

(2012) 02 MAD CK 0164

In the Madras High Court

Case No : A.S. No. 243 of 2005 and C.M.P. No. 3980 of 2005

M. Gouriammal

APPELLANT

Vs

Soundaraj, Anith S. Raj and Adarsh S. Raj

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Contract Act, 1872 — Section 74

Land Acquisition Act, 1894 — Section 16, 4(1)

Citation : (2012) 02 MAD CK 0164

Hon'ble Judges : S. Vimala, J; R. Banumathi, J

Bench : Division Bench

Advocate : S.V. Jayaraman, for Mr. N. Maninarayanan, for the Appellant; P.T. Asha, for the Respondent

Final Decision : Allowed

Judgement

R. Banumathi, J.—Challenge in this appeal is the judgment and decree dated 19.1.2004 made in O.S. No. 314 of 2004 in and by which Additional District and Sessions Judge - Fast Track Court No. 1, Coimbatore dismissed the appellant/plaintiff's suit for specific performance. Defendants are the owners of the property measuring an extent of 1.45 acres in S.F. No. 11, Krishnarayapuram village, Coimbatore Taluk. The 1st defendant is the father of defendants 2 and 3. Defendants 1 to 3 entered into an agreement of sale (Ex. A.1) with the plaintiff on 14.4.1999 agreeing to sell the suit property at the price of Rs. 12,00,000/- per acre i.e., for a total sale consideration of Rs. 17,40,000/-. On the date of agreement of sale, the 1st defendant has received an advance of Rs. 4,00,000/-, which is incorporated in Ex. A.1.

2. Case of plaintiff is that after entering into sale agreement, the 1st defendant has disclosed that there was land acquisition proceedings in respect of the suit property and challenging the same, the 1st defendant has filed writ petition before the Chennai High Court, the plaintiff was always ready and willing to purchase the suit property and that even after receiving their written consent,

defendants have not come forward to execute the sale deed in favour of the plaintiff and the 1st defendant has requested the plaintiff to wait till the court proceedings are over. Further case of plaintiff is that the defendants were evading to execute the sale deed on the pretext of the land acquisition proceedings and on the ground of pendency of case before the High Court, Chennai. The plaintiff believed the words of 1st defendant and waited for disposal of the Court case for completing the contract. But the defendant had issued Ex. B.7 notice (5.9.2002) disclosing the true facts. According to the plaintiff, she was always ready and willing to purchase the suit property, but only the defendants have evaded on the pretext of the court proceedings. Alleging that the defendants have been evading to perform their part of the contract and that the plaintiff was always ready and willing to perform her part of contract, the plaintiff has filed the suit for specific performance.

3. Resisting the suit, the 1st defendant has filed elaborate written statement contending that the plaintiff was never ready and willing to perform her part of the contract. The 1st defendant has referred to the earlier agreements of sale (6.2.1998 and 19.3.1999) entered by the 1st defendant at the instance of plaintiff's husband - Marudhachalam, who is doing business in Real Estate. Plaintiff also executed Ex. B.4 - letter dated 19.3.1999 agreeing to take care of the acquisition proceedings at her risk and responsibility. Believing the representation of the plaintiff, the defendant signed and executed an agreement dated 19.3.1999. At the instance of plaintiff's husband, Marudhachalam and S. Lakshmanan, the 1st defendant had also executed a sale deed for 72 cents in the name of S. Sivados, the brother of S. Lakshmanan on 5.4.1999. After the sale deed, the 1st defendant had executed a fresh agreement dated 14.4.1999 in the name of plaintiff agreeing to sell 1.45 acres at the rate of Rs. 12 lahs per acre. The plaintiff had also executed a fresh Varthamana letter Ex. B.6 dated 14.4.1999. The defendants received the sum of Rs. 4,00,000/- only by way of earnest money and subject to the condition that the same would be forfeited in the event of default on the part of the plaintiff. The plaintiff was aware of the land acquisition proceedings even prior to the agreement i.e., 14.4.1999, which is revealed by the Varthamana letter Ex. B.4 dated 19.3.1999. The plaintiff was never ready and willing to perform her part of the contract nor taken care of the land acquisition proceedings. According to the defendants, the land acquisition proceedings were quashed by the High Court on 2.4.2001. According to the defendants, six months time stipulated in the agreement was mandatory and essence of the contract and the plaintiff is not entitled to any extension of time. The plaintiff, who was not ready and willing to perform her part of the contract, is not entitled to the discretionary relief of specific performance. Further case of defendants is that as stipulated in the agreement, sum of Rs. 4,00,000/- paid by the plaintiff stood forfeited and plaintiff is not entitled to seek enforcement of the agreement and also refund of the advance amount.

4. On the above pleadings, in the trial Court, the relevant issues were framed On behalf of the appellant/plaintiff, Plaintiff examined herself as P.W.1. To prove the

means of plaintiff, one Arumugam was examined as P.W.2 and Exs. A1 to A19 were marked. On behalf of the respondents/defendants, D.W.1 was examined and Assistant from Sub Registrar's Office was examined as D.W.2. Exs. B1 to B.15 were marked. Exs. C.1 to C.4 were marked. Upon consideration of oral and documentary evidence, the trial Court held that the plaintiff was not ready and willing to perform his part of the contract within the stipulated period of six months. Accepting the defence plea, the trial Court further held that the time of six months stipulated in Ex. A.1 - sale agreement was mandatory and pointing out that the suit was filed only on 11.10.2002, which was just three days prior to expiry of three years from the date of Ex. A.1 - agreement of sale, the trial Court held that the plaintiff was not ready to perform her part of the contract and held that the plaintiff is not entitled to the relief of decree for specific performance.

5. Being aggrieved by the dismissal of the suit, plaintiff has preferred this appeal.

6. Learned Senior Counsel appearing for appellant contended that in view of pendency of land acquisition proceedings the appellant/plaintiff could not further proceed in getting the sale deed executed. It was further submitted that the 1st defendant did not furnish number and other particulars of land acquisition proceedings and without those particulars the plaintiff was intercepted from taking any further action. It was further argued that the lower Court failed to note that the right to enforce suit agreement would arise only after the disposal of land acquisition proceedings and trial Court failed to note that inspite of disposal of land acquisition proceedings it was not brought to the notice of the plaintiff and that the defendants slept over the matter for long time without even informing the plaintiff about the conclusion of land acquisition proceedings. The learned Senior Counsel would further contend that even when the defendants have not proved any damage suffered by them, the trial Court erred in holding that the plaintiff is entitled to forfeit the advance amount.

7. Ms. P.T. Asha, learned counsel for respondents would contend that time was essence of the contract and the plaintiff/appellant had not established her readiness and willingness to get the sale deed executed within the stipulated period of six months. Taking us through the pleadings and material evidence on record, the learned counsel has further submitted that plaintiff has not come to the Court with clean hands and that the plaintiff is not entitled to the discretionary relief of specific performance. In support of her contention, the learned counsel placed reliance upon decisions of Supreme Court in Sita Ram and Others Vs. Radhey Shyam ((2008 (1) CTC 86 (SC)) and Division Bench of this Court in the case of A. Ganapathy Vs. S. Venkatesan,

8. Upon consideration of oral and documentary evidence, impugned judgement and the rival contentions, the following points arise for determination in this appeal:

1. Whether the appellant is right in contending that in view of notification u/s 4(1) of the Land Acquisition Act and the writ petition challenging the acquisition

of land, the question of readiness and willingness was not relevant in the performance of her obligations?

2. Whether the trial Court was right in holding that plaintiff was not ready and willing to perform her part of the contract in getting the sale deed executed?

3. Whether the plaintiff is entitled to the discretionary relief of specific performance?

4. Whether the trial Court was right in holding that in view of plaintiff's failure to perform essential parts of the contract, earnest money is liable to be forfeited?

5. To what relief the parties are entitled to?

9. Points No. 1 to 5:- It is not in dispute that the plaintiff and the defendants have entered into Ex. A.1 - agreement of sale (14.4.1999) under which the defendants have agreed to sell an extent of 1.45 Acres in S.F. No. 11, Krishnarayapuram village, Coimbatore Taluk at the price of Rs. 12,00,000/- per acre and paid advance of Rs. 4,00,000/-. The time stipulated for performance of the contract was six months.

10. Section 16(c) provides that specific performance of a contract cannot be enforced in favour of a person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract, which are to be performed by him, other than terms, the performance of which has been prevented or waived by the defendant. In the suit for specific performance, readiness and willingness on the part of the plaintiff to perform his part of the contract is a condition precedent for obtaining the relief. Explanation (2) to Sub-section (2) provides that the plaintiff must aver performance of or readiness and willingness to perform. Not only there should be such an averment in the plaint, but the surrounding circumstances must also indicate that the readiness and willingness to continue from the date of contract till the hearing of the suit. However, readiness and willingness cannot be treated as a straitjacket formula and has to be determined from the surrounding facts and circumstances relevant to the intention and such conduct of the parties.

11. In Ex. A.1, the time stipulated for performance of the contract was six months i.e., the plaintiff has to pay the balance sale consideration and obtain the sale deed by 14.10.1999. But the plaintiff had issued legal notice (Ex. A.3) calling upon the defendants to execute the sale deed only on 8.10.2002 just at the verge of expiry of three years from Ex. A.1 agreement. It is pertinent to note that the plaintiff has filed the suit on 11.10.2002 i.e., just three days prior to the expiry of period of limitation for filing the suit.

12. Learned Senior Counsel for appellant/ plaintiff contended that in view of the land acquisition and writ petition filed challenging the land acquisition proceedings, time was not the essence of the contract. In this regard, the learned Senior Counsel has also drawn our attention to Ex. B.12 - letter (dated 19.4.2002) in which the 1st defendant had called upon the plaintiff to cancel Ex.

A.1 agreement for sale. Laying emphasis upon the contents in Ex. B.12, learned Senior Counsel has submitted that the defendants' request calling upon the plaintiff to cancel the agreement Ex. A.1 would clearly show that it was not the intention of the parties to treat time as the essence of the contract.

13. As pointed out earlier, in Ex. A.1 - sale agreement, time stipulated for performance was six months. In Clause 1 of Ex. A.1 it is clearly stated that the stipulated time would not be extended. Despite such stipulation, plaintiff had not taken steps to get the sale deed executed.

14. It is well settled that the mere fixation of a specific period in the agreement of sale for the completion of sale transaction does not by itself amount to make time as essence of the contract. The intention to treat time as of essence of the contract may be evidenced by circumstances, which have to be sufficiently strong. As a general rule, delay in performance of his part of the contract is a bar to the plaintiff to claim for the relief of specific performance.

15. Case of plaintiff is that inspite of the land acquisition proceedings she was ready and willing to purchase the property and only the defendants have been taking time to execute the sale deed on the ground of pendency of acquisition proceedings and challenge to the acquisition of land. Grievance of the plaintiff is that the plaintiff has neither informed about the details of land acquisition proceedings nor informed about the details of the case challenging land acquisition proceedings and without informing the plaintiff about those details, the plaintiff cannot be blamed that she was not ready to perform her part of the contract.

16. Mr. S.V. Jayaraman, learned Senior Counsel for appellant contended that even though as per recitals in Exs. B.4 and B.6 - Varthamana letters, the plaintiff has to take care of the land acquisition proceedings, plaintiff was not informed about the details of the writ petition regarding challenging the land acquisition proceedings. It was further submitted that when plaintiff was not informed about the details of the case there is no question of plaintiff taking action. As seen from Ex. B.15, the land acquisition proceeding was quashed and the writ petition/writ appeal was disposed off on 2.4.2001. The learned Senior Counsel for the appellant contended that when the land acquisition proceedings came to be terminated only on 2.4.2001, the plaintiff could not have earlier taken steps to get the sale deed executed. It was further submitted that in view of pendency of the land acquisition proceedings and unless and until the notification was set aside, the agreement for sale cannot be enforced by either of them and therefore the plaintiff cannot be blamed for the delay in issuing notice and also filing the suit, more so, when the plaintiff was not informed about the completion of the land acquisition proceedings. In support of his contention, the learned Senior Counsel placed reliance upon a judgment of the Supreme court in the case of Thiriveedhi Channaiah Vs. Gudipudi Venkata Subbarao (D) By LRS. & Others, (AIR 2007 Supreme Court 2439).

17. Even though much arguments were advanced that the plaintiff was not informed about the details of land acquisition proceedings and that the plaintiff could not perform her obligations as stipulated in Exs. B.4 and B.6 - Varthamana letters, by perusal of the pleadings, we find that the plaint averments are silent about the prior agreements for sale and Exs. B.4 and B.6 - Varthamana letters. The plaint proceeds on the footing that "after entering into the sale agreement, the 1st defendant has revealed that there was a land acquisition proceedings in respect of the suit property and he has filed writ petition before the Chennai High Court....." Thus, the plaintiff has averred that she came to know about the land acquisition proceedings in respect of the suit property only after entering into the sale agreement. The said plaint averments are not factually correct and there are clinching evidence to show that the plaintiff was aware of the land acquisition proceedings much earlier to Ex. A.1.

18. Originally, suit survey No. - S.F. No. 11 contained total extent of 2.17 acres. Plaintiff's husband - Marudhachalam and one Lakshmanan entered into Ex. B.11 sale agreement (6.2.1998) with the defendants for the entire 2.17 acres in which the defendants agreed to sell the lands at a rate of Rs. 16,00,000/- per acre. An amount of Rs. 10,00,000/- was paid as advance and later the said amount was cancelled and Rs. 10,00,000/- was refunded as seen from the endorsement in Ex. B.11. Again, on 19.3.1999, plaintiff, who is the wife of Marudhachalam had entered into a fresh agreement for sale - Ex. B.2 dated 19.3.1999 agreeing to purchase the property at the rate of Rs. 12,00,000/- per acre. On the same day - 19.3.1999, plaintiff had executed Ex. B.4 - Varthamana letter stating that the plaintiff was informed about the land acquisition proceedings and that the plaintiff would take care of the land acquisition proceedings and that she would get the sale deed executed, notwithstanding the land acquisition proceedings. From the recitals in Ex. B.4 (19.3.1999), it is clear that the plaintiff was well aware of the land acquisition proceedings much prior to Ex. A.1 - agreement for sale.

19. Furthermore, according to defendants, in the month of April, 1999, at the instance of plaintiff's husband - Marudhachalam and Lakshmanan, they have executed Ex. B.5 - sale deed (5.4.1999) in favour of Sivadoss, the brother of said Lakshmanan, under which the defendants have sold 72 cents out of 2.17 acres in S.F. No. 11 to the said Sivadoss. It was thereafter the defendants have entered into fresh agreement of sale - Ex. A.1 dated 14.4.1999 with the plaintiff in respect of balance of 1.45 acres in S.F. No. 11. On the date of Ex. A.1 agreement (14.4.1999), the plaintiff again executed Ex. B.6 (14.4.1999) - Varthamana letter reiterating the same clauses as in Ex. B.4. Thus, it is amply evident that the plaintiff was well aware of the land acquisition proceedings and also the Court proceedings challenging the land acquisition. While so, the plaintiff is not justified in saying that only after entering into the suit sale agreement, the 1st defendant revealed about the land acquisition proceedings.

20. Even though the plaintiff was well aware of the land acquisition proceedings

much earlier to Ex. A.1 - agreement of sale and inspite of her assurance to get the sale deed executed notwithstanding the land acquisition proceedings the plaintiff did not take any steps to get the sale deed executed. As per recitals in Exs. B.4 and B.6 - Varthamana letters, plaintiff has to take care of the land acquisition proceedings. Absolutely no evidence is forthcoming as to the steps taken by the plaintiff in respect of the Court proceedings. The plaintiff also did not take any steps to know about the status of land acquisition proceedings.

21. Clause 8 of Ex. A.1 - agreement of sale stipulates certain obligations to be performed by the defendants i.e., the defendants have undertaken that before the execution of the sale deed, defendants will measure and produce the encumbrance certificate, tax receipt and all other parent documents and title deeds. The learned Senior Counsel for the appellant contended that when no steps were taken by the defendants to measure the property and when the defendants had not performed their mutual obligations, the plaintiff cannot be blamed for the delay in taking steps to get the sale deed. Here again, the plaintiff does not seem to have taken prompt steps in communicating with the defendants calling upon them to measure the lands, hand over encumbrance certificate and other documents.

22. As seen from Ex. B.15, the land acquisition proceedings was quashed and the writ appeals - W.A. Nos. 1427 to 1429 of 1994 and 727 to 730 of 1995 came to be disposed of on 2.4.2001. Had the plaintiff been diligent and pursuing the matter, the plaintiff would have known about the status of the land acquisition proceedings and would have taken prompt steps. It is not as if the plaintiff is naive. Her husband - Marudhachalam and Lakshmanan are stated to be dealing in real estate. In fact, during that time i.e., on 18.02.2002, the plaintiff's husband Marudhachalam as power of attorney for Sivadoss has entered into agreement for sale (Ex. B.14) with one Muthuswamy agreeing to sell the said 72 cents purchased by Sivadoss under Ex. B.5 from the defendants. When the plaintiff's husband - Marudhachalam has been pursuing the other transactions, no explanation is forthcoming as to the silence on the part of the plaintiff.

23. For the first time, only the defendants have sent Ex. B.12 letter (19.04.2002) calling upon the plaintiff to cancel Ex. A.1 - agreement of sale and to fix the date for the sale. The defendants are also said to have sent Ex. B.13 letter (15.07.2002) and informing the plaintiff about the cancellation of Ex. A.1 - agreement and calling upon the plaintiff to hand over the documents - Adangal, legal heirship certificate, sketch etc., The plaintiff denies having received Exs. B.12 and B.13 on 5.9.2002 stating that the plaintiff has not performed her part of the contract as per the terms and conditions of the contract and that the plaintiff has no right to enforce Ex. A.1 - agreement of sale and calling upon the plaintiff to return the documents. It was only thereafter the plaintiff had issued Ex. A.3 - legal notice (8.10.2002) expressing her readiness to get the sale deed executed. Mere averment in the plaint as to readiness and willingness to perform her part of the contract is not to be read in isolation; but must be construed

reasonably having regard to the surrounding circumstances and the conduct of the parties. The plaintiff has not established her readiness and willingness to get the sale deed executed.

24. To prove the "means" of the plaintiff, one Arumugam, who is running chit and finance in Coimbatore, was examined as P.W.2. P.W.2 has stated that plaintiff and her husband are subscribers to various chits organised by his Chit Company and that the plaintiff and her husband are partners in Royappa Hospital and are also having bakery and running other business and that the plaintiff and her husband are with sufficient means. P.W.2 has further stated that on 3.10.1999, the plaintiff and her husband Marudhachalam have deposited Rs. 7.50 lakhs each and told P.W.2 that the said amount is deposited with P.W.2 to get the sale deed executed from Sundararajan - 1st defendant. In his evidence, P.W.2 has also deposed that plaintiff and her husband told him that because of the pendency that once the case challenging the land acquisition proceedings is over they would use the money deposited with P.W.2 and get the sale deed executed.

25. The trial Court did not go into the question of "means" and the evidence of P.W.2. The trial Court held that since the plaintiff was not ready to perform her part of the contract there was no necessity to go into the question of plaintiff's "means" and the trial Court did not proceed to examine the evidence of P.W.2.

26. The learned counsel for respondents vehemently contended that the plaintiff did not have the means to pay the amount and that P.W.2 is interested witness and no credence could be attached to his evidence. Learned counsel urged that to go into the question of "means" even though the trial Court did not go into the question of "means".

27. When the trial Court has not gone into the question of plaintiff's "means", we are also not inclined to go into the question. However, it is pertinent to note that even though P.W.2 -Arumugam is said to have signed as witness in Ex. B.14 - agreement of sale (18.2.2002), his evidence cannot be brushed aside by saying that he is a partisan witness. It is also pertinent to note that to prove that she had income and sufficient means, the plaintiff also produced incometax returns - Exs. A.6, A.7 and A.9. By perusal of Exs. A.6 and A.7 - income tax returns, it is seen that the plaintiff's husband's total income for the assessment year 1996-97 was Rs. 1,24,761/- (Ex. A.6) and for the assessment year 1996-97 was Rs. 93,300/- and for the assessment years 1993-94 to 1996-97 was Rs. 3,56,700/- (Ex. A.7). Ex. A.9 is the assessment order passed by the income tax Officer, Ward-I(2), Coimbatore assessing the income of the plaintiff as Rs. 1,00,000/- for the assessment year 1998-99 by not accepting the declared income of Rs. 89,570/-. Therefore, it cannot be said that the plaintiff had no means to purchase the property or pay the balance consideration.

28. The Court has to grant relief on the basis of the conduct of the person seeking relief. The relief of specific performance, being discretionary, holding that the plaintiff has not established her readiness and willingness to perform her part

of the contract, the trial Court has declined to exercise its discretion in granting the relief of specific performance and we do not find any reason to interfere with the said finding.

29. Forfeiture of earnest money:- Under Ex. A.1 - sale agreement, plaintiff has paid Rs. 4,00,000/- as advance towards sale consideration. Clause 5 of Ex. A.1 - sale agreement stipulates that if the plaintiff fails to perform the contract within the stipulated time, the advance amount shall be forfeited. The trial Court held that since the plaintiff has not performed her part of the obligations within the stipulated time the advance amount of Rs. 4,00,000/- paid by the plaintiff is to be forfeited.

30. Case of plaintiff is that in view of the land acquisition proceedings and since the conclusion of the Writ Petition was not informed to the plaintiff, she could not perform her part of the contract and therefore the trial Court was not right in holding that the advance amount is liable to be forfeited. Per contra, the contention of defendants was that Rs. 4,00,000/- was paid only as earnest money i.e., as guarantee for performance of the contract and in view of the plaintiff's failure to perform her part of the obligations within the stipulated time, the defendants are entitled to forfeit the said amount of Rs. 4,00,000/-.

31. Considering the rival contentions, the point falling for determination is, whether the defendants are entitled to forfeit the entire advance amount of Rs. 4,00,000/-.

32. Section 74 of the Contract Act deals with compensation for breach of contract, where penalty stipulated for. Section 74 reads as under:

74. Compensation of breach of contract where penalty stipulated for. -

When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.- A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

33. In an agreement of sale, where money is paid only as part of sale price, the forfeiture clause will be treated as having the effect of penalty. The effect of Section 74 is to disentitle the plaintiff to recover simpliciter the sum fixed in the contract, whether penalty or liquidated damages. The plaintiff must prove the damages they have suffered, but the same agreed upon as damages is not recoverable as a matter of course. It is a duty of the Court to determine what compensation could be allowed as reasonable compensation.

34. As pointed out earlier, as per the recitals in Ex. A.1 - sale agreement, the amount of Rs. 4,00,000/- was paid only as advance/ part of sale consideration. Even though the defendants claim that the said amount of Rs. 4,00,000/- was paid as earnest money, their contention is not reflected in the recitals in Ex. A.1. Considering the recitals in Ex. A.1 sale agreement, the question falling for consideration is, whether the defendants are entitled to forfeit the entire advance amount of Rs. 4,00,000/-. In this regard, the learned Senior Counsel for the appellants contended that when the land was under acquisition notification, agreement thus becoming unenforceable and forfeiture of advance money paid in circumstances of the case is improbable and in support of his contention, the learned Senior Counsel placed reliance upon judgment of the Supreme court in the case of Thiriveedhi Channaiah Vs. Gudipudi Venkata Subba Rao (D) by Lrs. and Others, wherein considering the similar question, in paragraph No. 12, the Supreme Court held as follows:-

10. The only question which arises for our consideration is as to whether in a situation of this nature, the respondent could exercise his right of forfeiture of the entire amount. It is not his case that he had suffered any damage. He did not deny or dispute that after the Agreement of Sale was executed, a notification u/s 4(1) of the Act had been issued. He himself raised a contention that the Agreement stood frustrated. It may be true that he not only questioned the validity of the said notification, but had also filed a suit, but indisputably the parties were aware that unless and until, the notification was set aside, the Agreement for Sale, in the aforementioned situation, cannot be enforced by either of them.

35. As discussed earlier, even in Ex. B.12 - letter dated 19.4.2002, the 1st defendant has sent the letter to the plaintiff asking her to cancel Ex. A.1 - sale agreement. It is not the case of the defendants that because of the non-performance/delay in performance of plaintiff's obligations, the defendants suffered any loss. The defendants have not adduced any evidence that they suffered damages. In the absence of any evidence as to the damages suffered by the defendants, the trial Court was not right in holding that the entire advance amount is liable to be forfeited. In the facts and circumstances of the case and applying the ratio of the Thiriveedhi Channaiah Vs. Gudipudi Venkata Subba Rao (D) by Lrs. and Others, in our considered view, the defendants are not entitled to forfeit the amount of advance. Even though the plaintiff has not asked for the alternative relief of return of advance amount, with a view to render complete justice between the parties, the Court is empowered to mould the relief. It would be appropriate to direct the respondents/defendants to repay the amount of advance paid by the plaintiff/appellant with interest at the rate of 9% p.a. from the date of plaint till this date and thereafter with interest at the rate of 6% p.a. till the date of realisation. In the result, the judgment and decree dated 19.1.2004 made in O.S. No. 314 of 2004 on the file of Additional District and Sessions Judge, Fast Track Court No. 1, Coimbatore is modified and this Appeal is partly allowed. The respondents/defendants are directed to refund the advance

amount of Rs. 4,00,000/- paid by the appellant/plaintiff with interest at the rate of 9% p.a. from the date of plaint (11.10.2002) till this date and thereafter with interest at the rate of 6% p.a. till the date of realisation. In the circumstances of the case, both parties are directed to bear their respective costs in the appeal as well as in the suit. Consequently, the connected miscellaneous petition is closed.