

(2003) 02 MAD CK 0087

In the Madras High Court

Case No : O.S.A. No. 163 of 1994

Garuda Chit and Trading Co. P. Ltd., T.P. Narayanan,
Chairman and Director, Garuda Chit and Trading Co. P. Ltd.
and T.K. Gopinath, Managing Director

APPELLANT

Vs

Coramandel Indag Products P. Ltd.

RESPONDENT

Date of Decision : 17-02-2003

Acts Referred:

Original Side Rules — Order 36 Rule 1

Citation : (2003) 1 LW 696 : (2003) 1 MLJ 707

Hon'ble Judges : S. Jagadeesan, J;D. Murugesan, J

Bench : Division Bench

Advocate : R. Krishnaswami for T.N. Unni Nambiar, for the Appellant; Vijay Narain, for the Respondent

Final Decision : Allowed

Judgement

S. Jagadeesan, J.—The appeal is against the judgment and decree dated 1.6.1993 in C.S. No. 287 of 1982 granting the relief of specific

performance in favour of the respondent. The respondent herein filed the said suit for specific performance of an agreement of sale dated

28.8.1981 entered into between the respondent and the first appellant, represented by the appellants 2 and 3. The case of the respondent is that

the first appellant, represented by their Director Mr. T.V. Raghavan negotiated for the sale of the building and vacant site at No. 46, Cathedral

Road, Madras-86 belonging to the first appellant herein. After the terms were agreed, on 28.8.1981 an agreement of sale was signed on behalf of

the respondent by its Director Mr. T.V. Raghavan and on behalf of the first appellant by its General Manager and Power Holder Mr. K.S. Hari.

On the date of the said agreement a sum of Rs.2 lakhs was paid to the first

appellant by way of advance and the sale consideration was fixed at Rs.82 lakhs. The suit agreement was entered into pending investigation of the title of the first appellant in respect of the suit property. The terms of the suit agreement would reveal that the first appellant was under obligation to produce all documents of title for the investigation of their title and the sale shall be subject to the approval of the first appellant's title by the respondents' advocate. As per the terms of the agreement, the respondent called upon the first appellant and their Directors, the second and third appellants herein, to furnish the documents of title in their possession, the details of encumbrance on the property and also the Income Tax Clearance Certificate which are necessary to complete the sale.

The first appellant did not respond properly and due to the conduct of the first appellant, the respondent was forced to approach the appellants 2 and 3 for completion of the sale. The second and third respondents promised to comply with the formalities without any undue delay. In the meeting held between the parties on 7.9.1981 the appellants agreed to furnish all the documents needed by the respondent within 2 or 3 days. The respondent also agreed to get ready to pay the balance of sale consideration as per the terms of the agreement of sale within one week from the date of the appellant's made available of the documents. On 9th September, 1981 the first appellant's Manager called on the respondent and showed the Income Tax Clearance Certificate and renewed the request of the first appellant for further payment of Rs.10 lakhs, as advance pending finalisation of the sale. Since the appellants failed to furnish the necessary documents, the respondent, by their letter dated 14.9.1991 requested the first appellant to furnish the documents and particulars, as the respondent wanted to complete the sale, since huge funds were blocked. The first appellant by their letter dated 15.9.1991 called upon the respondent to expedite the sale by making certain false and untenable allegations. Even though the first appellant was called upon to produce as many as nine documents, they did not produce any document and also any information pertaining to those documents. Once again by letter dated 19.9.1981 the respondent called upon the first appellant to furnish the solvency certificate. The second appellant expressed his apologies for the delay and undertook to produce the same as soon as the auditing of the

accounting year ending 31.3.1981 was completed and further he demanded an additional advance of Rs.10 lakhs. The respondent paid a sum of

Rs.5 lakhs on 21.9.1981 on the undertaking that the first appellant will furnish rest of the documents by 30.9.1981 and the advances so far paid

will be held by the first appellant on trust for the respondent. It was also agreed that on production of such document an additional advance of Rs.5

lakhs to be paid, at any rate not later than the first week of October, 1981. However, the first appellant failed to keep up the promise. Taking into

consideration of the efforts of the second appellant to get the Urban Land Clearance, the respondent herein paid a further sum of Rs.5 lakhs on

6.10.1981 and the total sum of Rs.12 lakhs so far paid shall be held by the appellant under trust. The appellant agreed to furnish all the documents

and the information needed by the respondent by 10th October, 1981 and the respondent was advised to have the document of sale kept ready

for execution. The second appellant was unable to get the exemption from the Government in the Urban Land Ceiling matter and they requested

time for the completion of the formalities till December, 1981. The second appellant further requested for a sum of Rs.2 lakhs, as the same was

required to meet certain statutory compliance which was a charge on the property. Since the liability is only to the tune of Rs.1,10,000/- the

respondent paid the said sum by way of cheque and thereby the total advance amount paid was Rs.13,10,000/-. In spite of the same the appellants

failed to discharge their obligations and protracted the proceedings which ultimately forced the respondent to file the suit for specific performance.

In the suit the respondent also sought for the leave to reserve their right to sue the appellants for damages caused and continued to be caused for

the reasons of the delay in performing the contract and other consequential reliefs.

2. The appellants 1 and 3 filed the written statement contending that the respondent did not possess the necessary funds and as such they were not

ready and willing to perform their obligations under the suit agreement. When they were not ready and willing to perform their obligation, they are

not entitled for the discretionary relief of specific performance. The respondents, through their counsel, satisfied with regard to the title of the

appellants and thereafter prepared the draft sale deed and also applied for the Income Tax Clearance Certificate as required u/s 230-A of the

Income Tax Act. Having obtained the Income Tax Clearance Certificate, there is no other formality between the parties to be complied with

except the execution of the sale deed by the appellants in accordance with the conditions imposed in the suit agreement. The appellants paid the

necessary taxes pertaining to the property and also agreed to discharge the mortgage. The respondent, instead of coming forward to comply with

the conditions, sent communications, calling for unnecessary particulars to gain time. The respondent is now taking shelter under Clause 3 and 4 of

the suit agreement just to explain the default committed by them. When the Land Ceiling Act was intervened, the respondent insisted for the

clearance from the concerned authorities which was never contemplated under the suit agreement. Similarly the furnishing of balance sheet and the

Solvency Certificate pertaining to the first appellant was also never contemplated. The respondent, however, insisted for the compliance of the

conditions which were never contemplated under the suit agreement and to their advantage delayed the compliance of their part under the suit

agreement. Though the appellants are not bound to get the Urban Land Ceiling Clearance, however, they applied for the same at the instance of

the respondent. It was never agreed that the appellants will furnish all the necessary documents asked for by the respondent except those

pertaining to the title of the property. In fact with an additional sum of Rs.2,45,000/- the mortgage on the property was discharged. The appellants,

realising that the respondent had not been able to provide funds, wanted to refund the amount and made arrangement for the same. The repeated

notices sent by the respondent is clear that they are creating documentary evidence to suit their convenience to throw the blame on the appellants,

as if the appellants failed to perform their part of the obligations under the suit agreement. The allegation made by the respondent that they

discharged their part of the obligations under the suit agreement is neither true nor sustainable. Even though the appellants discharged their

obligations under the suit agreement, the respondent alone totally failed to comply with the terms of the suit agreement. Because of the failure on

the part of the respondent to comply with their obligations, the suit agreement came to an end and the appellants are entitled to forfeit a sum of

Rs.1 lakh as liquidated damages out of the advance amount paid by the respondent. The appellants are ready and willing to return the advance

amount to the respondent without any reservation. The suit is liable to be dismissed.

3. An additional written statement was filed by the second appellant which was also almost in terms of the written statement filed by the appellants

1 and 3. He has further stated that as the appellants were in need of funds, they accepted the further advance offered by the respondent with the

belief that the respondent will proceed with the transaction without any delay. Contrary to the belief of the appellants, the respondent was trying to

delay the completion of the transaction. The second appellant never gave any personal assurances to the respondent as alleged in the plaint.

Further it is stated that the suit itself is not maintainable as on the date of filing of the suit a winding up petition against the first appellant company

was pending before the High Court of Judicature at Bombay. A Provisional Liquidator was also appointed and subsequently he was discharged.

The first appellant company moved the Bombay High Court for sanctioning of the scheme of compromise and the same was pending. As the

respondent failed to comply with their obligation by paying the balance of sale consideration and complete the sale by 9.9.1981 or on any other

subsequent dates, the appellants were put to hardship in the hands of their creditors which culminated in the winding up proceedings. The

respondents, having abandoned the agreement by their failure to fulfill the terms of the agreement, are not entitled for the discretionary relief.

Further if the relief of specific performance is granted to the respondents it will amount to conferring an unfair advantage on them; especially taking

into consideration of the sequence of events and the fact that the respondent did not have sufficient funds to complete the transaction.

4. The respondent filed a detailed reply statement. However, we are not concerned with so much of the details. Hence only the relevant materials

alone is being considered for the disposal of this appeal. The respondent has furnished the particulars with regard to the purchase of other

properties subsequent to the suit agreement to establish that they have got the necessary funds and to deny the averments made by the appellants in

their written statement. The respondent further stated that as per the provisions of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 the

clearance is required from the Government as there is a statutory bar for the alienation of the lands. Hence the respondent insisted for the

Exemption Certificate from the Government. They also insisted for the production of the Encumbrance Certificate, the latest audited balance sheet, list of creditors of the company, Solvency Certificate and other documents to satisfy themselves with regard to the title of the property and also regarding the other commitments. These particulars were sought for only to safeguard the interest of the appellants and also to find out the marketable title of the appellants. Hence it cannot be said that the requisite particulars sought for by the respondent is immaterial or to delay the completion of the transaction. The respondent further calculated the interest for the advance amount and the rent received by the appellants from the suit property and given credit to those amounts towards the balance of sale consideration. Virtually as per the calculation, the appellants have to pay to the respondent and pleaded in such circumstances the respondent is entitled for the specific performance.

5. On the above pleadings, the following issues were framed by the learned Judge:

(1) Whether the plaintiff is entitled to specific performance of the agreement dated 28.8.1981 entered into between the plaintiff and the first defendant with reference to the building, ground and premises bearing door No. 45, Cathedral Road, Madras-86?

(2) Whether the plaintiff has always been ready and willing to perform its obligation under the agreement of sale?

6. After considering both oral as well as documentary evidence, the learned Judge by judgment and decree dated 1.6.1993 decreed the suit in favour of the respondent and the relief of specific performance was granted. As against the same the present appeal has been filed.

7. The learned senior counsel for the appellants contended that the appellants agreed to sell the suit property to the respondent mainly to discharge their liability, as they were facing the winding up proceeding. Due to the urgency and immediate necessity the appellants agreed to receive a sum of Rs.48 lakhs at the time of registration of the sale deed and the balance of the sale consideration of Rs.32 lakhs on three monthly installments. When the appellants agreed to receive the balance of sale consideration after the execution of the sale deed and after handing over possession of a portion of the property by attorning the tenancy in favour of the respondents, it should be construed that the time is the essence of the contract. As

per the agreement it is for the appellants to produce the Income Tax Certificate and the documents pertaining to the title. The learned counsel for

the respondent, having satisfied with the title, handed over the draft sale deed for the purpose of obtaining the Income Tax Clearance Certificate.

The appellants duly obtained the same and handed over to the respondent. Thereafter the respondent raised unnecessary query and delayed the

completion of the transaction. The conduct of the respondents in raising such unnecessary query would lead to an inference that the respondents

are not ready and willing to perform their part of the contract due to their financial strain. In fact by raising the unnecessary queries and seeking

certain clarification the respondent bent upon to delay the completion of the transaction, thereby gaining time. The plea put forth by the respondent

that they purchased some properties subsequent to the suit agreement to the tune of Rs.1 Crore will not lend any support to the respondent about

their financial condition or their readiness to complete the sale transaction. The respondents purchased those properties only by raising loan and as

such their balance sheet will have no relevance to the real financial condition of the respondents. The learned Judge was carried away by the

balance sheet produced by the respondents in coming to the conclusion that the respondents are in a sound financial position and they are ready to

discharge their obligation. While the learned Judge found that the appellants had delayed the completion of the transaction, the learned Judge totally

failed to consider as to whether the appellants are bound to produce the documents sought for by the respondent in terms of the suit agreement.

Further the insistence on the part of the respondent to produce the exemption certificate from the Urban Land Ceiling Authorities which is not

contemplated in the agreement would nullify the suit agreement itself. If the respondents are of the view that the suit property attracts the purview of

the Land Ceiling Act, then the transaction itself would become illegal in accordance with the provisions of the said Act. When the transaction is an

illegal one, then the parties are not entitled to enforce the same. On that ground the suit agreement has become frustrated. On this short ground the

respondents are not entitled for the specific performance as prayed for.

8. On the contrary, the learned counsel for the respondent contended that the suit agreement envisages a condition as per which the appellants are

obliged to furnish all particulars that are being asked for by the respondent in order to establish a clear title over the property. Hence on the basis of the particulars sought for from the appellants it cannot be construed as to either the respondent is avoiding or delaying the completion of the suit agreement. When the respondent invested a huge sum and being a company it is for them to satisfy themselves with regard to the clear title of the suit property; especially when the appellants are facing the winding up proceeding. Whenever any doubt arises with regard to the title of the appellants, in order to clear the cloud, it is always open to the respondent, as a prudent purchaser, to request the appellants to remove such cloud, in order to avoid any trouble at a future point of time. When there is no dispute that the respondent had purchased some other properties subsequent to the suit agreement, that itself is a clear proof that the respondent is in a sound financial position. Even assuming that the properties have been purchased by raising loans, it also will be a clear proof that the respondent is in a position to raise funds for the purchase of the suit property to discharge their obligation under the suit agreement. Hence it cannot be said that the respondents are totally in lack of funds and tried to delay or avoid the suit agreement. The respondent, having parted with a sum of Rs.13 lakhs, had deprived of the benefit of such funds for quite long period; whereas the appellants are deriving the rental income from the suit property which is not less than Rs.7 lakhs per month. When that be so, the appellants cannot be said to be aggrieved persons by prolongation of the completion of the transaction by the respondent. On the contrary, by the conduct of the appellants in not furnishing the necessary particulars sought for by the respondent, the appellants were benefited and hence the delay cannot be said to be an adverse factor for granting the discretionary relief. Even assuming that the appellants should be compensated by enhancing the price of the suit property, taking judicial notice of the fact that nearly two decades had passed after the suit agreement, this court can reasonably enhance the price and determine the same on the principles laid down by the Apex Court in the judgment reported in NIRMALA ANAND v. ADVENT CORPORATION PVT. LTD 2002 (2) CTC 554. In so far as the time is the essence of the contract is concerned, it is the contention of the learned counsel for the respondent that normally in the sale of immovable property, time cannot be said to be the essence of the

contract unless and until it is specifically established that the intention of the parties is to treat the time as the essence of the contract. In the case on hand, the appellant agreed thrice for extension of time by receiving the additional advance amount which being treated as the trust amount in the hands of the appellants. When that be so, the intention of the parties is not to treat the time as the essence of the agreement. Hence there is absolutely no need for any interference in the judgment of the learned Judge.

9. The following points arise for consideration in this appeal:

(i) Whether the time is the essence of the contract in respect of the suit agreement dated 28.8.1981.

(ii) Whether the respondents are not ready and willing to perform their part of the contract and thereby they are not entitled for the discretionary relief of the suit agreement?

(iii) Whether the respondent is justified in giving the adjustment to the rents from the suit property and plead that the respondent is not obliged to pay the entire balance of the sale consideration or in reserving their right for compensation?

(iv) Whether the respondent will have undue advantage by granting the discretionary relief of specific performance; especially when two decades had lapsed after the suit agreement?

(v) To what equitable relief the parties are entitled to?

10. Issue No. 1: To draw the attention of the court that it was agreed between the parties that time is the essence of the contract, the learned counsel for the appellants relied upon the preamble in the suit agreement which is as follows:

AND whereas the Vendor requires substantial liquid cash for meeting its business purposes and has therefore decided to sell the said property in view of the prevailing advantageous market conditions.

From the above clause, the learned counsel for the appellants contended that the necessity for the appellants to sell the property was that they were in requirement of substantial liquid cash for meeting their business purposes. When the purpose of sale itself is to have the benefit of the immediate liquid cash, naturally the time is the essence of the contract; otherwise the purpose of the sale itself is being lost.

11. He also relied upon Clause 6 of the suit agreement. As per the said clause, the sale is to be completed on or before 5.9.1981 or within one

week from the date of furnishing the certificate u/s 230-A of the Income Tax Act, 1981 by the vendor, whichever is later, upon payment of Rs.48

lakhs out of the purchase money by the purchaser to the vendor.

12. He also relied upon Clause 7 of the suit agreement which provides for the payment of the balance of sale consideration of Rs.32 lakhs on

monthly installments viz., Rs.10 lakhs on or before 7.10.1981 and Rs.11 lakhs each on or before 7.11.1981 and 7.12.1981 respectively.

13. From these clauses, the learned senior counsel for the appellants contended that it was agreed between the parties that the sale was to be

completed by 5.9.1981 or within one week from the date of furnishing of the Income Tax Clearance Certificate. In the case on hand, the

appellants having furnished the Income Tax Clearance Certificate dated 9.9.1981 there is no excuse for the respondents in not getting the sale

deed registered by paying Rs.48 lakhs. When there was a specific understanding between the parties within which period the sale was to be

completed, it has to be construed that the intention of the parties was to treat the time as the essence of the agreement.

14. Further relying upon Clause 7 it was contended that the appellants had agreed to receive the balance of Rs.32 lakhs on installments from

October to December, 1981; that too after the registration of the sale deed which itself is a clear proof for the understanding of the parties that the

time is the essence of the agreement and the requirement of the immediate cash by the appellants.

15. To controvert the above contention, the learned counsel for the respondents relied upon Clauses 3 and 4 of the agreement which are as

follows:

The Vendors shall produce or cause to be produced to the purchaser all the documents of title in their possession or control or relating to the said

property for the investigation of the Vendor's title thereto.

The sale shall be subject to the approval of the title of the vendor to the said property agreed to be sold herein by the advocate for the purchaser

and the Vendor shall at its own costs and expenses get in all outstandings estates and clear all defects in title and encumbrances and claims on or to

the said property.

On the basis of the above clauses he contended that it is for the appellants to produce the documents pertaining to the title and also the necessary

certificate to clear all the doubts of title and encumbrance. Though the appellants produced the Income Tax Clearance Certificate, they failed to

produce the certificate asked for by the respondents in their letter dated 14.9.1981. When the respondent being the purchaser, they are entitled for

the clearance of all doubts in respect of the title; especially when they are to invest a huge sum of Rs.82 lakhs. Further though a sum of Rs.2 lakhs

was paid on the date of the suit agreement on 28.8.1981, a further sum of Rs.5 lakhs was paid on 21.9.1981 and further sum of Rs.5 lakhs on

6.10.1981 as well as Rs.1,10,000/- on 19.12.1981 were paid to the appellant. On each date, by mutual agreement there was postponement of

the completion of the agreement. When that be so, it cannot be said that the time is the essence of the agreement.

16. While considering this issue, we have to take into consideration of the oral evidence let in by the parties. On behalf of the respondent, one

James Fadric was examined as P.W.1. He has stated in the cross examination that the appellant company wanted to sell the property, since they

had cash crunch problem. Further there was no dispute that the appellants company was facing liquidation proceeding before the Bombay court.

The appellants also filed an application before the company court at Bombay for settlement of the scheme to avoid the liquidation. If this is taken

together with the recital in the sale agreement that the appellants required substantial liquid cash for meeting its business purposes, then there cannot

be any dispute that the appellants had decided to sell the property to meet the immediate need of their creditors. The agreement was dated

28.8.1981 on which date a sum of Rs.2 lakhs was paid as advance. Within three weeks on 21.9.1981 a further sum of Rs.5 lakhs was paid and

by mutual consent the time was extended to 30.9.1981. Again within hardly two weeks on 6.10.1981 another sum of Rs.5 lakhs was advanced by

the respondent and the time for completion of the sale agreement was extended upto 14.10.1981. Then on 19.12.1981 for the third time the time

was extended for the completion of the transaction upto 31.10.1981 on payment of Rs.1,10,000/-.

17. When we consider the payment of money in the short intervals and also the extension of time for the completion of the transaction in the short intervals on each endorsement, it would clearly reveal that the parties wanted to complete the transaction as early as possible without extending the time for longer duration. The need for such short term extension would reveal that the parties intended to treat the time as the essence of the agreement by virtue of the immediate need of money for the appellants to discharge their liability to their creditors as well as the investors and also to avoid liquidation proceeding. As per Clause 7 of the agreement, at the time of registration of the sale deed the respondent is to pay a sum of Rs.50 lakhs, deducting the advance amounts already paid and the appellants have to attorn the tenancy. The balance of Rs.32 lakhs is to be paid after the registration of the sale deed on monthly instalments. When the appellants agreed to receive Rs.32 lakhs on installments after the registration of the sale deed that itself shows that the appellants were in immediate need of a sum of Rs.50 lakhs. This would also reveal that the intention of the parties is to treat the time as the essence of the contract. Hence, in our view, so far as this issue is concerned, the time is the essence of the agreement and we answer this issue accordingly in favour of the appellants.

18. Issue Nos.2 and 3: So far as readiness and willingness is concerned, the learned counsel for the appellants contended that the conduct of the respondent in asking for the particulars which are not provided in the terms of the agreement would itself explicitly reveal their intention that they wanted to delay the proceeding.

19. On the contrary, the learned counsel for the respondent contended that his client is justified in asking for the particulars in order to satisfy about the title of the suit property.

20. Both rely upon Clauses 3, 4 and 10 of the suit agreement. As per Clause 3 the appellants have to produce to the respondent all documents of title in their possession or control or relating to the suit property for the investigation. As per Clause 4 of the suit agreement the sale is subject to the approval of title of the appellants to the said property. Clause 10 of the suit agreement requires the appellants to get the Income Tax Clearance Certificate and also to obtain the requisite permission or sanction of any authority as may be necessary for the purpose of effectual completion of

the sale.

21. While considering the readiness and willingness, we have to keep in our mind the judgment of the Apex Court in the case of His Holiness

Acharya Swami Ganesh Dassji Vs. Shri Sita Ram Thapar, : where the learned Judges held as follows:

There is a distinction between readiness to perform the contract and willingness to perform the contract. By reading may be meant the capacity of

the plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform his

part of the contract, the conduct has to be properly scrutinised. There is no documentary proof that the plaintiff had ever funds to pay the balance

of consideration. Assuming that he had funds, he has to prove his willingness to perform his part of the contract. According to the terms of the

agreement, the plaintiff was to supply the draft sale deed to the defendant within 7 days of the execution of the agreement, i.e., by 27.2.1975. The

draft sale deed was not returned after being duly approved by the petitioner. The factum of readiness and willingness to perform plaintiff's part of

the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The Court may infer from the facts and

circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract.

22. On the above principle, we have to consider whether the respondent was ready and willing to perform their part of the agreement. As per

Clause 6 of the suit agreement, the sale was to be completed on or before 5.9.1981 or within one week from the date of furnishing the certificate

u/s 230-A of the Income Tax Act, 1981 by the appellants whichever is later and upon payment of Rs.48 lakhs out of the said purchase money.

There is no dispute that the appellant produced the Income Tax Clearance Certificate as early as 9th September, 1981. After such production of

the Income Tax Clearance, the respondents sought further particulars such as mortgage on the Bank of India, arrears of Urban Land Tax, arrears

of Property Tax, Exemption Certificate from the Land Ceiling Authorities, Encumbrance Certificate, latest audited balance sheet of the appellants

company, the list of creditors, Solvency Certificate, the details of attachment, if any and the details with regard to the winding up proceedings.

23. This requisition was made by the respondent in their letter dated 19.1.1982 referring earlier personal discussion. Earlier to this on 19.9.1981

the respondent sent a letter to the appellant . In this letter they asked for the Solvency Certificate with regard to the company's business affairs.

Thereafter there was exchange of legal notices between the parties.

24. From the evidence of P.W.1 it is clear that their lawyer scrutinised the title deeds before entering into the agreement and the lawyer gave an

opinion with regard to the clear title of the appellants. Only after getting the clearance from the lawyer as well as the legal section of their company,

the draft sale deed was prepared and sent for the Income Tax clearance. However, in his evidence P.W.1 has stated that the matter was delayed

only for the production of the Exemption Certificate from the Urban Land Ceiling Authorities. This is clear from the evidence as extracted below:

The title perused was considered to be good, but we have to get all other informations such as encumbrance certificate, Urban Land Ceiling u/s 6

of the said Act and other statutory information connected with the company law affairs.

He has also stated that the appellants have fulfilled the obligations under Clause 3.

25. In such circumstance it is for us to consider as to whether the further particulars asked for by the respondent is just to delay the completion and

to gain time or to avoid the completion of the suit agreement.

26. As discussed above, Clause 3 of the sale agreement requires the appellants to produce all the documents pertaining to the title of the suit

property. Clause 4 of the sale agreement contemplates the approval of the title by the respondents' advocate. On 14.9.1981 the respondent sent a

letter to the appellants wherein it is clearly stated that the appellants were required to furnish the copy of the return filed by them under the Urban

Land Ceiling Act and also the petition preferred by the appellants for exemption along with the sketch of the property showing the portion of the

above land which is in excess under the said Act. Apart from that the appellants were directed to furnish the following particulars:

Encumbrance Certificate for the period from 3.6.1981;

latest audited balance sheet of the company;

the list of creditors of the company;

the amount due to the Bank of India;

the arrears of property tax and urban land tax;

Solvency Certificate of the company;

the particulars with regard to the attachment, if any or other encumbrance or claim over the property which is the subject-matter of the suit

agreement;

the particulars with regard to the winding up proceedings; and

the resolution duly passed agreeing for the sale of the property;

27. The appellants sent a reply on 15.9.1981 in which they have clearly stated that after combined discussion at the office of the respondent on

7.9.1981, the draft sale deed was approved and the appellants also obtained the necessary certificate dated 9.9.1981 u/s 230-A(1) of the Income

Tax Act, 1951. They further stated that as per the agreement of sale and the consensus between the parties, the respondent has to complete the

sale within one week from 9.9.1981. The appellants have further mentioned that due to the delay on the part of the respondent the appellants

suffered heavy loss and the object of the sale is also being defeated. On 19.9.1981 the respondent sent a letter requesting the appellants to furnish

the Solvency Certificate in respect of the company's business affairs. Once again on 19.1.1982 a notice was sent by the counsel on behalf of the

respondent reiterating the particulars asked for in the letter dated 14.9.1981. In the meanwhile, it may be pertinent to note that on 21.9.1981 the

respondent paid an advance of Rs.5 lakhs and mutually the time for the completion of the transaction was extended upto 30.9.1981. Again on

6.10.1981 another sum of Rs.5 lakhs was paid by the respondent and mutually the time was extended upto 14.10.1981. Once again on

19.10.1981 a sum of Rs.1,10,000/- was paid by the respondent and the time was extended upto 31.12.1981.

28. If the particulars sought for by the respondent in their communication dated 14.9.1991 which was reiterated by the lawyer's notice dated

19.1.1982 are also the necessary documents to clear the title, then they would not have made any further advance. But, however, the respondent

had been delaying the matter only to get the clearance from the urban land ceiling authorities which is clear from the following deposition of P.W.1:

We were going ahead that the intention of the defendant was to take as much money as far as possible without going through the sale deed. So, we decided that most of the work connected with the collection of the information done by us we found that only to collect more money from us with an obvious purpose of extracting as much money as possible without going through the sale deed. So we had to necessarily make his people stood with our people to work out towards the statutory liabilities and that turn out to be about a sum of Rs.10,00,000/- as against Rs.5,00,000/- and that they are asked for Rs.10,00,000/- only. It was primarily pertaining to the corporation tax and expenses involved in getting the urban land ceiling clearance.

29. From the above evidence it is clear that though the advance amount was paid to the appellants, not satisfied with their conduct in getting the clearance certificate, the respondents themselves made their people to work out for the clearance of the statutory liability. This is also clear from the evidence of D.W.1 who in his evidence has stated as follows:

I have already told that as far as I remember some officer of the company requested my people to sign particular form to apply for Urban Land exemption and they had assured that if there is an exemption necessary they will get it.

Q: Therefore what you are saying that what the company people signed the form which was brought by the plaintiff company but your company people did not actually apply.

A: Our company did not apply.

Q: Kindly take Ex.P6. This is a reply notice issued by your company's advocate to the plaintiff's advocate on 9.2.1982. If look at page 3, i.e., the allegations in paragraphs 6 to 8 of your notices about six lines thereafter this notice says that your company has applied for Urban Land exemption and the matter is pending with the Government.

A: It is the purchaser, who sent with a form and got it signed and said that they will also try to get an exemption if necessary.

Q: Are you aware that u/s 6 of the Urban Land Ceiling Act, sale of any property is void if there is any excess vacant land?

A: We have no excess land.

Q: In that case why did you apply and make efforts and spent heavy amounts?

A: As the purchaser insisted that we must get clearance whether there is land or not, we signed only an application form. So they were delaying on the pretext of it.

30. If the evidence of both P.W.1 and D.W.1 taken together, the respondent is very particular in getting the exemption from the urban land ceiling authorities and consequently the respondents' people got the signature from the appellants' representative and filed the application for the exemption with the urban land ceiling authorities and also pursued the matter by themselves the appellants did not do anything. Having taken up the task by themselves, now it is not open to the respondent to blame the appellants for their inefficiency in getting the exemption from the Urban Land Ceiling Act and the delay in completion of the transaction was only due to the conduct of the appellants.

31. When the statutory requirement of the clearance under the Urban Land Ceiling Act is necessary, the respondent could have insisted for the same without advancing any amount. In case if the respondents themselves failed in their attempt to get the exemption under the Urban Land Ceiling Act, then there is no point in filing the suit for specific performance as there is a statutory bar for alienating the property.

32. Apart from that, when in the suit agreement there is no mention as to the particulars of the documents which are to be produced by the appellants, it may not be open to the respondent to insist for the production of such of the documents which have no relevance to the title of the property. When the draft sale deed was prepared after the respondent's counsel satisfied with the title of the appellants and the Income Tax Clearance Certificate was also obtained, the further particulars asked for by the respondent are not pertaining to the title of the property which is the subject-matter of the suit agreement. While purchasing the property it is for the purchaser to satisfy himself with regard to the clear title of the vendor. More than that the purchaser is not concerned about the other financial condition or otherwise of the vendor. If the respondent entertained any doubt; that too bonafide in respect of the other things under the impression that the other particulars sought for may have a bearing with regard to the transfer of valid title in their favour, then they could have given up the

agreement and insisted for the return of the advance amount. It may not be open to the purchaser to entertain unwarranted doubts in their mind which are not pertaining to the title over the property which is the subject-matter of the agreement and delay the completion of the transaction. As held in Issue No. 1 that the time being the essence of the contract due to various factors, we are of the view that the conduct of the respondent in asking for the particulars which are not pertaining to the title of the property which is the subject-matter of the agreement would amount to the unnecessary delay on their part. When the delay is not a bona fide one, then it has to be construed that the respondents are not ready and willing to perform their part of the contract. Even assuming that they have the funds and they are ready to get the sale deed executed, they are not willing to discharge their part of the agreement.

33. Further even in the written statement filed in the suit the respondent has calculated the interest on Rs.13,10,000/- for eight years from

1.9.1982. Even in the reply statement, the respondent had calculated the interest on the advance amount at 18% p.a and the rent accrued in the

property and reserved their right to claim the damages. When the respondent paid only a sum of Rs.13,10,000/- specifically mentioning that the

amount is to be kept as trust on behalf of the respondent till the transaction is completed, it is not known as to how the interest is being calculated

on the amount. Further when the entire sale consideration is Rs.82 lakhs out of which Rs.50 lakhs is to be paid at the time of registration and on

such payment the tenancy have to be attorned in favour of the respondent, here again this court is at a loss to know how the respondent is entitled

to calculate the damages on the basis of the rental income and make an adjustment out of the balance of sale consideration. This sort of

unnecessary plea exposes the mind of the respondent as to how they want to drag on the transaction. This may be perhaps their purchase of other

properties to the tune of more than Rs.1 Crore after entering into the suit agreement. P.W.1 in his evidence stated that from 1982 after Ex.P9 all

the properties are secured to the bank and the working capital is being provided by the bank. Virtually the properties were given as collateral

security to the bank. From this evidence of P.W.1 we have no hesitation to conclude that the respondents deliberately delayed the completion of

their obligation under the suit agreement only to gain time. In such circumstance, we have to necessarily hold that the respondents are not ready and willing to perform their part of the obligation under the suit agreement.

34. Issue No. 3:Coming to the insistence of the exemption from the purview of the Urban Land Ceiling Act is concerned, this court as well as the

Apex Court held that when there is a statutory bar of alienating the property of excess holding, as prescribed under the Urban Land Ceiling Act

being illegal one, the same cannot be enforced.

35. The Full Bench decision of this Court in P. Gopirathnam and 4 others Vs. Ferrodous Estate (Pvt.) Ltd., : in which, one of us (S. Jagadeesan, J)

is a party, rejecting the principle laid down in Shah Jitendra Nanlal Vs. Patel Lallubhai Ishverbhai, : has held as follows:

We do not think that the decision therein could be applied so far as Tamil Nadu Act is concerned. Exemption u/s 21 can be applied only by

vendor and it is for him exemption is granted. While considering suit for specific performance, Court is only concerned whether purchaser has

come to Court for enforcing the agreement in terms thereof. Asking vendor to get exemption and then to execute the agreement will be deviating

from the terms of contract and the Court will not enforce such a contract. That will mean that purchaser is not willing to purchase the land as per

agreement, but only with deviation, i.e., Vendor must get exemption and execute the sale deed.

36. Moreover, the Division Bench of this court in SAMIAPPAN v. ARUNTHASELVAN 1994 (1) LW 399 held that in view of Section 23 of

the Tamil Nadu Land Reforms (Fixation of Ceiling on Lands) Act (58 of 1961) there is prohibition of alienation and it was also declared that if any

such alienation effected contravening the provisions shall be deemed as null and void. The learned Judges have held as follows:

The only ground on which the Court below has dismissed the suit is that the agreement is void inasmuch as it is against the provisions of the Tamil

Nadu Land Reforms Act (58 of 1961). Section 23 of the Act, as it stood prior to the amendment in 1974, provided that the Authorised Officer

shall not take into consideration any transfer, whether by sale or by gift, exchange, surrender, settlement or otherwise effected on or after the

notified date and before the date of the publication of the final statement u/s 12

or 14.

37. Learned counsel for the appellant contends that the provisions of the Act will invalidate only a transfer and will not affect an agreement of sale.

According to him an agreement is not a transfer and, therefore, the Section does not come into play. We are unable to accept this argument. The

plaintiff seeks to have the agreement enforced by a Court of law and get a sale deed in pursuance thereof. If the Court grants a decree in favour of

the plaintiff and it leads to a sale deed in favour of the plaintiff, either by the party or by the Court, that sale is automatically void and it is deemed to

be void always as per the provisions of the Act. The Court cannot be a party to a transaction which would be void in law. Hence, there is no

substance in the contention that the agreement are not affected by the provisions of the Act.

38. It is next argued that the agreement is valid as between the parties and it is only a Authorised Officer who is not bound by the transaction and

who is entitled to ignore the same. In this connection reliance is placed upon the Judgment of the Supreme Court in Mrs. Chandnee Widya Vati

Madden Vs. Dr. C.L. Katial and Others, : In that case a contract of sale was entered with reference to a house belonging to the defendant on the

plot granted by the Government. One of the terms of the contract was that the vendor shall obtain necessary permission of the Government for the

same within two months of the agreement and if the permission was not forthcoming, it was open to the vendees to extend the date or to treat the

agreement as cancelled. The vendor made an application for permission but for the reasons of her own, withdrew the same. The vendees filed a

suit for specific performance of the contract or in the alternative for damages. The Court found that the vendor had wilfully refused to perform her

part of the contract and the vendees were entitled to get specific performance. The contention that unless the Government granted permission, the

contract was unenforceable was negatived. The Court pointed out that the stipulation in the agreement was not a condition precedent and that the

contract was not a contingent one. Hence, the Court held that the contract was binding as between the parties and enforceable as such. The ruling

has nothing to do with the present case. Hence a provision in a statute declares a transaction to be void. It is a declaration in rem. The transaction

is void for any purpose. It cannot be said that it is void any purpose. It cannot be said that it is void only as against the Authorised Officer and valid

as between the parties. The very purpose of the amendment is to declare the entire transaction as a nullity from the inception. The difference in the

language between the Section as it stood before the amendment and the Section as it stands after the amendment is very significant. Before the

amendment the Authorised Officer shall not take into consideration certain transactions, but after the amendment, the statute itself declares the

transaction to be void from the inception and a fiction is introduced that it is deemed to be always void.

39. Even in the decision in T. Periasamy Nadar and Others Vs. T.D. Ramasubramaniam, :such a view has been taken.

40. After considering these decisions, the Full Bench of this Court in the decision in P. Gopirathnam and 4 others Vs. Ferrodous Estate (Pvt.) Ltd.,

: has held as follows:

It is true that the Act is a self-contained Code with regard to urban lands and ceiling provisions. It is also true that there are authorities to decide

as to whether transaction is valid or invalid. Question of valid or invalid transaction will apply only regarding completed transaction. When Section

6 prohibits even proposed transfer, question of considering validity or invalidity does not arise and the consequences are also already declared by

the Act as null land void. It takes as if there is no transaction at all in the eye of law.

41. From the above decision, it is clear that even if any agreement had been entered into in respect of the sale of the property prior to the Act

came into force, the agreement would become null land void and that cannot be enforced. When that be the case, in this case, the agreement itself

is subsequent to the Tamil Nadu Urban Land (Ceiling and Regulation) Act came into force and the specific prohibition of alienation is contemplated

u/s 6 of the said Act. When that be so, the agreement itself is null and void, as the same is contrary to the enactment prohibiting such alienation.

When the agreement is null and void, the suit is not maintainable and consequently the suit is liable to be dismissed.

42. So far as Issue No. 4 is concerned, it was the contention of the learned counsel for the appellants that the price was fixed in 1981 at the time

of the suit agreement and now already two decades had passed and the land value also increased. In such circumstance, the granting of specific performance in favour of the respondent would amount to undue advantage for them.

43. On the other hand, the learned counsel for the respondent contended that the principle of undue advantage is to be considered mainly on the conduct of the parties and the reasonableness of the price at the time of the agreement. Even assuming that there is delay, the court is entitled to enhance the price to a reasonable extent and grant the relief of specific performance in favour of the respondent subject to the condition of paying such enhanced price. It was further contended by the learned counsel for the respondent that when the appellants are in possession of the property and are deriving more than Rs.7 lakhs as monthly income from the property, it cannot be said that the appellants are put to loss or their interests have been affected adversely. In view of our finding on the above three issues, it may not be necessary to decide this issue. But, however, to have a completeness, we decide this issue also on merits.

44. In CHIDAMBARAM v. ANTHONY RAJ 2002 (4) LW 769 the Division Bench of this court in which one of us (S. Jagadeesan, J) was a party has held as follows:

Though, ordinary Rule is that specific performance should be granted on equitable consideration of the facts of the case, the Court can exercise its discretion even to deny the relief for specific performance and to grant the relief for damages. In this case, the plaintiff has sought for such a relief also. Though it is well settled that such a discretion shall not be exercised in an arbitrary and unreasonable manner, discretion can be exercised if it is established that under the terms of contract, the plaintiff gets an unfair advantage over the defendants, and if the defendants would be put to undue hardship which they did not foresee at the time of the execution of the agreement. Even if the Court is not able to come to the conclusion that it is inequitable to grant specific relief, then the Court would desist from granting a decree for specific performance in favour of the plaintiff. The above said issue is supported by the judgment in A.C. Arulappan Vs. Smt. Ahalya Naik, :

45. While considering the scope of Section 20 of the Specific Relief Act, the

Division Bench of the Karnataka High Court in the judgment in

RANGANAYAKAMMA v. GOVINDA NARAYAN AIR 1982 Karn 264 has held as follows:

It is thus clear from the above decision that the illustrations given under sub-sections (23) and (3) of Section 20 of the Specific Relief Act, in which

a Court could refuse specific performance are not exhaustive and there may be a broad band of different cases in which also the Court may deny

relief to the plaintiff. The relief may vary with the circumstances of individual cases judged by the familiar legal standard of the reasonable man. The

legislature in the first place has given the discretion to Courts and secondly, it was emphasised that the discretion is required to be exercised on

sound and reasonable basis guided by judicial principles. Thirdly, it was provided that the decision should be capable of correction by a Court of

appeal. The latter two aspects are always implied and need not be stated when the power is conferred upon Courts. The purpose of restating these

principles, as we understand, was to discourage a tendency to subject a case to ""legal straight-jackets"", and to ensure that Judges are not led into

the trap of legalism on the validity of the agreement. Judges cannot approach the matter with a mind sentimental to the rights of the parties, but must

take into account the relative hardships in granting or refusing the relief prayed for.

46. Keeping the above principles in mind, if we consider the facts of the case on hand, the sale consideration fixed under the agreement is Rs.82

lakhs, out of which Rs.13,10,000/- was paid as advance. P.W.1 in his evidence which was extracted supra, has clearly stated that the respondent

decided that most of the work connected with the collection of the information done by them and the appellants interested only in collecting more

money from the respondent, with the obvious purpose of extracting as much money as possible without going through the sale deed. Consequently

the respondents had to necessarily make the appellants people stand with their people to work out the statutory liability and that turned out to be

about a sum of Rs.10 lakhs as against Rs.5 lakhs and that the respondents asked for Rs.10 lakhs only.

47. From the above evidence, it is clear that whatever the advance amount paid by the respondent seems to have spent by the appellants with the

able assistance of the respondent's representative either for getting the clearance certificate or in making arrangement for getting such of those particulars which were sought for by the appellants. When the sale is intended by the appellants to discharge the debt by satisfying their creditors as well as depositors and to avoid the liquidation proceeding which they are facing before the Bombay court, definitely the appellants were not benefited by the suit agreement except to the extent of discharging the mortgage. In fact because of the delay on the part of the respondent by asking for the irrelevant particulars which are unconnected with the title of the property which is the subject matter of the agreement, the appellants were forced to make other arrangement to settle the liquidation proceeding. There is no dispute that the liquidation proceeding before the Bombay court were closed by settling the creditors therein. When that be so, definitely the appellants might have done so only from other source. When the appellants are not benefited by the suit agreement if the respondent is granted with the relief of specific performance, definitely they will be in an undue advantageous position and hence we are of the view that on this ground also the respondent is not entitled for the discretionary relief of specific performance. Even in the evidence of P.W.1 he has not stated how the particulars sought for by them are essential and without which the sale transaction could not be completed; especially when the respondent gave the draft sale deed after their lawyer satisfied with the title of the appellants and further on which basis the Income Tax Clearance Certificate was obtained by the appellants.

48. Since we found that the respondent is not entitled for the relief of specific performance, it is for us to consider whether the appellants can be directed to return the advance amount received by them. In order to avoid further litigation between the parties and to give a quietus, we are of the view that the appellants can be directed to refund the advance amount; especially when the relief of specific performance in favour of the respondent is rejected. The appellants are directed to return a sum of Rs.13,10,000/- together with interest at 18% p.a from 21.9.1991 till the date of deposit.

49. Accordingly the appeal is allowed and the judgment and decree in the suit are set aside and consequently suit C.S. No. 287 of 1982 stands

dismissed, directing the appellants to return the sum of Rs.13,10,000/- (Rupees thirteen lakhs and ten thousand only) together with interest at 18%

p.a from 21.9.1991 till the date of deposit. The parties are directed to bear their respective costs throughout.