say that this explanation is vague and irrelevant. Another important fact is that the bank draft for the amount of Rs. 5,000 received from the defendants was not returned and it is not the case of the plaintiff that the draft was not credited to their account. When Shri B.D. Meattle (P.W.1) was confronted with this fact, he came forward with a peculiar explanation that the relationship was not so much strained and therefore the bank draft was not returned. If

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A at all, this is a factor which goes in favour of the defendants rather than the plaintiff. All this would show that the plaintiff consciously agreed to honour the understanding arrived at between the Director of the Company Shri R.K. Meattle and the defendants which was reduced into writing in the form of a letter. If that agreement is true and binding, as has been held by the Trial Court, the plaintiff could not have rescinded the contract in September 1973, despite the fact that the suit filed by Seth Shanti Lal Jain was pending and the formalities requisite for completion of registration were not completed. It may be an imprudent act on the part of Shri R.K. Meattle, going by the tenor of agreement, but, in the absence of any allegations of collusion and misrepresentation, the Court cannot disregard the agreement embodied in the letter dated 12.8.1971 which was believed by the trial Court. We are, therefore, of the view that reversal by the High Court of the trial Court's finding on this aspect is unwarranted and as already noted, is vitiated by non-consideration of the relevant material on record. This Court has, therefore, no option but to disturb the factual finding reached by the High Court.

D One more fact which disentitles the plaintiff to the equitable relief under Section 27/31 of the Specific Relief Act is the un-explained delay in filing the suit after the exchange of notices in September 1973. Almost three years later, the suit was filed. This inaction has its own revelation. Either the plaintiff did not stand by his declaration to rescind the contract, as held by the trial Court, or the plaintiff was sitting on the fence and waiting to see whether the turn of events would be to his advantage or disadvantage.

If the above facts and circumstances are cumulatively considered, the plaintiff has no legitimate ground to seek the equitable remedy. While these are the factors that can be put against the plaintiff, the defendants-appellants are not free from blame. We cannot lose sight of the fact that their conduct is also open to question. The defendants, in the initial stages, insisted on income-tax clearance certificate. When the defendants were informed of the readiness of the plaintiff to hand over the ITC subject to payment of balance money within 15 days, the defendants then raised the plea of pendency of the suit of Seth Shanti Lal which was by then dismissed for default. The factum of dismissal of suit was intimated to the defendants through the notice dated 3.7.1973, though the suit was subsequently restored and was finally dismissed in the year 1978. The fact remains that the defendants who, in the initial stages, were prepared to pay the balance sale price on receipt of ITC, for reasons best known to them, dodged to make the payment on the ground of pendency of suit. Though this conduct on the part of the defendants is not

above board, the conduct of the plaintiff, who has sought equitable remedy, should be kept uppermost in the mind of the Court. The plaintiff seeking equitable remedy cannot approach the Court with unclean hands or be guilty of laches. Irrespective of the conduct of the defendants we must hold that the plaintiff has, for various reasons discussed above, disentitled himself to the relief of cancellation of instrument and for recovery of possession from the defendants that too after the property was substantially developed.

The result of the foregoing discussion is that the suit is liable to be dismissed and it has been rightly dismissed by the trial Court. However, in view of the fact that the defendants are not free from blame as discussed above and they have utilised the property to the best of their advantage right from day one without, at the same time, paying the balance sale price for several years we put it to the counsel for the appellants whether they are willing to pay to the plaintiff a substantial amount over and above the sale price already deposited in the Court, in order to do justice to the parties. In fact, in the course of arguments by the learned counsel for the appellants, there was an indication that the appellants were prepared to offer a reasonable amount, without prejudice to their contentions. The learned counsel for the appellants has filed a letter dated 18.04.2002 stating that "the appellants can pay and agree to pay a further sum of Rs. 35 lacs (Rupees thirty five lacs) in 3 instalments of Rs. 15 lacs and Rs. 10 lacs and Rs. 10 lacs," in three weeks, by the end of August and by the end of November, 2002 respectively. When we suggested to the learned counsel that it would be fair if some more amount is offered, the learned counsel for the appellants agreed on behalf of his clients for payment of Rs. 40 lacs in lump sum within a period of six months commencing from today. Having regard to the offer made in the letter coupled with the oral representation made today and to mete out justice to the parties, we direct that the undertaking to pay the sum of Rs. 40 lacs within six months should form part of the decree in the suit. This shall be in addition to the sale price already deposited in the Court. The same shall be deposited in the Court within a period of six months and the plaintiffs are entitled to withdraw the same in addition to the amount already deposited.

The judgment of the High Court is set aside and the appeal is allowed subject to the direction as given above. With regard to the deposit of the said additional sum of Rs. 40 lacs, the decree of the trial Court shall stand modified accordingly. Parties are left to bear their own costs.