
(1993) 07 GUJ CK 0032
In the Gujarat High Court

Naranji Makanji

APPELLANT

Vs

Bhagwanji Makanji Patel and Another

RESPONDENT

Date of Decision : 09-07-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 100

Citation : (1994) 1 CivCC 671 : (1993) 2 GLR 1444

Hon'ble Judges : A.N. Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—What should be the effect of inability on the part of a party approaching the Court for the equitable relief of specific performance to establish its case in toto at trial? Will inability to establish the case in toto at trial not amount to the falsity of the case? In such a case, should the Court grant to that party the relief of specific performance? These are the main questions arising in this appeal preferred before This Court by original defendant No. 2 in Regular Civil Suit No. 166 of 1975 questioning the correctness of the decision given by the learned District Judge of Valsad at Navsari on 31st January, 1981 in Regular Civil Appeal No. 18 of 1976. Thereby the decision given by the learned Joint Civil Judge (J.D.) at Valsad on 30th January, 1978 in Regular Civil Suit No. 166 of 1975 came to be affirmed. It is needless to say that the trial Court decreed the suit for specific performance of the agreement of sale of one immovable property executed between the respondents herein on 16th November, 1972. Incidentally, the parties to the litigation culminating into this second appeal are brothers.

2. Respondent No. 1 was the original plaintiff, respondent No. 2 original defendant No. 1 and the appellant original defendant No. 2 in the suit before the trial Court. For the sake of convenience I shall refer to them as they were arraigned in the suit proceedings.

3. The facts giving rise to this second appeal are not many and not much in dispute. One piece of land bearing Survey No. 98 admeasuring 1 Acre and 23? Gunthas situated in village Vashiar, District Valsad ("the suit land" for

convenience) belonging to defendant No. 1 herein was agreed to be sold for Rs. 8,000/- to the plaintiff. The document representing the agreement of sale was executed on 16th November, 1972. It is at Exh. 93 on the record of the case ("the suit agreement" for convenience). An amount of Rs. 4,000/- was paid on the date of the agreement and the balance amount of the consideration in the sum of Rs. 4,000/- was agreed to be paid at the time of execution of the sale deed. No time-limit was fixed for performance of the contract. It appears that defendant No. 1 later on agreed to sell the suit land together with a small parcel of land bearing Survey No. 95/1 admeasuring only 7 Gunthas to defendant No. 2 in all for Rs. 8,001/-. The document recording the agreement of sale was executed on 20th April, 1973. It is at Exh. 53 on the record of the case. Thereunder defendant No. 2 paid to defendant No. 1 Rs. 5,001/- towards the consideration amount and the balance amount was agreed to be paid at the time of execution of the sale deed. It appears that possession of the suit land was handed over to defendant No. 2 pursuant to the agreement of sale at Exh. 53 on the record of the case. It appears that the plaintiff came to know of handing over possession of the suit land to defendant No. 2. He thereupon caused to serve both the defendants with one notice through his Advocate on 18th June, 1973 indicating therein that the agreement of sale of the suit land was entered into between the plaintiff and defendant No. 1 on 16th November, 1972 and warned the addressees of the notice not to make any attempt to frustrate the said agreement in any manner. It appears that defendant No. 2 caused his reply to the said notice on 6th July, 1973. Its copy is at Exh. 87 on the record of the case. Thereby he denied to have any knowledge of any agreement between the plaintiff and defendant No. 1 for sale of the suit land. It appears that the matter rested there at till the plaintiff instituted one suit on 15th November, 1975 in the Court of the Civil Judge (J.D.) at Valsad for specific performance of the suit agreement or in the alternative for repayment of the consideration paid till that date with interest at the rate of 9% per annum. It came to be registered as Regular Civil Suit No. 166 of 1975. The suit was originally filed only against defendant No. 1. On service of the summons he appeared and filed his written statement at Exh. 11 on the record of the case and resisted the suit on various grounds. The suit appears to have been assigned to the learned Joint Civil Judge (J.D.) at Valsad for trial and disposal. In his written statement defendant No. 1 herein inter alia declared that the suit agreement was cancelled and thereafter on 20th April, 1973 he agreed to sell the suit land together with another small parcel of land to defendant No. 2 for Rs. 8,001/- and pursuant to the said agreement Rs. 5,001/- was received on 20th April, 1973 and the balance amount of the consideration was received on 12th October, 1973. It was also declared that the required sale deed was executed in favour of defendant No. 2 and it was duly registered. Thereupon the plaintiff moved an amendment application at Exh. 14 on the record of the case for impleading the present appellant as defendant No. 2 in the suit proceedings. Pursuant to the order passed there below, the present appellant was impleaded as defendant No. 2 in the suit proceedings. It transpires from the record that defendant No. 1 herein filed one purshis at Exh.

33 on the record of the case taking up his reply at Exh. 16 on the record of the case to the amendment application at Exh. 14 on the record of the case to be his additional written statement to the amended plaint. Defendant No. 2 does not appear to have filed any written statement. Instead, he filed one purshis at Exh. 36 on the record of the case adopting the written statement filed by and on behalf of defendant No. 1 in the suit proceedings. On the pleadings of the parties the necessary issues were raised at Exh. 39 on the record of the case. After recording the evidence and hearing the parties, by his decision given on 30th January, 1978 in Regular Civil Suit No. 166 of 1975, the learned Joint Civil Judge (J.D.) at Valsad decreed the plaintiff's suit for specific performance of the suit agreement. That aggrieved defendant No. 2 in the suit. He therefore carried the matter in appeal before the District Court of Valsad at Navsari. It came to be registered as Regular Civil Appeal No. 18 of 1976. After hearing the parties, by his judgment and order passed on 31st January, 1981 in Regular Civil Appeal No. 18 of 1976, the learned District Judge of Valsad at Navsari dismissed the appeal. The aggrieved appellant has thereupon invoked the further appellate jurisdiction of This Court u/s 100 of the Code of Civil Procedure, 1908 ("the Code" for brief) by means of this second appeal for questioning the correctness of the decision rendered by the learned District Judge of Valsad at Navsari in Regular Civil Appeal No. 18 of 1976 as aforesaid.

4. The substantial question of law pressed into service before the at the time of hearing this appeal is to the effect that the plaintiff could not be said to have approached the Court with clean hands and he would therefore not be entitled to the equitable relief of specific performance. It has also been urged as a part of this substantial question of law that the plaintiff could not be said to be ready and willing to perform his part of the contract as he was not ready and willing to pay the balance amount of consideration in full in view of his having failed to establish at trial his alleged payment of Rs. 2,500/- after execution of the suit agreement and before institution of the suit. As against this, Shri Shah for the plaintiff has urged that the aforesaid substantial question of law involves questions of fact and the Courts below have concurrently found in favour of the plaintiff to the effect that he was ready and willing to perform is part of the contract. Shri Shah has further urged that the point as to the plaintiff's not approaching the Court with clean hands was not raised before the trial Court but was raised for the first time before the lower appellate Court and in appeal on consideration of the evidence on record, the learned District Judge has found that the plaintiff was not disentitled to the relief of specific performance by his said conduct. According to Shri Shah, this conclusion reached by the lower appellate Court on appreciation of the evidence on record would constitute a conclusion of fact and This Court in exercise of its limited powers u/s 100 of the Code would not be justified in interfering with the impugned decision of the lower appellate Court. Shri Shah for the plaintiff has further urged that defendant No. 2 has inter alia purchased the suit land during the pendency of the suit before the trial Court and at his instance the decision of the lower appellate Court need not

be upset. On merits, according to Shri Shah, the plaintiff could not be denied the relief of specific performance of the suit agreement merely on the ground that he could not establish at trial the payment of Rs. 2,500/- after the suit agreement and before institution of the suit.

5. It is not in dispute that in his notice of 18th June, 1973 and also in his plaint the plaintiff asserted in no uncertain and equivocal terms that he paid in all Rs. 6,500/- as part of the consideration amount for the suit land. It is not in dispute that he paid Rs. 4,000/- at the time of the suit. He however alleged that he paid Rs. 2,500/- thereafter by instalments. In his written statement at Exh. 11 defendant No. 1 denied to have received Rs. 2,500/- from the plaintiff. The learned trial Judge did not accept the plaintiff's case of payment of Rs. 2,500/- subsequent to execution of the document at Exh. 93. The case of the plaintiff regarding payment of Rs. 2,500/- as further payment towards the consideration for the suit land was not accepted by the trial Court. It has been urged by Shri Shelat that in appeal thereagainst by defendant No. 2 no cross-objections were filed by or on behalf of the plaintiff questioning the correctness of the finding recorded by the trial Court in that regard, and as such the finding in that regard can be said to have been concluded qua the plaintiff. I think it was not necessary for the plaintiff to have filed any cross-objections as he could have questioned at the appellate stage the finding recorded against him by the trial Court in view of the ruling of this Court in the case of *Husseinbhai Abdulkarim v. Abdul Hussein Nazarali* reported in 1992 (2) GLH 279. On behalf of the plaintiff it was however asserted before the appellate Court that a further payment of Rs. 2,500/- was made by him towards the consideration fixed under the suit agreement at Exh. 93 on the record of the case. But the lower appellate Court has also disbelieved the plaintiff's case regarding payment of a further sum of Rs. 2,500/- towards the consideration for the suit land. It thus becomes clear that the plaintiff approached the Court with a case that in all he paid Rs. 6,500/- towards the consideration for the suit land but his case of further payment of Rs. 2,500/- was disbelieved by both the Courts below.

6. Relying on this concurrent finding of fact recorded by the Courts below, Shri Shelat for the appellant has urged that since the falsity of the plaintiff's case has been established at trial, he would not be entitled to the relief of specific performance on the ground that he did not approach the Court with clean hands. In support of his submission, Shri Shelat for the appellant has relied on the ruling of the Andhra Pradesh High Court in the case of *Kommiseti Venkatasubbayya Vs. Karamseti Venkateswarlu and Others*, .

7. The facts of the case before the Andhra Pradesh High Court in the case of *Kommiseti* (supra) were to the effect that pursuant to the agreement of sale the plaintiff averred that he paid a further sum of Rs. 1,500/- towards the consideration for the property involved in the litigation. That was his case in the notice before institution of the suit. The other party to the suit denied that case. At trial, the plaintiff failed to establish his further payment of Rs. 1,500/- towards

the consideration for the subject matter of the litigation. In that context, it was held that the plaintiff was disentitled to the discretionary relief of specific performance on the ground that he set up a false plea. He was further held to be disentitled to the relief of specific performance on the ground that on his having failed to establish a further payment of Rs. 1,500/- he could be said not to be ready and willing to perform his part of the contract as he approached the Court with the case that he had to pay the remaining amount of the consideration after deducting the further payment of Rs. 1,500/-.

It cannot be gainsaid that the relief of specific performance is an equitable relief. Well-settled principles of equity require the party claiming equity to approach the Court with clean hands. A person approaching the Court with clean hands will have to make disclosure of true facts entitling him to claim the equitable relief sought by him in the proceedings. In the present case, as aforesaid, the plaintiff disclosed to the Court that he had paid Rs. 6,500/- towards the consideration for the suit land. At trial he could not establish the payment of Rs. 2,500/- paid over and above the payment of Rs. 4,000/- at the time of execution of the suit agreement at Exh. 93 on the record of the case. His case of additional payment of Rs. 2,500/- was thus disbelieved. It would mean that he approached the Court with an untrue case that he paid Rs. 6,500/- as against the actual payment of Rs. 4,000/- as found by the Courts below. The true disclosure of the case was thus not made before the Court while approaching it for claiming the equitable relief of specific performance. This would certainly disentitle the plaintiff from claiming the equitable relief of specific performance in view of the aforesaid ruling of the Andhra Pradesh High Court in the case of Kommiseti (supra).

8. It may be noted that the Andhra Pradesh High Court has relied on the ruling of the Supreme Court in Civil Appeal No. 1076 (N) of 1966 decided on 17th July, 1969 in support of its conclusion. In the case before the Supreme Court the agreement involved sale of one immovable property for Rs. 6,000/-. The proposed vendee paid Rs. 300/- by way of the earnest money at the time of execution of the agreement. It was entered between the parties on 12th May, 1953. It was agreed that the balance amount of the consideration in the sum of Rs. 5,700/- was to be paid by 4th June, 1953. On 5th June, 1953 the proposed vendee addressed one letter to the proposed vendor to the effect that, pursuant to the terms of the agreement, the balance amount of consideration in the sum of Rs. 5,700/- was offered on the previous day, that is, on 4th June, 1953 but it was not accepted. In reply the proposed vendor denied to have been offered any payment on 4th June, 1953 and he declared the agreement to have been cancelled. The property involved in the litigation was sold by the proposed vendor to a third party on 22nd June, 1953. The matter was carried to the Court by means of a suit. The trial Court found against the plaintiff regarding offer of payment of the balance amount of consideration in the sum of Rs. 5,700/- on 4th June, 1953. It further refused to grant the relief of specific performance. In appeal the first appellate Court agreed with that conclusion. The matter was carried to the High Court in further appeal. The High Court agreed with the

findings of the Courts below that the proposed vendees had made untrue representations in their plaint and that the evidence they had tendered as to the offer of the balance of the sale price and its declaration by the vendor was unreliable. However, in the view of the High Court the lower appellate Court erred in holding that because they had set up a false case about the tender of the balance of the sale price, they were not entitled to a decree for specific performance. According to the High Court, making of a false representation did not disentitle the plaintiffs to a decree for specific performance unless it was established that "the making of the false representation resulted in adversely affecting their interest, if it altered the position of the parties in such a way that it would be inequitable to grant relief to the plaintiffs." Apropos, the High Court accepted the appeal and decreed the suit for specific performance. In appeal before the Supreme Court, the judgment of the High Court was reversed. It has been held:

The Court has a discretion to grant or withhold a decree for specific performance, in the exercise of the discretion the circumstances of the case, the conduct of the parties and their respective interests under the contract must be kept in mind.

The plaintiffs had set up a case that they had offered on June 4, 1953 to the first defendant the balance of the purchase price due, and they sought to support that case by leading evidence which was to their knowledge false. It is true that the trial Court and the District Court have held that after June 4, 1953 the plaintiffs were ready and willing to perform their part of the contract and under the terms of the agreement of sale, time was not of the essence, but having regard to their conduct the plaintiffs were not entitled to a decree for specific performance. The question whether in the circumstances of the case the claim of the plaintiff for specific performance may be decreed being within the discretion of the trial Court and the District Court, the High Court could not interfere with the exercise of that discretion unless the order was shown to be arbitrary or patently erroneous in law. The High Court observed that the question of law, and the High Court sitting in second appeal will interfere in the exercise of its discretion if it is of the opinion that the discretion vested in the Court u/s 22 of the Act had not been exercised in accordance with well recognised principles of equity. The High Court further observed that though the trial Court declined to give relief to the plaintiffs on the ground that they had made a false representation, the lower appellate Court declined to grant relief on that ground and also on the ground of delay in instituting the suit. In the view of the High Court, mere delay not involving consequences adverse to the interest of the defendants will not justify refusal of relief to the plaintiffs.

In our view, the exercise of discretion against the claim made by the plaintiffs was not arbitrary but was reasonable and guided by judicial principles.

(Emphasis supplied)

I think the aforesaid ruling of the Supreme Court in Civil Appeal No. 1076 (N) of

1966 decided on 17th My, 1969 is on all fours applicable in the present case. The plaintiff in the present case by his conduct has become disentitled to the equitable relief of specific performance of the suit agreement on account of his approaching the Court with a false representation about the subsequent payment of Rs. 2,500/-. It is an admitted position on record that in his notice of 18th June, 1973 he had taken up the stand regarding further payment of Rs. 2,500/- after execution of the suit agreement. He asserted that position even in the plaint. He supported his such plea even at trial but failed to prove it. In the view of the matter, there is no escape from the conclusion that the plaintiff approached the Court with an untrue representation about the subsequent payment of Rs. 2,500/- towards the consideration amount for the suit land.

9. Shri Shah for the plaintiff has submitted that simply because a particular case is not established or proved at trial it would not mean that "the case set up is false. A false case, runs the submission of Shri Shah for the plaintiff, is different from a case which could not be established or proved at trial for want of proper evidence. I think this distinction between a false case and an untrue case is not very material in the present context. The plaintiff approached the Court for the relief of specific performance with a plea of subsequent payment of Rs. 2,500/- towards the consideration for the suit land. As aforesaid, he asserted such payment of Rs. 2,500/- subsequent to execution of the suit agreement even in his notice of 18th June, 1973. It is not in dispute that the notice of 18th June, 1973 was sent through his Advocate. When a party seeks a lawyer's assistance in serving a notice, he would obviously give all necessary instructions to his lawyer in that regard. He would obviously seek his lawyer's advice as well. It would be obvious that the lawyer might have advised him to substantiate the case of his subsequent payment of Rs. 2,500/- towards the consideration for the suit land at trial if the litigation was required to be instituted. The plaintiff very well knew what evidence he possessed in that regard. Despite that position, he has chosen to approach the Court with assertion about subsequent payment of Rs. 2,500/-. He has not been able to substantiate his such assertion at trial. This would mean that he approached the Court with such untrue assertion and he could be said to have known that he would not be able to establish his such assertion at trial on the strength of his lawyer's advice. As pointed out hereinabove while giving instructions for drafting his notice of 18th June, 1973, he might have definitely sought his lawyer's advice with respect to the proof of subsequent payment of Rs. 2,500/- at trial. This exercise into conjectures and hypotheses is undertaken keeping in mind the settled principle of law that civil cases are decided on the basis of preponderance of probabilities. Even if such a specific case is not put to the plaintiff in his oral testimony at trial, in order to understand his conduct it is necessary to resort to certain reasonable inferences on the basis of the record. I am therefore of the view that the plaintiff could be said to have known that he would not be able to establish his case of his subsequent payment of Rs. 2,500/- towards the consideration for the suit land at trial if the litigation was required to be instituted for specific performance of the

suit agreement. In that case, he ought not to have approached the Court with a case which he could not have established at trial, more particularly when he was praying in his suit for an equitable relief from the Court. As aforesaid, the settled principle of equity would require a party to approach the Court with clean hands. An untrue assertion in his pleadings while approaching the Court would certainly amount to not approaching it with clean hands. In mat view of the matter, the conduct of the plaintiff in that regard would certainly disentitle him from claiming the equitable relief of specific performance in view of the aforesaid ruling of the Supreme Court in Civil Appeal No. 1076(N) of 1966 decided on 17th July, 1969. The Courts below were not justified in granting the relief of specific performance to the plaintiff.

10. Shri Shah for the plaintiff has then submitted that the lower appellate Court has exercised that discretion in favour of the plaintiff despite the fact that its attention was drawn to this conduct of the plaintiff as reflected by his assertions in the plaint. According to Shri Shah, the learned District Judge has come to the conclusion that there was no malicious intention on the part of the plaintiff in putting up such a case, and as such the plaintiff should not be denied the relief of specific performance. In that view of the matter, runs the submission of Shri Shah for the plaintiff, This Court need not interfere with the exercise of discretion by the lower appellate Court in view of the aforesaid ruling of the Supreme Court in Civil Appeal No. 1076(N) of 1966 decided on 17th July, 1969.

11. It is true that in the course of its judgment the Supreme Court has held that the High Court could not interfere with the exercise of such discretion unless the order was shown to be arbitrary or patently erroneous in law. I think the qualifying words are quite significant. It would mean that the High Court could interfere with the exercise of such discretion if the order of the lower appellate Court was shown to be arbitrary or patently erroneous in law. When a party approaches the Court with an untrue assertion and it is concurrently found so by the Courts below, the plaintiff cannot get any equitable relief in his action. Despite the position of law, if the equitable relief of specific performance has been granted by the Courts below, that is certainly not in consonance with the principle of law enunciated by the Supreme Court in its aforesaid ruling in Civil Appeal No. 1076(N) of 1966 decided on 17th July, 1969 and followed by the Andhra Pradesh High Court in its aforesaid ruling in the case of Kommisetti (supra). The resultant decree of the lower appellate Court can thus be said to be patently erroneous in law. In exercise of its further appellate jurisdiction u/s 100 of the Code, This Court can certainly interfere with the exercise of discretion on the part of the Courts below.

12. As rightly submitted by Shri Shelat for the appellant. Section 20(1) of the Specific Relief Act, 1963 ("the Act" for brief) would also require the appellate Court, whether first or the second, to examine the correctness of the discretion exercised by the Court or Courts below. It has been made very clear in the aforesaid statutory provision that the discretion of the Court to grant the relief of

specific performance should not be arbitrary but should be sound and reasonable guided by judicial principles and capable of correction by a Court of appeal. It cannot be gainsaid that the High Court is a Court of appeal u/s 100 of the Code. If the exercise of discretion in granting the relief of specific performance is not sound and reasonable and is not guided by judicial principles, it would be open to This Court, even in exercise of its limited powers u/s 100 of the Code, to interfere with such discretion concurrently exercised by the Courts below. It is needless to repeat that the exercise of discretion by the Courts below is not found to be in accordance with the principle of law in that regard enunciated in the aforesaid ruling of the Supreme Court in Civil Appeal No. 1076(N) of 1966 decided on 17th July, 1969 and in the aforesaid ruling of the Andhra Pradesh High Court in the case of Kommiseti (supra).

13. The ruling of the Supreme Court in the case of Reserve Bank of India and Anr. v. Ramkrishna Govind Morey reported in AIR 1976 SC 830 as relied on by Shri Shah for the plaintiff is of no help to him in the instant case. It is true that it has been held therein that the question whether the trial Court should not have exercised its jurisdiction differently is not a question of law justifying interference by the High Court in a second appeal. However, if the facts of that case are examined, it would be found that the exercise of discretion was with respect to the amendment applications. As transpiring from the judgment in that case, exercise of such discretion by the trial Court was affirmed by the High Court in exercise of its revisional powers. Again, the exercise of discretion was on general principles and not in view of any statutory provision like Section 20 of the Act. In that view of the matter, the aforesaid ruling of the Supreme Court in the case of Ramkrishna Govind Morey (supra) is distinguishable on its own facts. It will have no application in the present case.

14. Shri Shah for the plaintiff has then urged that This Court need not upset the decree for specific performance of the suit agreement passed in favour of the plaintiff at the instance of the subsequent purchaser of the suit land during the pendency of the suit. In support of his submission, Shri Shah has relied on the ruling of the Bombay High Court in the case of Abdul Kayum Ahmad and Others Vs. Damodhar Paikaji Kinhekar and Another, . In that case it appears that in the litigation involving specific performance of an agreement of sale of some immovable property, the subsequent purchaser purchased the subject-matter of the litigation with notice of the prior agreement. His bona fides were not established at trial. It appears that while contesting the suit he took up the plea that the relief of specific performance should not be given as the plaintiff could be adequately compensated in terms of money. The High Court of Bombay in its aforesaid ruling in the case of Abdul Kayum Ahmad (supra) has held that a subsequent purchaser would not be entitled to take up such a plea. The aforesaid ruling of the Bombay High Court is distinguishable on its own facts. In the present case the appellant has come forward with a case that the plaintiff would not be entitled to the relief of specific performance by his own conduct as reflected in the proceedings. Disentitlement to get an equitable relief is certainly

different from an alternative relief of compensation for money in lieu of the relief of specific performance. It cannot be gainsaid that the alternative relief of compensation in lieu of the relief of specific performance would mean that the plaintiff is not disentitled from claiming the equitable relief of specific performance of the agreement in question. Whether or not the plea of the alternative relief of compensation should be allowed to come from the subsequent purchaser was the question before the Bombay High Court in its ruling in the case of Abdul Kayum Ahmad (supra). The question whether or not the plaintiff was entitled to the equitable relief of specific performance was not before the Court. In that view of the matter, the aforesaid ruling of the Bombay High Court in case of Abdul Kayum Ahmad (supra) will not come to the rescue of the plaintiff in the present case.

15. Shri Shah for the plaintiff has then submitted that This Court cannot upset the findings of fact concurrently recorded by the Courts below in exercise of its limited appellate powers u/s 100 of the Code in view of the rulings of the Supreme Court in the case of R. Ramachandran Ayyar Vs. Ramalingam Chettiar, and in the case of Mst. Kharbuja Kuer Vs. Jangbahadur Rai, and in the case of Smt. Jahejo Devi and Others Vs. Moharam Ali, and in the case of Maniar Ismail Sab and Others Vs. Maniar Fakruddin and Others, . It is not necessary for the to dilate upon the aforesaid rulings of the Supreme Court in extenso. The position of law regarding the further appellate powers of the High Court u/s 100 of the Code is well-settled. It cannot be disputed that the High Court does not possess the power u/s 100 of the Code to upset the findings of fact recorded by the lower appellate Court unless they are found to be perverse. No finding of fact recorded by the lower appellate Court is sought to be upset in this appeal. What is sought to be done is to interfere with the exercise of discretion by the lower Court on proved facts. It is found by This Court that the exercise of discretion by the lower Courts was not sound and reasonable and it was not guided by judicial principles an required by Section 20 of the Act. In that view of the matter, the aforesaid rulings of the Supreme Court will be of no assistance to the plaintiff in this appeal.

In view of my aforesaid discussion, I am of the opinion that the decree for specific performance of the suit agreement passed by the trial Court and affirmed in appeal by the lower appellate Court cannot be sustained in law. It has to be set aside in this appeal.

In the result, this second appeal is accepted. The judgment and the decree passed by the learned Joint Civil Judge (JD.) at Valsad on 30th January, 1978 in Regular Civil Suit No. 166 of 1975 as affirmed in appeal by the decision of the District Judge of Valsad at Navsari on 31st January, 1981 in Regular Civil Appeal No. 18 of 1976 are quashed and set aside. The plaintiffs suit is decreed for Rs. 4,000/- with running interest at the rate of 6 per cent per annum from the date of the suit till payment. There shall however be no order as to costs on the facts and in the circumstances of the case.