

(2006) 12 DEL CK 0099

In the Delhi High Court

Case No : IA No. 9859 of 2006 and is No. 13076 of 2006 in CS (OS) 1233 of 2006

Shri Satya Bhushan Kaura

APPELLANT

Vs

Smt. Vijaya Myne

RESPONDENT

Date of Decision : 22-12-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), Order 12 Rule 6, Order 20 Rule 1, Order 8 Rule 3, Order 8 Rule 5
Evidence Act, 1872 — Section 17, 91, 92
Specific Relief Act, 1963 — Section 10, 16, 16, 18, 19

Citation : (2007) 1 ILR Delhi 499

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : Prem Kumar and Gurpreet S. Bawa, for the Appellant; Kamlesh Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.

IA No. 9859/2006

1. This application has been filed by the plaintiff under the Provisions of Order 8 Rule 3 and 5 read with Order 12 Rule 6 of the CPC praying for passing of a decree in its favor on the admissions of the sole defendant.

2. Inasmuch as there is no dispute to the essential facts, the same are noticed hereafter.

3. On 14th November, 1979 Smt. Vijaya Myne, the sole defendant herein was granted perpetual leasehold right in the property measuring 325 sq. yards bearing No. C-2/270 Janak Puri Residential Scheme, New Delhi. There is no dispute that she continues to be the owner in occupation of this property and had built a double storey house thereon. Smt. Vijaya Myne entered into an

agreement on 13th April, 2004 to sell this entire property to Shri Satya Bhushan Kaura, the plaintiff herein for a total consideration of Rs. 99 lakhs. This agreement has been duly exhibited on record as Exhibit P1. The defendant has received a sum of Rs. 8 lakhs as earnest money and Rs. 2 lakhs pursuant to this agreement on the same day and executed the receipt Exhibit P 2 in acknowledgment thereof. This agreement is duly witnessed by two persons including Shri Gagan Myne, the son of the defendant.

The parties to this agreement inter alias had covenanted thus:

If the intending buyer failed to arrange the balance payment within after freehold one month the earnest money will be forfeited but I will pay 2% (two per cent) brokerage to Raja Property Dealers, New Delhi.

4. It is noteworthy that the amount of Rs. 2 lakhs was to be utilised towards payment of dues of DESU, the house tax and for getting the property converted from leasehold to freehold. The plaintiff has asserted that the defendant started ignoring the queries of the plaintiff with regard to the status of the conversion from leasehold to freehold of the property of the defendant. The plaintiff made inquiries from even the property dealer who had been appointed by the defendant in this behalf. Finally, the plaintiff met the defendant with the property dealer sometime in December, 2004 and found that the defendant was prevaricating on account of the escalation of the prices and was desirous that the sale consideration be increased. Consequently, a revised agreement to sell and purchase dated 6th April, 2005 was entered into between the parties wherein he total sale consideration was enhanced to Rs. 1.27 crores on the defendant's insistence. The parties thereupon executed and signed a fresh agreement dated 6th April, 2005 resulting in revocation of the prior agreement dated 13th April, 2004.

5. The agreement dated 6th April, 2005 has been admitted by the defendant and has been exhibited as Exhibit P4 on record. This agreement is witnessed by Mr. Gagan Myne, son of the defendant and Mr. Joginder Pal Singh and recorded thus:

And whereas the first party has further into this agreement with the second party and she has agreed to sell the said double storey built up property bearing No. C-2/270, measuring 325 sq. yds., situated at Janak Puri, New Delhi, with all rights and titles thereto, to the second party, and the second party had agreed to purchase the same for a sum of Rs. 1,27,00,000/- (Rs. one crore Twenty Seven Lacs only), out of which the first party has received a sum of Rs. 15,00,000/- (Rs. Fifteen Lacs only) (Along with Rs. 8,00,000/- previous amount plus Rs. 7,00,000/- on sale proceeds and the receipt of which the first party hereby acknowledges.

That after conversion of the said property from lease hold into freehold in her name and after getting the conveyance deed of the said property duly registered with the office of sub-registrar, thereafter the second party will pay the balance amount of Rs. 1,12,00,000/- (Rs. One crore Twelve Lacs only), within one

month, and the first party shall execute the sale deed in respect of the said property in favor ;of the second party in his nominee,

That the first party shall deliver the vacant physical possession of the said property at the time of receipt of balance payment and registration of sale deed to the second party.

That all the expenses of stamp papers, registration fee etc. shall be paid by the second party.

That any property tax, electric, water bills and all other dues and demands regarding the said property, up to the date of registration of the sale document, shall be paid by the first party and thereafter the same shall be paid by the second party.

That the first party shall deliver all previous documents relating to this property to the second party at the time of registration of sale document.

6. So far as the consequences of the failure of the defendant, who was the first party in the agreement, to complete the transaction was concerned, the parties had covenanted thus:

That in case the first party backs out from the said transaction on any grounds then the second party will get the transaction completed through court of law by specific performance of suit at the risk and cost of the first party.

That in case the second party backs out from the said transaction, on any ground, then his earnest money shall stand forfeited in favor of the first party.

This deal has been done through Raja Property at New Krishna Park, New Delhi, both side 2% commission will be paid by the first party.

7. Pursuant to this agreement to sell dated 6th April, 2005, in addition to the amount of Rs. 10 lakhs paid earlier, the defendant has admittedly received a further sum of Rs. 7 lakhs from the plaintiff and duly executed a receipt and acknowledgment thereof which has been exhibited on record as Exhibit P3. Thus the defendant has received a sum of Rs. 17 lakhs pursuant to his agreement.

8. The plaintiff has contended that even thereafter he desperately pursued the matter with the defendant, the property dealer and the defendant's son to expedite the matter of getting the property converted to freehold. The plaintiff clearly informed the defendant that he had made adequate arrangements and was in a position to pay the balance sale consideration as soon as the defendant got the clearance and approval from the DDA in getting the property converted from leasehold to freehold. The plaintiff was informed by the property dealer that sufficient progress had been made with the DDA who was to process the conversion and that even conversion charges stood deposited with the DDA. Since July, 2005, the plaintiff was informed by the property dealer that the defendant who was to appear before the DDA for signing and executing certain documents was reluctant to get the process completed for some inexplicable

reasons and consequently it appeared that the defendant may not be interested in going ahead with the deal. Between October, 2005 and February, 2006, the plaintiff repeatedly called the defendant on the telephone making calls at her residential telephone number 51551170 and at her mobile at No. 9811008695 which is her son's mobile and by personally visiting at her residence at A-317, 1st floor, defense Colony, New Delhi.

9. The defendant has till date not disclosed, either to the plaintiff or before this Court, the date on which she had applied for getting the property converted and the date when it has been converted. The plaintiff had even sought dates when the same would be converted to freehold in case it had not been so converted. After Realizing that the defendant is avoiding the registration of the sale deed in favor of the plaintiff, the plaintiff caused a public notice to be published in the Hindustan Times and Times of India on 19th March, 2006. The defendant sent a legal notice dated 22nd March, 2006 as a reply which has been admitted before the court and exhibited on record as Exhibit P5. She stated therein that she is no longer interested in selling a property to the plaintiff for "personal reasons".

10. In his reply dated 5th April, 2006, the plaintiff requested certain information regarding the conversion of the property and reiterated his readiness and willingness to purchase the suit property. The defendant sent a rejoinder through counsel dated 10th April, 2006, stating that the defendant was not interested in dealing with the plaintiff and wanted to return double the amount of earnest money received by her.

11. In these circumstances, urging readiness, willingness and ability to perform his part of the contract, the plaintiff has filed the present suit seeking the following relief:

(a) pass a decree in favor of the plaintiff and against the defendant directing the defendant to specifically perform her part of the contract dated 06.04.2005 by executing and registering sale deed and conveyance deed in favor of the plaintiff in respect of property double storey house measuring 325 sq. yds bearing No. C-2/270, Janak Puri, Residential Scheme, New Delhi as shown in the schedule annexed with the plaint after getting the conversion of the lease-hold property into freehold;

(b) pass a decree for possession of the suit property namely, C-2/270, Janakpuri Residential Scheme, New Delhi in favor of the plaintiff and against the defendant;

(c) in the alternative pass decree in favor of the plaintiff and against the defendant, directing the defendant to refund tot he plaintiff the amount of Rs. 17 lacs paid as earnest money Along with interest thereupon @ 18% per annum from the date of the payment of the amount and also to pay Rs. 1.10 crores as damages for committing breach of the contract.

(d) pass a decree in favor of the plaintiff and against the defendant for compensation for not finalising and executing registered sale deed and

withholding the transaction and also award interest thereon @ 18% per annum from the date of entering into Agreement to Sell and purchase till realisation of the amount of compensation;

(e) pass a decree in favor of the plaintiff and against the defendant for perpetual injunction for restraining the defendant from creating any third party rights or interest, whatsoever, in the suit property, i.e. double storey house measuring 325 sq.yds. bearing No. C-2/270, Janakpuri, Delhi;

(f) award cost of the suit to the plaintiff and

(g) pass any other relief in favor of plaintiff and against the defendant as this Hon"ble Court may deem fit and proper in the interest of justice.

12. There is no dispute in the written statement to any of the documents as noticed hereinabove apart from vehemently contending that the defendant on her own paid a sum of Rs. 1 lakh to M/s Raja Property Dealers who is alleged to be the property dealer of the plaintiff. It is contended on behalf of the defendant that Mr. Joginder Pal of M/s Raja Property Dealer failed to get the property converted from leasehold to freehold and that the onus and burden of getting the same done was on the plaintiff as he is a builder by profession. The suit has been filed, according to the defendant, to cover up his own wrongs, as it is the plaintiff who has failed to get the property converted to freehold and to complete the sale transaction despite the request of the defendant in this behalf. The defendant has contended that since there have been some changes in the scenario, she is no more interested in selling the suit property and wants to shift to the same with her family members. The defendant has stated that she is ready and willing to return the advance amount received by the plaintiff from the plaintiff Along with the interest agreed thereupon.

13. In the light of such stand of the defendant, the plaintiff has filed the present application pointing out that no material facts urged by the plaintiff has been disputed and that the suit deserves to be decreed on the admissions made by the plaintiff not only in her written statement but in the legal notice dated 22nd March, 2006 and the subsequent rejoinder dated 10th April, 2006. Reliance has been placed on the letter filed by the defendant dated 1st June, 2005 from the Delhi Development Authority whereby she was required to appear for the purposes of execution of the conveyance deed and it is pointed out that in fact all material steps for the conveyance stood completed except the payment of the small amount of Rs. 810/- on account of composition fees. The defendant was required to tender the NOC/Redemption deed and a original completion certificate as well as her photographs for execution of the conveyance deed in her favor. It has been urged that, in these facts, the plaintiff is entitled to a decree forthwith as the plaintiff has been all along ready, willing and able to tender the balance consideration for which he had made arrangements.

14. Before advertng to the principles which would govern grant of a decree for specific performance and the parameters within which a decree would deserve to

be passed on an admission by the defendant, it would be appropriate to cull out the admissions made by the defendant in her pleadings and documents.

So far as the execution of the agreement to sale and purchase in respect of sale of double storey property bearing No. C-2/270 measuring 325 sq. yards situated in the Janakpuri Residential Area, New Delhi for a total consideration of Rs. 1 crore 27 lakhs and receipt of Rs. 17 lakhs towards the earnest money, the defendant has repeatedly admitted the same. It would be useful to examine these in extenso and they read thus:

(a) in the notice dated 22nd March, 2006 got issued by the defendant through counsel, it was stated thus:

1. That my client had entered into an agreement to sell and purchase in respect of sale of double storey property bearing No. C-2/270, measuring 325 sq.yds. situated at Janakpuri Residential Scheme, New Delhi, for a total sale consideration of Rs. 1,27,00,000/- (Rs. one crore twenty seven lacs only).

2 . That in accordance with the said agreement to sell and purchase my client received an earnest money of Rs. 15,00,000/- (Rupees Fifteen lacs only) from you in respect of the said property.

(b) the defendant through counsel sent a rejoinder dated 10th April, 2006 to the plaintiff's reply dated 4th April, 2006 to the legal notice wherein it was stated thus:

Infact the correct factual position is that my client intended to sell the property bearing No. C-2/270, Janakpuri, New Delhi, measuring 325 sq. yds. through property dealer namely Sh. Joginder Pal. Initially the total sale consideration agreed to be paid was Rs. 99 lacs out of which but after negotiations, the same was agreed for Rs. 1,27,00,000/- and your client paid a sum of Rs. 17 lacs as earnest money to my client. However, till date, the balance amount has not been paid by your client to my client and neither your client ever showed any intentions to pay the said amount despite my client being constantly following up the matter both with the said property dealer and your client.

(c) in answer to the plaintiff's averments in para 3 of the plaint with regard to the agreement to sell dated 13th April, 2004, the defendant in para 3 of the written statement has stated and admitted thus:

3. That the present suit is an abuse of the process of this Hon''ble Court and the same is not maintainable because the defendant received a notice from the Delhi Development Authority dated 01.06.2005 but at that time, since the defendant was out of station, her son informed the DDA through letter that since his mother is out of station, some time may be given. The said letter was duly served upon the DDA. The son of the defendant handed over the said documents to the said M/s Raja Property Dealer as well as to the plaintiff herein with the request that since all the requisite documents have been executed by the defendant herein, hence all the formalities in respect of the said conversion may

be taken care off. The plaintiff assured the son of the defendant that necessary action would be taken and new dates would be taken from the DDA. The defendant No. 1 also sent a notice to Raja Property Dealer on 13.12.2005 vide Speed Post. The plaintiff also assured the son of the defendant that since the plaintiff is in the profession of builder, he will manage the entire scenario. The defendant till date is totally unaware of the fact whether the plaintiff has deposited the said documents in the DDA or not. Hence the plaintiff is trying to somehow push ball to the court of defendant and is trying to pass the buck, since the plaintiff has miserably failed to get the said property freehold from leasehold. the defendant has failed to understand that despite giving the entire documents, fees for conversion, then where was the occasion for not getting the work of the defendant done on time despite the assurances given by the plaintiff to the defendant from time to time.

10. that the present suit is an abuse of the process of this Hon"ble court and the same is not maintainable because the plaintiff has manipulated the documents and in collusion with the property dealer namely M/s Raja Property Dealer has got trapped the defendant in such a way that the defendant has been forced to sell the property at throwaway price.

15. Therefore, from the pleadings and the reply dated 22nd March, 2006 and 10th April, 2006, there is a clear unconditional and unequivocal admission of the execution of the agreement dated 13th April, 2006 of the suit property for a total sale consideration of Rs. 1crore 27 lakhs and receipt of Rs. 17 lakhs as earnest money on the part of the defendant.

16. From a perusal of the agreement to sell between the parties, certain steps were required to be taken which can be enumerated thus:

(i) the suit property which was leasehold property was required to be converted to freehold property by the defendant.

(ii) within one month thereafter, the plaintiff was required to pay the balance amount of Rs. 1 crore 12 lakhs and the defendant was required to execute the sale deed in respect of the said property in favor of the plaintiff or its nominee.

(iii) the defendant was required to deliver the vacant physical possession of the suit property at the time of receipt of the balance sale consideration to the plaintiff. The defendant was also required to make payment of all dues of property tax, electricity, water bills and all other dues and demands regarding the suit property up to the date of registration of the sale document.

(iv) the expenses of the stamp paper and registration etc of the sale deed in favor of the defendant was required to be paid by it.

(v) The defendant was required to deliver all previous documents relating to the suit property to the plaintiff at the time of the registration of the sale deed in favor of the defendant.

17. Therefore, the only obligation on the part of the plaintiff in terms of the agreement to sell dated 6th April, 2005 was to pay the balance sale consideration within one month from the conversion the suit property from leasehold to freehold and after the conveyance deed is executed in favor of the defendants by the superior lesser and at the time of getting the sale deed in its favor executed by the defendant.

Since the main objection to the present application of the defendant is based on purported obligations of the plaintiff in this behalf, it becomes necessary to notice the stand of the defendant in the legal notices and the reply.

18. It would be useful to notice the remaining contents of the legal notice dated 22nd March, 2006 which is the first document wherein the defendant refused to abide by the agreement to sell and the cause thereof. The only reason for refusing to complete the transaction in favor of the plaintiff is set out in the notice dated 22nd March, 2006 was:

3. that since there is some misunderstanding between my client and the other legal heirs of the late husband of my client, hence my client is no more interested in selling the above said property to you for some personal reasons.

4. that to be precise, I state on behalf of my client that a civil suit for partition has been initiated before the Hon"ble Delhi High Court being suit No. 192/2006 titled as Brig. Deepak Myne v. Vinod Kumar Myne and Ors. in respect of the ancestral property bearing no/ a-317, defense Colony, New Delhi.

5. That my client has every apprehension that since there has arisen a dispute in the ancestral property, hence my client would be required to shift to the said property situated at Janakpuri, New Delhi.

6. That my client hereby undertakes and assures you that my client is ready and willing to return the amount of Rs. 15,00,000/- received from you Along with interest @ 12% p.a. Needless to mention that my client is further ready and willing to enhance the amount to such a reasonable level just to compensate you for the deal done by you as aforesaid.

19. The plaintiff repudiated this notice in its reply dated 4th April, 2006 and required the defendant to clear the position in respect of the following:

10. We hereby call upon you to clear the position in respect of the following:

(i) the exact date when you applied for conversion of property from leasehold to freehold in DDA;

(ii) the date when the said property has been converted into freehold;

(iii) the likely time to be taken in getting the said permission in case it has not been converted into freehold so far; and

(iv) the likely time by which you would register the sale deed in favor of our client.

20. In its rejoinder dated 10th April, 2006 the defendant nowhere set up the pleas which have been set up in the written statement. She merely sought to place reliance on a clause of the earlier agreement dated 18th April, 2004. So far as the obligation under the terms of the agreement dated 6th April, 2005 were concerned, the defendant stated thus:

In fact, the correct factual position is that my client intended to sell the property bearing No. C-2/270, Janakpuri, New Delhi, measuring 325 sq. yds. through property dealer namely Sh. Joginder Pal. Initially the total sale consideration agreed to be paid was Rs. 99 lacs out of which but after negotiations, the same was agreed for Rs. 1,27,00,000/- and your client paid a sum of Rs. 17 lacs as earnest money to my client. However, till date, the balance amount has not been paid by your client to my client and neither your client ever showed any intentions to pay the said amount despite my client being constantly following up the matter both with the said property dealer and your client.

21. However, very cleverly in the written statement which has been filed before this Court, for the first time in its written statement, the defendant has tried to lay the responsibility and blame for getting the conversion of the property to freehold done upon the plaintiff and has stated thus:

13. xxxx On the contrary, it is submitted that the defendant time and again was calling upon the plaintiff as well as the said property dealer to get the conversion process expedited at the earliest so that the defendant could receive the balance amount at the earliest. The said request was made by the defendant to the plaintiff and the said local property dealer because it was the plaintiff and the said property dealer who assured the defendant that all the running in respect of the conversion process would be done by them. In this respect, it is submitted that the necessary documents required for conversion were duly handed over by the defendant to the said property dealer in the presences of the plaintiff Along with Rs. 1,00,000/- which receipt was duly executed by the said Joginder Pal and witnessed by the plaintiff herein.

xxx

15. xxx On the contrary, it is submitted that the defendant time and again was calling upon the plaintiff as well as the said property dealer to get the conversion process expedited at the earliest so that the defendant could receive the balance amount at the earliest. The said request was made by the defendant to the plaintiff and the said local property dealer because it was the plaintiff and the said property dealer who assured the defendant that all the running in respect of the conversion process would be done by them. In this respect, it is submitted that the necessary documents required for conversion were duly handed over by the defendant to the said property dealer in the presence of the plaintiff Along with Rs. 1,00,000/-, which receipt was duly executed by the said Joginder Pal and witnessed by the plaintiff herein.

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18. that the contents of para No. 18 of the plaint as stated are wrong and vehemently denied. It is submitted that the plaintiff is a builder by profession and he knows all the means and ways to get his work done and the plaintiff in collusion with M/s Raja Property dealer through its proprietor Sh. Joginder Pal had allured the defendant to sell her property at throwaway price and assurance was given to the defendant that since a lot of documentation with the government authorities are involved, the defendant may sign some papers and the rest would be taken care off by the said plaintiff and his other staff/servants/ the local property dealer. The defendant signed all the relevant documents and handed over the same tot he plaintiff herein in the presence of the said M/s Raja Property Dealer and the defendant also paid a sum of Rs. 1,00,000/- to the said property dealer for getting the property converted from leasehold to freehold. Interestingly, the witness in the said receipt is the plaintiff.

22. On these averments, the defendant has unequivocally refused to complete the transaction and to carry out its obligations under the agreement to sell dated 6th April, 2005 and further averred so:

22. That the contents of para No. 22 of the plaint as stated are wrong and vehemently denied. on the contrary it is submitted that since there have been some changes in the scenario, the defendant is no more interested in selling the suit premises and wants to shift in the same Along with her family members. The defendant is ready and willing to return the advance amount received by the defendant from the plaintiff Along with interest accrued thereupon.

23. From the above, it is evident that the stand taken before this Court, is a malafide afterthought on the part of the defendant in order to set up a semblance of a defense to the case of the plaintiff. No such obligation as has been set up against the plaintiff by the defendant in its written statement, is to be found in the agreement dated 6th April, 2005. I find that no such obligation is asserted either in the notice dated 22nd March, 2006 or in the rejoinder dated 10th April, 2006. The pleas set up before this Court in this behalf Therefore are completely belied by the prior stand and assertions of the defendant.

24. It is well settled that the oral stipulations when pitched against the written contract, would have to give way to the terms and conditions of the written statement which alone will bind the parties and nothing further. In this behalf, Section 91 and 92 of the Indian Evidence Act, 1872 need no elaboration. Hence the written statement really discloses no defense and such pleas have been set up only in an attempt to protract and delay the trial. If such a defense is examined on the principles applicable to an application on such facts seeking leave to defend in a suit under Order 37 of the CPC, this Court would have had to hold that the defendant has no defense and the pleas set up are illusory and moonshine.

At the same time, it is noteworthy that all material facts are admitted.

25. There is yet another aspect to this matter. Assuming that this Court was to

accept the plea set up by the plaintiff and hold that the plaintiff was bound to get the property converted to freehold, then the defendant would fail on the case set up by it. Before this Court, the defendant has filed documents evidencing that payment was made to get the conversion to freehold effected through the property dealer. In the notice sent by the defendant dated 22nd March, 2006, and the rejoinder dated 10th April, 2006 no allegation has been made of any collusion between the property dealer and the plaintiff. The defendant has placed before this Court a communication dated 1st June, 2005 addressed by the Delhi Development Authority to Smt. Vijaya Myne(defendant herein) at her address at A-317, defense Colony, New Delhi which reads thus:

Sir/Madam,

With reference to your letter dated 27.5.05 on the subject noted above, I am directed to request you to attend the office of the undersigned with two witnesses having attested photocopy of identification on 8.6.05 between 10.30 a.m. to 12.30 a.m. to execute the conveyance deed in respect of above mentioned plot Along with witnesses and holder, if applicable.

2. You are also requested to bring 5 copies of passport size photographs for affixing the same on the form of conveyance deed as well as on the execution register of the conveyance deed. You are also requested to bring the original lease deed and agreement and D form/occupancy certificate of the plot Along with other original documents relating to above noted plot subject to payment of Rs. 810/-.

3. A n/c of composition fees and submissions of NOC/Redemption deed and original completion certificate before execution of conveyance deed.

26. From a bare reading of this letter, it is apparent that the entire formalities relating to processing of the application for conversion of freehold stood completed. In fact, only the final act of the actual execution of the conveyance deed remained. For this purpose, the defendant had been required by the Delhi Development Authority to attend the office with two witnesses with copies of their identification. Even a date for execution of the conveyance deed had been set down. the defendant was required to produce a copy of the completion certificate and the NOC/Redemption/ as well as five photographs on the form of the conveyance deed and the execution rates of the conveyance deed. It cannot be said and it is not the defendant's case that this documentation could be in the possession of the plaintiff or the property dealer. Furthermore, it is an admitted case of the defendant that the conveyance deed by the Delhi Development Authority was to be executed in favor of the defendant who was to thereafter execute a registered sale deed in favor of the plaintiff and receive the balance sale consideration at the office of the Sub-Registrar at such time.

27. Instead of visiting the office of the Delhi Development Authority to complete the process of the conveyance, the defendant caused a letter dated 8th June, 2005 to be written by her son Gagan Myne to the legal administration

branch(residential) of the DDA informing it that the defendant was out of station and would be back on "20th July" and requesting a date thereafter. It is an admitted position that no steps whatsoever have been taken by the defendant in the matter thereafter. Nothing precluded the defendant from visiting the Delhi Development Authority for getting the conveyance deed executed if she was so inclined. No communication whatsoever was addressed by the defendant to the plaintiff informing it that the DDA had written to the defendant requiring the conveyance deed to be executed.

Almost six months thereafter, the defendant No. 1 claims to have written a letter dated 12th December, 2005 to Raja Properties claiming that she has deposited the required documents with Delhi Development Authority in December and alleges telephonic communications to the property dealer and the plaintiff. There is no proof of either issuance of this letter or its service on the property dealer. There is no communication whatsoever addressed to the plaintiff nor any proof of deposit of the documents with the Delhi Development Authority. This letter itself shows that after June, 2005, only the defendant was aware of the requirements of the DDA and no steps had been taken till December, 2005.

28. Looked at from any angle, even if the responsibility for conversion rested on the plaintiff, it is evident that all steps stood taken and the ball was clearly in the defendant's court for taking the final step of visiting the office of the DDA and getting the conveyance deed executed in which her presence was essential. The defendant has not acted to make available even the copies of the record which was sought by the DDA or the photographs and has not acted to deposit a sum of Rs. 810/- which the DDA had demanded in respect of which she has raised no dispute. No blame for the delay in conversion of the property to freehold can Therefore be attributed to or fastened on the plaintiff.

29. In the light of the above it now becomes necessary to consider the relief to which the plaintiff could be held entitled. The plaintiff has prayed for grant of a decree for specific performance which is governed by the provisions of Section 20 of the Specific Relief Act. There is no dispute that the relief of specific performance is a discretionary relief and cannot be claimed as a matter of right. However, it is equally well settled that the discretion to grant specific performance of an agreement to sell immovable property is governed by statutory provisions and sound judicial principles. So far as the relief of specific performance is concerned, the same is governed by the provisions of Section 16 and 20 of the Specific Relief Act, 1963. The statutory provisions read thus:

16. Personal bars to relief Specific performance of a contract cannot be enforced in favor of a person-

(a) who would not be entitled to recover compensation for its breach; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or willfully acts at variance with, or in subversion of, the relation

intended to be established by the contract; or

(c) 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 of the performance of which has been prevented or waived by the defendant. Explanation : For the purposes of Clause (c),-

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

20. Discretion as to decreeing specific performance

(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1 : Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of Clause (a) or hardship within the meaning of Clause (b).

Explanation 2: The question whether the performance of a contract would involve hardship on the defendant within the meaning of Clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in

consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.

30. It is Therefore evident that in a suit praying for a decree for specific performance of an agreement to sell and purchase of immovable property, the court is required to consider two issues:

(i) whether the agreement of sale as alleged by the plaintiff is lawful, validly executed and binding.

(ii) whether the plaintiff, who is a purchaser, has complied with the provisions of Section 16(c) of the Specific Relief Act by pleading and establishing that it has performed and has been ready, willing and able to perform his part of the contract.

31. It is trite that in order to determine as to whether the plaintiff was ready and willing to perform his part of the contract, the sequence in which the obligation under the contract are to be performed are required to be taken into consideration(Re: Ajit Prasad Jain Vs. N.K. Widhani and Others,

32. In this behalf, it would be apposite to advert to the principles laid down by the Apex Court in Aniglase Yohannan Vs. Ramlatha and Others, wherein the court held thus:

9. The requirements to be fulfilled for bringing in compliance of the Section 16(c) of the Act have been delineated by this Court in several judgments. Before dealing with the various judgments it is necessary to set out the factual position. The agreement for sale was executed on 15-2-1978 and the period during which the sale was to be completed was indicated to be six months. Undisputedly, immediately after the expiry of the six months period lawyer's notice was given calling upon the present appellant to execute the sale deed. It is also averred in the plaint that the plaintiff met the defendant several times and requested him to execute the sale deed. On finding inaction in his part, the suit was filed in September, 1978. @page-SC3506 This factual position has been highlighted in the plaint itself. Learned single Judge after noticing the factual position as reflected in the averments in the plaint came to hold that the plaint contains essential facts which lead to inference to plaintiff's readiness and willingness. Para 3 of the plaint indicates that the plaintiff was always ready to get the sale deed prepared after paying necessary consideration. In para 4 of the plaint reference has been made to the lawyer's notice calling upon the defendant to execute the sale deed. In the said paragraph it has also been described as to how after the lawyer's notice was issued plaintiff met the defendant. In para 5 it is averred that defendant is bound to execute the sale deed on receiving the balance amount and the plaintiff was entitled to get the document executed by the defendant. It is also not in dispute that the balance amount of the agreed

consideration was deposited in Court simultaneously to the filing of the suit. While examining the requirement of Section 16(c) this Court in Syed Dastagir Vs. T.R. Gopalakrishnasetty, noted as follows:

So the whole gamut of the issue raised is, how to construe a plea specially with reference to Section 16(c) and what are the obligations which the plaintiff has to comply with in reference to his plea and whether the plea of the plaintiff could not be construed to conform to the requirement of the aforesaid section, or does this section require specific words to be pleaded that he has performed or has always been ready and is willing to perform his part of the contract. In construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. In India most of the pleas are drafted by counsel hence the aforesaid difference of pleas which inevitably differ from one to the other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. But to test whether he has performed his obligations, one has to see the pith and substance of a plea. Where a statute requires any fact to be pleaded then that has to be pleaded may be in any form. The same plea may be stated by different persons through different words; then how could it be constricted to be only in any particular nomenclature or word. Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of "readiness and willingness" has to be in spirit and substance and not in letter and form. So to insist for a mechanical production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded." Again in Motilal Jain Vs. Smt. Ramdasi Devi and Others, it was noted as follows:

The other contention which found favor with the High Court, is that plaintiff averments do not show that the plaintiff was ready and willing to perform his part of the contract and at any rate there is no evidence on record to prove it. Mr. Choudhary developed that contention placing reliance on the decision in Ouseph Varghese Vs. Joseph Aley and Others, . In that case, the plaintiff pleaded an oral contract for sale of the suit property. The defendant denied the alleged oral agreement and pleaded a different agreement in regard to which the plaintiff neither amended his plaint nor filed subsequent pleading and it was in that context that this Court pointed out that the pleading in specific performance should conform to Forms 47 and 48 of the First Schedule of the Code of Civil Procedure. That view was followed in Abdul Khader Rowther Vs. P.K. Sara Bai and Others, .

However, a different note was struck by this Court in *R.C. Chandiok and Another Vs. Chuni Lal Sabharwal and Others*, . In that case "A" agreed to purchase from "R" a leasehold plot. "R" was not having lease of the land in his favor from the Government nor was he in possession of the same. "R", however, received earnest money pursuant to the agreement for sale which provided that the balance of consideration would be paid within a month at the time of the execution of the registered sale deed. Under the agreement "R" was under obligation to obtain permission and sanction from the Government before the transfer of leasehold plot. "R" did not take any steps to apply for the sanction from the Government. "A" filed the suit for specific performance of the contract for sale. One of the contentions of "R" was that "A" was not ready and willing to perform his part of the contract. This Court observed that readiness and willingness could not be treated as a strait-jacket formula and that had to be determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned. It was held that in the absence of any material to show that "A" at any stage was not ready and willing to perform his part of the contract or that he did not have the necessary funds for payment when the sale deed would be executed after the sanction was obtained, "A" was entitled to a decree for specific performance of contract.

That decision was relied upon by a three-Judge Bench of this Court in *Syed Dastagir Vs. T.R. Gopalakrishnasetty*, wherein it was held that in construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather the true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed:

Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) of the Specific Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of "readiness and willingness" has to be in spirit and substance and not in letter and form.

It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfill his part of the obligations under the contract which is the subject-matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit for specific performance of contract for sale.

11. The basic principle behind Section 16(c) read with Explanation (ii) is that any

person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.

33. Readiness and willingness cannot be treated as a strait jacket formula and that had to be determined from the facts and circumstances which are relevant to the intention and conduct of the parties concerned. It was so held in *Motilal Jain Vs. Smt. Ramdasi Devi and Others*, . The Apex Court further held in para 9 at page 67 thus:

9. That decision was relied upon by a three-Judge Bench of this Court in *Syed Dastagir* case wherein it was held that in construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather the true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed:

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34. In *Nirmala Anand Vs. Advent Corporation Pvt. Ltd. and Others*, , the Apex Court held thus:

45. The appellant has always been ready and willing to perform her part of the contract at all stages. She has not taken any advantage of her own wrong. The appellant is in no way responsible for the delay at any stage of the proceeding. It is the respondents who have always been and are trying to wriggle out of the contract. The respondents cannot take advantage of their own wrong and then plead that the grant of decree of specific performance would amount to an unfair

advantage to the appellant.

35. In P. D'Souza Vs. Shondrilo Naidu, , it would be useful to notice the observations of A. Bhan J who had written a dissenting judgment. However in para 45 of the pronouncement, it was observed thus:

45. The said decision cannot be said to constitute a binding precedent to the effect that in all cases where there had been an escalation of prices, the court should either refuse to pass a decree on specific performance of contract or direct the plaintiff to pay a higher sum. No law in absolute terms to that effect has been laid down by this Court nor is discernible from the aforementioned decision.

Therefore, a conclusion of readiness and willingness on the part of the plaintiff has to be gathered and arrived at not on any mathematical formula but upon a consideration of the entire material placed before the court.

36. Before this Court, the plaintiff has categorically stated that he was ready and willing to perform his part of the contract and that he had repeatedly approached the defendant to do so as well. In support of its contention that it was able and possess all the means to pay the balance consideration, the plaintiff has placed before this Court documents evidencing availability of the overdraft facility from the HDFC Bank to the tune of rupees one crore and fifty lakhs only. It is necessary to notice the averments of the plaintiff in the plaint in this behalf and the reply of the defendant thereto in the written statement. Para 22 and 23 of the plaint and the defendants reply which are relevant stated thus:

Averments in the plaint para 22 and 23 Reply in the written statement

22. That the plaintiff hereby avers that since the execution of agreement to sell, the plaintiff has been and is still ready and willing to perform his part of contract and pay the balance sum of the consideration i.e. Rs. 1.10 crores to the defendant immediately, when the Hon'ble court so orders.

23. That the plaintiff always had and still has adequate resources to pay the balance consideration of Rs. 1.10 crores to the defendant. Infact the plaintiff is a reputed builder and also a business man doing business in-partnership in the name of DET Scaffoldings, M-12, New Mahabir Nagar, New Delhi and is an Income Tax payee. The plaintiff has account's with HDFC Bank, Janakpuri, New Delhi-58 and also with Indian Overseas Bank, Janakpuri, New Delhi-58. the plaintiff has also availed the overdraft limit up to Rs. 1.5 crores with HDFC, Janak Puri Branch. the plaintiff encloses herewith the bank's documents showing the said OD limit which is annexed as Annexure-F. The plaintiff's wife Smt. Parveen Kaura and son Mr. Sundeep are also in business. They are men of means and are partners in the business being run in the name of DEE-Sons" Traders, J-3, New Mahabir Nagar, New Delhi-18. they are income tax assesses and are also having their business banks" account with Indian Overseas Bank, Janakpuri as well as HDFC, Janakpuri, New Delhi. The plaintiff has also business associates namely

Shir Sanjay Jain and Shri Sandeep Jain both sons of Shri Raj Kumar Jain who are partners in Ludhiana.

22. That the contents of para No. 22 of the plaint as stated are wrong and vehemently denied. on the contrary it is submitted that since there have been some changes in the scenario, the defendant is no more interested in selling the suit premises and wants to shift in the same Along with her family members. The defendant is ready and willing to return the advance amount received by the defendant from the plaintiff Along with interest accrued thereupon.

23. That the contents of para No. 23 of the plaint as stated are denied for want of knowledge.

Steel Rolling Mill, Dhandhari Kalan, G.T. Road, Ludhiana Punjab. They are men of means. they are income tax payees and are financially very sound. They had promised to give loan for the suit property as and when needed. They are still prepared to give loan any time it is needed to pay balance of consideration in respect of the suit property. Thus payment of the balance consideration to the defendant was never a problem. The defendant had been duly and repeatedly informed of this fact. in the course of last one year the plaintiff contacted the Defendant at least once or twice every fortnight.

37. It is well settled that denial of the averments in the plaint for want of knowledge is a deemed admission of the averments made by the other side. The pleas taken by the defendant are vague, evasive and legally untenable.

38. In addition to the above pleadings, the plaintiff evidenced his having been ready and willing throughout to perform his part of the contract even in the reply sent through his counsel which was dated 4th April, 2006. The admitted position is that the defendant never informed the plaintiff about the property being converted to freehold or that just the formal step of the execution of the conveyance deed by the superior lesser remained to be done for which was pending only because she had not cared to go to the Delhi Development Authority. In view of this position and having regard to the well settled legal principles, it has to be held that the plaintiff was throughout ready and willing to perform his part of the contract at all stages. It is the defendant who is responsible for the delay and has failed to complete her obligations. It is also evident from the above that the defendant is dishonestly trying to wriggle out of her obligations under the contract.

39. The only question which Therefore remains to be answered is as to whether in these facts, the plaintiff deserves to be denied the relief of specific performance. I have noticed above the statutory provisions of Section 16 and 20 of the Specific Relief Act, 1963 which would guide adjudication. Judicial precedents on the issue have elaborated the applicable principles and throw light on the issues.

It is trite that in cases of contracts for sale of immovable properties, the grant of

relief of specific performance is a rule. Refusal of the relief of specific performance would be only by way of an exception which can be only on valid and cogent grounds. In this behalf, learned Counsel for the plaintiff has placed the principles laid down by this Court in *Ajit Prasad Jain Vs. N.K. Widhani and Others*, wherein the court laid down the principle thus:

22. It was next contended that it is not equitable to grant the relief of specific performance to the plaintiff. Reliance has been placed by learned Counsel for the defendants on Section 20 of the Specific Relief Act, 1963 for the proposition that the court is not bound to decree relief of specific performance merely because it is lawful to do so. I have no quarrel with the proposition that the relief of specific performance is in the discretion of the court which is to be exercised not arbitrarily but on sound and well-settled principles of law. It is equally well-settled that in cases of contracts for sale of immovable properties the grant of relief of specific performance is a rule and refusal an exception on valid and cogent grounds shown. Two grounds have been put forth by defendants in support of their contention that it is not equitable to grant relief of specific performance to the plaintiff. The first ground is that the document Ex.PW2/1 is not a final agreement but final agreement had to be executed later on after grant of permission from Land and Development Office. I do not agree. There is no such condition stipulated in Ex.PW2/1. All material terms have been incorporated in Ex.PW2/1. The total sale consideration and the manner of payments have been all agreed in Ex. PW 2/1. It is not stated therein that any other agreement was required to be executed. The other ground put forth by the defendants is that defendants would have been put to under advantage had they delivered the possession to the plaintiff inasmuch as the plaintiff would have continued in possession but defendants would have been liable for payment of lease money. I cannot ignore that in terms of Ex.PW2/1 the plaintiff would have been out of pocket to the extent of Rs. 1,75,000/- before getting possession. It is evident that plaintiff did his best to make the payment and take possession but defendants have been avoiding it. Defendants could have taken permission from the Land & Development Office and on communication of it the plaintiff was required to make a further payment of Rs. 35,000/- The defendants cannot take advantage of their own wrong and then plead it to be an unfair advantage to the plaintiff. Thus, I find no merit in this ground as well, for exercising discretion to refuse the relief of specific performance to the plaintiff.

40. In *Nirmala Anand Vs. Advent Corporation Pvt. Ltd. and Others*, the Apex Court had laid down the principle in para 30 of the judgment which reads thus;

30. Grant of relief of specific performance being discretionary, it cannot be claimed as a matter of right. It is governed by sound judicial principles and one of the foremost principle is that the court should be satisfied that circumstances are such that it is equitable to grant the relief of specific performance of the contract. Under this principle, one of the questions which has been considered at times by the courts is as to whether due to delay in the grant of decree and the

escalation of prices of real estate during the period is a ground to deny the relief of specific performance. It has repeatedly been held that per se the delay or the escalation of price is no ground to deny the relief of specific performance. In certain cases the courts in equity and to mitigate the hardship to the vendor have directed the vendee to pay further compensatory amount. But this is not a principle of universal application. It would depend upon the facts and circumstances of each case.

It is Therefore well settled that mere escalation of prices would be no ground to deny the relief of specific performance and that equity would govern grant of the relief of specific performance.

41. It now becomes necessary to deal with the third submission on behalf of the defendant that under the terms of the contract dated 13th April, 2004, the plaintiff had agreed to receive double the amount of earnest money in case of failure on the part of the defendant to complete the transaction. In this behalf, it becomes necessary to notice the case of the plaintiff. The plaintiff in para 10 of the plaint has clearly asserted that "the defendant once again entered into a revised agreement to sell and purchase dated 6th April, 2005 in which the total sale consideration was enhanced to Rs. 1.27 crores on Defendant's insistence resulting into novation of the contract/agreement to sell dated 13th April, 2004". The defendant in its written statement has vaguely denied the same and in reply stated that "on the contrary, it is submitted that when the defendant told the plaintiff that since the prices of the properties were more as compared to the price offered by the plaintiff, the plaintiff immediately increased the price and gain entered into a fresh agreement to sell."

Thus, the argument raised now is clearly devoid of merit and only the terms of the agreement dated 6th April, 2005 are require to be looked at. Under this agreement, the parties had clearly covenanted that in case the defendant (first party) backs out from the transaction on any ground then the plaintiff (second party) would get the "transaction completed through court of law by specific performance of suit at the cost of the first party."

42. The defendant has further stated that on account of some misunderstanding between the other legal heirs of her husband and herself, she was no more interested in selling the property to the plaintiff for personal reasons. It is also stated that on account of a dispute raised in respect of the ancestral property bearing No. A-317, defense Colony, New Delhi, the defendant may be required to shift to the suit property situated at Janakpuri, New Delhi and for this reason was not willing to sell the property to the plaintiff. On these submissions, the defendant submitted that she was ready and willing to return the amount of Rs. 15 lakhs received from the plaintiff with interest at the rate of 12% and was also willing to enhance the amount to such a reasonable level to compensate the plaintiff for the deal between the parties. It is only in the rejoinder dated 10th April, 2006 that the defendant tried to fasten blame upon the property dealer to evade the liability for the conversion of the property and tried to link it with the

plaintiff. It is Therefore evident that it is the defendant who is dishonestly trying to wriggle out of the contract without there being any fault on the part of the defendant. The defendant has admittedly received a sum of Rs. 17 lakhs in terms of the agreement.

43. Learned Counsel for the defendant did not make out any case of special equity in favor of the defendant or a case of such hardship to the defendant as would disentitle the plaintiff to the relief of specific performance. However, Mr. P. Kumar learned Counsel for the plaintiff has elaborately laid down the principles which would govern adjudication on such a plea as well. Assuming that the plea of the dispute between the legal heirs of the husband of the defendant and the pending dispute in respect of the property at defense Colony was to be considered as creating hardship to the defendant, the same would be governed by the principles laid down in Explanation to Section 20 of the Specific Relief Act. Such hardship which would disentitled the plaintiff to the decree for specific performance has to be a sum total of various factors and cannot be in the nature of a plea which is not collateral to the contract or in the nature of inadequacy of price or escalation of price subsequent to the date of the contract.

44. At this stage, it would be useful to advert to the principles laid down by the High Court of Karnataka in its pronouncement reported at AIR 1991 Kar 4142 Lt. Cdr. M.C. Kendall v. S. Chandrasekhar wherein the court placing reliance on an earlier pronouncement of the privy counsel stated thus:

34. The next aspect required to be considered is the element of hardship. In this connection, the provisions of Section 20 of the Specific Relief Act would assume significance. It reads as under:

(1) The jurisdiction to decrees specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance.

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation -1 - Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of Clause (a) or hardship within the meaning of Clause (b).

Explanation -2- The question whether the performance of a contract would involve hardship on the defendant within the meaning of Clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) the court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.

A perusal of the aforesaid provision would go to show as to under what circumstances hardship can be taken into consideration in refusing specific performance. It is not possible to enumerate the different circumstances which constitute hardship. It will suffice if it is noted that the question of hardship will have to be adjudged in the facts and circumstances of the case. In this connection, the observations of the Privy Council in the Decision in *Devis v. Shwe* GO 11 Ind.Cas. 801 throw light on an important aspect of the matter. Among other things, it is observed in the said case as under:

In the absence of any evidence of fraud or misrepresentation on the part of the plaintiff which induced the defendant to enter into the contract, their Lordships see no reason to accede to the argument. The bargain is onerous, but there is nothing to show that it is unconscionable. The defendant knew all along that a lakh was the plaintiff's limit; it is in evidence that he had frequently urged the defendant's daughter to advise him to sell the land if he was getting a higher offer. It is difficult to say under the circumstances that he took an improper advantage of his position or the difficulties of the defendant.

Then again, it is necessary to remember that mere rise in price subsequent to the date of the contract or inadequacy of price is not to be treated as a hardship entailing refusal of specific performance of the contract. Further, the hardship involved should be one not foreseen by the party and should be collateral to the contract. In sum, it is not just one factor or two, that is relevant for consideration. But it is the sum total of various factors which is required to enter into the judicial verdict. In the instant case, defendant-1 has not pleaded hardship much less adduced any evidence. He has not even stepped into the witness box. Under these circumstances, it is not at all possible to hold that the performance of the contract would involve some hardship on the defendant which he did not foresee.

45. Such a plea for hardship to the seller on similar grounds fell for consideration before the Supreme Court. In its judgment reported at AIR 2004 SC 4472 P. D'Souza v. Shondriilo Naidu, the court held thus:

41. It is not a case where the defendant did not foresee the hardship. It is furthermore not a case that non-performance of the agreement would not cause any hardship to the plaintiff. The defendant was a landlord of the plaintiff. He had accepted part payments from the plaintiff from time to time without any demur whatsoever. He redeemed the mortgage only upon receipt of requisite payment from the plaintiff. Even in August, 1981, i.e. just two months prior to the institution of suit, he had accepted Rs. 20,000/- from the plaintiff. It is, Therefore, too late for the Appellant now to suggest that having regard to the escalation in price, the Respondent should be denied the benefit of the decree passed in his favor. Explanation 1 appended to Section 20 clearly stipulates that merely inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature would not constitute an unfair advantage within the meaning of Sub-section (2) of Section 20.

46. It is necessary to notice the statutory mandate on at this stage as well. Explanation to Section 20 of the Specific Relief Act, 1963 has mandated that the issue as to whether performance of a contract would involve hardship on the defendant within the meaning of Clause (b) shall be determined with reference to the circumstances existing at the time of the contract. It is only in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract which may be treated as an exception to the requirement of specifically performing the agreement.

In the instant case, there is no circumstance which existed at the time of the contract from which a conclusion of hardship to the defendant can be gathered. Additionally, there is nothing in the conduct of the plaintiff subsequent to the execution of the contract which has resulted in any hardship to the defendant. Her personal grounds that is the dispute about the defense Colony property was existing when she entered into the agreement. Such grounds or increase of price as having been submitted in her legal notice and her written statement, are not such hardship as would permit avoidance of her liability under the contract.

47. On the other hand, the defendant has admitted the loss which would be suffered by the plaintiff if the deal did not go through. In her legal notice dated 22nd March, 2006 in para 6 the defendant has stated thus:

Needless to mention that my client is further ready and willing to enhance the amount to such a reasonable level just to compensate you for the delay done by you as aforesaid.

48. It is also noteworthy that despite setting up a plea that under the terms of the agreement dated 13th April, 2004, the defendant had agreed to receive double the amount of earnest money in case the transaction failed there, the defendant has nowhere tendered payment of this amount. Even if such offer had

been made, the same would have been of no effect in the facts and circumstances of the present case.

49. A plea was urged that the plaintiff had claimed damages in its plaint and hence would not be entitled to specific performance. Such a plea is in ignorance of Section 23 of the Specific Relief Act, 1963 which specifically permits the plaintiff to seek damages in addition to or in the alternative to the relief of specific performance.

This issue also has been considered by the Apex Court in *Motilal Jain Vs. Smt. Ramdasi Devi and Others*, and it was held by the court that merely because the plaintiff claims damages in a suit for specific performance of a contract as an alternative relief, it cannot be said that he is not entitled to the relief of specific performance of the contract.

In this pronouncement, the Apex Court also held that delay in performance of the contract due to pendency of the matter in court would not be a ground to refuse the relief of specific performance in the absence of any other compelling circumstances to take a contrary view and

50. From the above the following facts remain established from the admissions of the defendant:

(i) the parties had executed the agreement dated 6th April, 2005 whereby the obligation to get the property converted to freehold rested squarely on the defendant. It is only thereafter that the plaintiff was required to pay the balance sale consideration of Rs. 1.12 lakhs to the defendant before the sub-registrar at the time of registration of the sale deed in his favor.

(ii) the sale consideration which had been agreed between the parties was Rs. 1,27,000/-.

(iii) The defendant had received a sum of Rs. 15 lakhs towards the earnest money and a sum of Rs. 2 lakh towards the clearance of her liability of DESU/ house tax/freehold charges.

(iv) The defendant had received the letter dated 1st June, 2005 from the Delhi Development Authority for requiring her to appear before the DDA for execution of the conveyance deed whereby the suit property would become freehold.

(v). The defendant had refused to perform her part of the obligation under the contract.

(vi) The plaintiff was all along ready and willing to perform his obligations under the contract.

51. In the light of the foregoing discussion, it has to be held that no triable issue remains for adjudication. The admissions on the part of the defendant are clear, unambiguous, unconditional and unequivocal. No issue of fact or of law has been raised by the defendant. The defendant had more than adequate opportunity to

explain her conduct and the said admissions and no tenable Explanation has been rendered.

52. The plaintiff has filed the present application under the provisions of Order 12 Rule 6 of the CPC which entitle this Court to pass a decree on such admissions. No Explanation is tendered even in the reply to this application.

It is necessary to consider the mandate of Order 12 Rule 6 of the CPC at this stage. The same reads as follows:

Order XII Rule 6. Judgment on admissions - (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under Sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

53. Section 17 of the Indian Evidence Act, 1972 defines the expression admission as a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact and which is made by any of the persons. In *Divisional Manager, United India Insurance Co. Ltd. and Another Vs. Samir Chandra Chaudhary*, , the Supreme Court reiterated the principles laid down in *Avadh Kishore Das Vs. Ram Gopal and Others*, and held that an admission is the best piece of evidence against the person making it.

Undoubtedly, evidentially admissions may not be conclusive proof of the facts admitted and may be explained or shown to be wrong. However, it raise an estoppel and shifts the burden of proof of placing it on the person making an admission or its representative in interest. Unless the admission is shown or explained to be wrong, the admission is an efficacious proof of the facts admitted. Thus, unless an admission is successfully withdrawn or proved erroneous, it is the best evidence that an opposing party can rely upon.

54. The legislature has enacted Rule 6 in Order 12 of the CPC permitting the court to pass a judgment in favor of a party based on admission by the other side. It is well settled that Order 12 Rule 6 of the CPC enables the court, at any stage of the suit to pronounce judgment on an admission made in the pleadings or otherwise, whether oral or in writing, by the other side. Reference in this regard can usefully be made to the pronouncement of this Court reported at (2001) II Delhi 385 *Jasmer Singh Sarna and Ors. v. Electronics Trade and Technology Development Corporation Limited*.

55. The object of this rule came up for consideration before a Division bench of this Court in *Delhi Jal Board Vs. Surendra P. Malik*, . The court noticed that order 12 Rule 6 confers almost sweeping power on the court to render a speedy

judgment in the suit to save the parties from going through the rigmarole of a protracted trial. Such judgment has to be passed on admissions of fact which are clear and unequivocal, unconditional and may relate to the whole claim or part of it. These admissions need not be made specifically or expressly and could be constructive admissions also. The Division Bench in this judgment laid down the following test.

9. The test, Therefore, is (i) whether admissions of fact arise in the suit, (ii) whether such admissions are plain, unambiguous and unequivocal, (iii) whether the defense set up is such that it requires evidence for determination of the issues and (iv) whether objections raised against rendering the judgment are such which go to the root of the matter or whether these are inconsequential making it impossible for the party to succeed even if entertained. It is immaterial at what stage the judgment is sought or whether admissions of fact are found expressly in the pleadings or not because such admissions could be gathered even constructively for the purpose of rendering a speedy judgment.

56. In *Shikharchand and Others Vs. Mst. Bari Bai and Others*, , the court held that a judgment under Order 12 Rule 6 of the CPC can be based on a statement made by the parties de hors the pleadings and such admissions could be either expressed or constructive. It was held that the court can not grant relief to the plaintiff on a case which was not pleaded but in case the defendant himself put forward such a plea in answer to the plaintiff's claim, then the court can grant such a relief based on the defendant's pleading and admission. This judgment was cited with approval of this Court in (2004) 111 DLT 437 *Cane Construction v. J.V.G. Finance Limited*.

57. In *Uttam Singh Dugal and Co. Ltd. Vs. Union Bank of India and Others*, , the Apex Court had occasion to consider the impact of an evasive and unspecific denials. It was held by the court that the same amounts to an unequivocal admission of the contents of document relied upon by the plaintiff. It would be useful to consider the observations of the Apex Court in extenso which read thus:

13. The next contention canvassed is that the resolutions or minutes of meeting of the Board of Directors, resolution passed thereon and the letter sending the said resolution to the respondent bank cannot amount to a pleading or come within the scope of the Rule as such statements are not made in the course of the pleadings or otherwise. When a statement is made to a party and such statement is brought before the Court showing admission of liability by an application filed under Order XII, Rule 6 and the other side has sufficient opportunity to explain the said admission and if such Explanation is not accepted by the Court, we do not think the trial Court is helpless in refusing to pass a decree. We have adverted to the basis of the claim and the manner in which the trial Court has dealt with the same. When the trial Judge states that the statement made in the proceedings of the Board of Directors meeting and the letter sent as well as the pleadings when read together, leads to unambiguous and clear admission with only the extent to which the admission is made is in

dispute, and the Court had a duty to decide the same and grant a decree, we think this approach is unexceptionable.

14. Before the trial Judge, there was no pleading much less an Explanation as to the circumstances in which the said admission was made, so as to take it out of the category of admissions which created a liability. On the other hand, what is stated in the course of the pleadings, in answer to the application filed under Order 12 Rule 6 CPC, the stand is clearly to the contrary. Statements had been made in the course of the minutes of the Board of Directors' meeting held on 30.5.1990 which we have already adverted to in detail. In the pleadings raised before the Court, there is a clear statement made by the respondent as to the undisputed part of the claim made by them. In regard to this aspect of communicating the resolution dated 30.5.1990 in the letter dated 4.6.1990 what is stated in the affidavit-in-opposition in application under Order 12 Rule 6 CPC is save what are matters on record and save what would appear from the letter (sic resolution) dated 30.5.1990 all allegations to the contrary are disputed and denied. This averment would clearly mean that the petitioner does not deny a word of what was recorded therein and what is denied is the allegation to the contrary. The denial is evasive and the learned Judge is perfectly justified in holding that there is an unequivocal admission of the contents of the documents and what is denied is extent of the admission but the increase in the liability is admitted.

58. It is well settled that the provisions of Order 12 Rule 6 have been enacted for the purposes of expediting adjudication in the face of admissions on the part of the defendant. In *Charanjit Lal Mehra and Others Vs. Smt. Kamal Saroj Mahajan and Another*, the Apex Court had held that there is any admission on the part of the defendant or an admission can be inferred from the facts and circumstances of the case without any dispute, even then in order to expedite and dispose of the case, such an admission can be acted upon. The court noticed that the spirit, intent and purpose of the legislation was to enable the party to obtain a speedy judgment at least to the extent of the relief to which, according to the admissions of the defendant, the plaintiff is entitled.

In this case, held that "admission" includes one that can be inferred from facts and circumstances of the case without any dispute, then, in such a case in order to expedite and dispose of the matter such admission can be acted upon.

59. In order to invoke the provisions of Order 12 Rule 6 of the CPC the court has to scrutinise the pleadings in their detail. The court is also required to ignore vague, evasive and unspecific denials and inconsistent pleas in the written statement and replies. Even a contrary stand taken while arguing the matter would require to be ignored. (Re : *Rajiv Saluja Vs. Bhartia Industries Limited and Another* ; *Shri Rajiv Sharma and Another Vs. Shri Rajiv Gupta*,)

60. In the instant case, there is no dispute to any of the material facts which are necessary for consideration in a suit for specific performance. There is also no

dispute to the fact that defendant at her whim and fancy has sought to back out of the agreement for no good or justifiable reasons. No fault is at all attributable to the plaintiff. There is no factual or legal ground whereby the plaintiff could be held disentitled to a decree for specific performance. It is noteworthy that the defendant, in anticipation of the present suit, had even lodged a caveat int his court being Caveat No. 51/2006 and had been heard at the time the matter was first listed before grant of an interim injunction.

61. In the light of the clear mandate of the statute as contained in Order 12 Rule 6 of the CPC, the statutory provisions of Section 10, 16 and 20 of the Specific Relief Act and in view of the well settled judicial principles laid down by the courts for exercise of the discretion to grant specific performance of an agreement to sell Immovable property and for consideration of an application for grant of a decree upon admission made by the defendant, this application has to be allowed.

62. The defendant before this Court has made clear and unequivocal admissions of all relevant issues not only in the legal notices sent on her behalf but also in her written statement and documents as noticed herein above. There is no necessity Therefore for delaying adjudication or proceeding to trial as no triable issue remains on which the parties would require to be put to evidence.

For all the foregoing discussion, this application is allowed with costs which are quantified at Rs. 1,00,000/-. The costs shall be paid by the defendant to the plaintiff within two weeks. It is held that the plaintiff is entitled to a decree as prayed on the admissions of the defendant.

IA NO. 13076/2006

63. After the matter had been reserved and the above judgment stood dictated but prior to its pronouncement, Mrs. Kamlesh Mahajan, learned Counsel for the defendant filed this application u/s 151 of the CPC dated 22nd November, 2006. The application was listed before this Court on 24th November, 2006.

64. Notice issued was accepted on behalf of the plaintiff by Mr. Prem Kumar, learned Counsel who submitted that no reply was necessary. Consequently, this application was also heard on the basis of the material already available on the record. Liberty was given to the parties to file written submissions also in support of their oral submissions. Only, the defendant has chosen to file additional written submissions.

65. By this application, it has been submitted by the defendant that on 29th November, 2006, she has received a registered AD letter from Shri Rajesh Gupta, Advocate informing her that her daughter Ms. Leena Mehta has filed a suit bearing CS(OS) No. 2188/2006 in this Court seeking a decree of declaration, partition and permanent injunction. The declaration prayed for was to the effect that late Shri J.K. Myne (husband of the present defendant) was the real owner of the property No. 270, Block C, Pankha Road, Janakpuri, New Delhi. It is

submitted that Ms. Leena Mehta has prayed for a permanent decree defining the individual share of each of the parties to her suit and a declaration that she was entitled to 1/4 share in the suit property bearing No. 270, Block C, Pankha Road, Janakpuri, New Delhi measuring 270 sq. meters.

66. It has also been submitted that in this case, by an order dated 14th November, 2006, the defendant No. 1 therein Smt. Vijaya Myne has been restrained from creating any third party interest in the suit property and also from selling, alienating or parting with possession of the suit property.

67. Apart from this suit, the defendant has pointed out that the other suit bearing CS(OS) No. 192/2006 entitled Brig. Deepak Myne and Ors. v. Col. Vinod Myne and Ors. was disposed of by a judgment dated 5th October, 2006 by this Court. By this judgment, the court passed a final decree holding that the defendant Smt. Vijaya Myne is only entitled to 1/2 share of first floor which consists of one drawing room, kitchen and one small store without any bathroom. The defendant has purported to set up a case that this portion of the property in the defense Colony was insufficient for the defendant, her unmarried son aged 38 years and unmarried daughter aged 28 years and that the property in the present case is the only residential property left for herself and her family members. The defendant has asserted that these changed circumstances be considered for passing an order on is No. 13076/2006.

68. This application has been vehemently opposed on behalf of the defendant who has pointed out that the application is a dishonest and mala fide attempt on behalf of the defendant to avoid the judgment which the plaintiff is entitled to in the present suit. It is pointed out that the CS(OS) No. 2188/2006 is a fraudulent, dishonest and a collusive suit which has been got filed by the present defendant utilising the shield of her married daughter Ms. Leena Mehta. It has further been submitted that the interim order which has been caused to be passed by Leena Mehta and the defendant in CS(OS) No. 2188/2006 is by suppression of material facts and that the same would not preclude this Court from proceeding in the matter so far as pronouncing the final decree is concerned.

Placing reliance on the judicial pronouncement reported at Arjun Singh Vs. Mohindra Kumar and Others, , it has been urged that there is no hiatus between reservation of judgment and pronouncing it and that the collusion between the plaintiff and Ms. Leena Mehta is glaring in the face of the proceedings in the earlier suit for partition filed jointly by them being CS(OS) No. 192/2006. It is further urged that the defendant before this Court set up a false claim that she was only entitled to an area of 100 sq. foot in the defense Colony house. Based on such false plea, whereof the defendant has purported to set up an untenable plea of hardship in the present case. Perusal of the judgment passed in CS(OS) No. 192/2006 would show that the defendant has not only been allowed ownership of 600 sq. feet covered area but also is entitled to use of another 600 square feet on the same floor as the defendant No. 3 in that suit who has been allotted this portion, is a resident of Bangalore.

69. Mr. Prem Kumar, learned Counsel for the plaintiff has urged at length that in the present suit for specific performance there is no need to determine the question of the vendor's title or possession of any third party. In this behalf, reliance has been placed on several judicial pronouncements.

70. On these pleas, it is urged that the filing of the suit and the claim by Leena Mehta has no bearing on the issues raised before this Court and that in the present suit, this Court is only concerned with the legality, validity and bindingness of the agreement to sell and the readiness and willingness to perform its part of the contract by the vendee in accordance with the statutory provisions of the Specific Relief Act.

71. Having heard learned Counsel for the parties, it becomes necessary to advert to a few admitted facts. There is no dispute by the defendant that the suit property was purchased in the year 1971 from the Delhi Development Authority. On the request of Shri J.K. Myne, the husband of the plaintiff, the allotment of the property was transferred in favor of the defendant Smt. Vijaya Myne. By a registered perpetual lease, the Delhi Development Authority conveyed the property in favor of Smt. Vijaya Myne on 14th November, 1975. Copy of this perpetual lease which was registered in favor of the defendant has been placed before this Court. Perusal thereof shows that this lease deed was duly witnessed by Shri J.K. Myne, husband of the plaintiff. Shri J.K. Myne accepted the ownership of the defendant in this suit property and has not raised a claim during his life time.

72. On a query put to Mrs. Kamlesh Mahajan, learned Counsel for the defendant, this Court was informed that Smt. Leena Mehta was born in 1970 and that she attained majority in the year 1988. It has further been stated that Shri J.K. Myne had expired on 5th November, 1977. She has not asserted any right or claim all these years. These facts would have material bearing on the maintainability of the claim of Leena Mehta, even if she had any legal right in the suit property.

73. Certain additional facts also are of extreme significance. The defendant has filed a photocopy of the judgment dated 5th October, 2006 passed in CS(OS) No. 192/2006. Copy of the memo of parties filed by the defendant shows that the plaint was drafted on 30th January, 2006. All the legal heirs of late Shri J.K. Myne were joined as plaintiffs in the array of parties in this suit. These include Mrs. Vijaya Myne, defendant herein as well as her son Mr. Gagan Myne and daughters Mrs. Leena Mehta as well as Ms. Teena Myne and have been shown as residents of A-131, Ground Floor, defense Colony, New Delhi.

74. There is thus no dispute that the defendant Smt. Vijaya Myne and Leena Mehta lea Myne were cohabiting in defense Colony or that there was any acrimony between them. Leena Mehta has admittedly not challenged the registered title of the defendant since 14th November, 1975 when it was registered. She has also not raised any claim after her father died on 5th November, 1977 or after she attained majority in 1988.

75. It is noteworthy that the agreement to sell in favor of the plaintiff in the present case was originally executed by the defendant on 13th April, 2004 which was novated and substituted by the agreement dated 6th April, 2005. The agreement and the receipt of the earnest money paid by the defendant stands witnessed by Mr. Gagan Myne, son of the defendant. Mr. Gagan Myne has also addressed the letter dated 8th June, 2006 to the Delhi Development Authority.

The present suit was filed by the plaintiff on 29th May, 2006.

76. The plaintiff filed is No. 9859/2006 an application seeking a decree on admissions by the defendant which was heard and reserved for judgment on 2nd November, 2006. The CS(OS) No. 2188/2006 which has been allegedly filed by Smt. Leena Mehta has been filed thereafter on 14th November, 2006.

I find force in the submissions of learned Counsel for the plaintiff that this suit has been filed only with the intent of attempting to interdict proceedings in the present suit in collusion with the present defendant.

77. So far as the effect of the claim made Ms. by Leena Mehta in CS(OS) No. 2188/2006 is concerned, the position in law is that the same has no impact on the result in the present case. It is well settled that in a suit for specific performance, there is no requirement of determination of the vendor's title or claimed possession of a third party. It is trite that in view of Section 16 and 20 of the Specific Relief Act of 1972, only parties to the agreement are necessary and proper parties in a suit for specific performance. The issues which would concern this Court in the present case have been elaborately considered above. The court is only concerned with the question as to whether the contract was executed by the parties to the suit and its enforceability. The court has to exercise discretion in favor of the plaintiff if it is established on record that the plaintiff was ready and willing to perform its part of the contract. The attempt of the defendant by way of this application is to assert a claim of title and interest in the suit property by the daughter. I have noticed the factual matrix placed before this Court in respect of such a claim.

However, it is imperative to notice the relevance of the claim made by her for the purposes of the present suit and its impact on the prayer of the present plaintiff.

78. Section 18 of the Specific Relief Act would also have bearing on the matter and deserves to be noticed in extenso. The same reads as follows;

Section 18. Non-enforcement except with variation - Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases, namely:

(a) whereby fraud, mistake or fact or misrepresentation, the written contract of which performance is sought is in its terms or effect different from what the parties agreed to, or does not contain all the terms agreed to between the parties on the basis of which the defendant entered into the contract.

(b) where the object of the parties was to produce a certain legal result which the contract as framed is not calculated to produce.

(c) where the parties have subsequently to the execution of the contract, varied its terms.

79. On the issue of questions relevant to a claim for specific performance and necessary parties to such a suit, it would be apposite to advert to the principles laid down by the Apex Court in *Kasturi Vs. Iyyamperumal and Others*, wherein the court held thus:

16. It is difficult to conceive that while deciding the question as to who is in possession of the contracted property, it would not be open to the Court to decide the question of possession of a third party/or a stranger as first the issue to be decided is the enforceability of the contract entered into between the appellant and the respondent between the appellant and the respondent No. 3 and whether contract was executed by the appellant and the respondent Nos. 2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against the respondent Nos. 2 and 3. Secondly in that case, whoever asserts his independent possession of the contracted property has to be added in the suit, then this process may continue without a final decision of the suit. Apart from that, the intervener must be directly and legally interested in the answers to the controversies involved in the suit for specific performance of the contract for sale. In *Amol v. Rasheed Tuck and Sons Ltd.* 1956(1) All Eng. Reporter. 273 it has been held that a person is legally interested in the answers to the controversies only if he can satisfy the Court that it may lead to a result that will affect him legally.

17. That apart, there is another principle which cannot also be forgotten. The applicant, who has filed the instant suit for specific performance of the contract for sales is dominus litis and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law, as already discussed above. For the reason aforesaid, we are Therefore of the view that respondent Nos. 1 and 4 to 11 are neither necessary parties nor proper parties and Therefore they are not entitled to be added as party-defendants in the pending suit for specific performance of the contract for sale.

18. the learned Counsel appearing for the respondent Nos. 1 and 4 to 11, however, contended that since the respondent Nos. 1 and 4 to 11 claimed to be in possession of the suit property on the basis of their independent title to the same and as the appellant had also claimed the relief of possession in the plaint, the issue with regard to possession is common to the parties including respondent Nos. 1 and 4 to 11, Therefore, the same can be settled in the present suit itself.

Accordingly, it was submitted that the presence of respondent Nos. 1 and 4 to 11 would be necessary for proper adjudication of such dispute. This argument which

also weighed with the two courts below although at the first blush appeared to be of substance but on careful consideration of all the aspects as indicated hereinafter, including the scope of the suit, we are of the view that it lacks merit. Merely, in order to find out who is in possession of the contracted property, a third party or a stranger to the contract cannot be added in a suit for specific performance of the contract for sale because the respondent Nos. 1 and 4 to 11 are not necessary parties as there was no semblance of right to some relief against the respondent No. 3 to the contract. In our view, the third party to the agreement for sale without challenging the title of the respondent No. 3, even assuming they are in possession of the contracted property, cannot protect their possession without filing a separate suit for title and possession against the vendor. It is well settled that in a suit for specific performance of a contract for sale the dispute between the appellant and the respondent Nos. 2 and 3 shall only be gone into and it is also not open to the Court to decide whether the respondent Nos. 12 and 4 to 11 have acquired any title and possession of the contracted property as that would not be germane for decision in the suit for specific performance of the contract for sale, that is to say in a suit for specific performance of the contract for sale the controversy to be decided raised by the appellant against respondent Nos. 2 and 3 can only be adjudicated upon, and in such a case the Court cannot decide the question of title and possession of the respondent Nos. 1 and 4 to 11 relating to the contracted property.

80. On this issue, it was held in *Deenanath Vs. Chunnilal*, thus:

6. I have heard learned Counsel for the parties and in my opinion the enquiry by the trial court on the question whether the suit land was ancestral in the hands of the defendant or whether the defendant was entitled to sell the suit land was wholly irrelevant in the present case. The plaintiff in his plaint has nowhere asserted that Ex A/1 though executed by the defendant was also binding on his adult sons and his wife. In the absence of such assertion in the plaint. It was not open to the trial court to go into the question that the defendant had defective title as the suit land was ancestral and the defendant was owner of one-fourth share only. In my opinion, the vendor cannot be permitted to set up a defense in a suit for specific performance brought by the purchaser that he had no title or had defective title to the property which he had agreed to sell. In support of my view I place reliance on *Abdul Hakeem Khan Vs. Abdul Mannan Khadri*, ; *Baluswami Aiyar Vs. Lakshmana Aiyar and Others*, and *C.V. Muni Samappa Vs. Kolala Gurunanjappa (dead) and Others*, . It was observed by the Full Bench of the Madras High Court in *Baluswami Aiyar's* case (supra):

xxx and the fact that the title which the purchaser may acquire might be defeasible by a third party is no ground for refusing specific performance if the purchaser is willing to take such title as the vendor has. But where a party seeking specific performance seeks to bind the interests of persons not parties to the contract alleging grounds which under Hindu Law would bind their interests and enable the vendor to give a good title as against them and make them

parties, it is difficult to see how the question as to the right of contracting parties to convey any interest except his own can be avoided and a decree passed the effect of which will merely be to create a multiplicity of suits.

81. The impact of a cloud over title of the vendor has fallen for consideration and a catena of judicial pronouncements have dealt with the issue. In AIR 1949 83 (Nagpur) , it was held thus:

4. xxxx, the doctrine of mutuality can have no application when the Specific Relief Act, as it does in this case, lays down the rights and disabilities in respect of doubts as to title both in respect of the vendor and of the vendee. Those relating to the vendor are to be found in Section 25 and those relating to the vendee in Section 18. The two sections are complementary to each other and the rights of a vendee who brings a suit are not to be deducted by an attempted application of the doctrine of mutuality to the conditions laid down in Section 25 but are to be determined by the conditions in Section 16 which defines the rights of the purchaser.

5. In my opinion, the words "imperfect title" in Section 18 include the absence of a title and certainly include the very contingent interest, far greater than a spes successionis, which exists when a person who has bid at an auction sale has deposited the money and has done everything that is necessary for him to do and has only to wait for the confirmation of the sale when possession, except for unforeseen circumstances, would come to him. It also seems to me that Section 25 itself deals with imperfect titles and puts them into two categories, namely, one when the vendor knows that he has no title at all, and secondly where although he has not got a good title he believes he has, and is usable to perfect his title at the time fixed by the parties for the completion of the sale.

82. It would be instructive also to advert to the following observations made by the Madras High Court in the judgment reported at Baluswami Aiyar Vs. Lakshmana Aiyar and Others, :

Where a person sues for specific performance of an agreement to convey and simply impleads the party bound to carry out the agreement there is no necessity to determine the question of vendor's title, and the fact that the title which the purchaser may acquire might be defensible by a third party is no ground for refusing specific performance if the purchaser is willing to take such title as the vendor has. But where a party seeking specific performance seeks to bind the interest of persons not parties to the contract alleging grounds, which under Hindu law would bind their interests and enable a vendor to give a good title as against them and make them parties, it is difficult to see how the question as to the right of contracting parties to convey any interest except his own can be avoided and a decree passed the effect of which will merely be to create a multiplicity of suits.

83. To the same effect are the principles laid down by the court in C.V. Muni Samappa Vs. Kolala Gurunanjappa (dead) and Others, whereby the court stated

the law as hereunder:

When a person sues for specific performance of an agreement to sell a house impleading only the two executants of the agreement who are the only persons bound to carry out the agreement and the plaint does not make any reference to the sons of defendant 1, there is no necessity to determine the question of the purchaser may acquire might be defeasible by sons of defendant 1 is no ground for refusing specific performance if the purchaser is willing to take such title as the vendors have.

84. Further in Abdul Hakeem Khan Vs. Abdul Mannan Khadri, the court has elaborated the applicable law and held that:

10. xxx It is settled law that if a person executes an agreement to sell property, the vendor is not entitled to put forward, in a suit for specific performance by the purchaser the defense that the vendor had no title. It is open to the purchaser to set up a defense that the vendor had no title or has defective title in a suit for specific performance by the vendor. But the vendor cannot set up defective in his own title as a defense in a suit for specific performance by the purchaser.

Where a person sues for specific performance of an agreement to convey and simply impleads the party bound to carry out to the agreement there is no necessity to determine the question of the vendor's title and the fact that the title which the purchaser may acquire might be defeasible by a third party is no ground for refusing specific performance if the purchaser is willing to take such title as the vendor has. But where a party seeking specific performance seeks to bind the interests of persons not parties to the contract alleging grounds which under Hindu law would bind their interests and enable the vendor to give a good title as against them and makes them parties, it is difficult to see how the question as to the right of the contracting party to convey any interest except his own can be avoided and a decree passed, the effect of which will merely be to create a multiplicity of suits.

85. My attention has been drawn to the principles laid down by the Supreme Court in Kasturi Vs. Iyyamperumal and Others, . In this case, the court held thus:

6. In our view, a bare reading of this provision namely, second part of Order 1 Rule 10 Sub-rule (2) of the CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determination the question who is a necessary party. These are - (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree

can be passed in the absence of such party.

8. We have carefully considered Sub-sections (a) to (e) of Section 19 of the Act. From a careful examination of the afore-said provisions of Sub-sections (a) to (e) of the Specific Relief Act we are of the view that the persons seeking addition in the suit for specific performance of the contract for sale who were not claiming under the vendor but they were claiming adverse to the title of the vendor do not fall in any of the categories enumerated in Sub-sections (a) to (e) of Section 19 of the Specific Relief Act.

10. As noted herein earlier, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all. Lord Chancellor Cottenham in *Tasker V. Small* made the following observations:

It is not disputed that, generally, to a bill for a specific performance of a contract for sale, the parties to the contract only are the proper parties; and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a Court of law, giving damages only for the non-performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as in law, the contract constitutes the right and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, Therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it.

xxx

21. For the reasons aforesaid, in our view, the stranger to the contract, namely, the respondent Nos.1 and 4 to 11 making claim independent and adverse to the title of the respondent Nos.2 and 3 are neither necessary nor proper parties, and Therefore, not entitled to join as party defendants in the suit for specific performance of the contract for sale.

The Apex Court in *Kasturi's case* (supra) placed reliance and cited with approval,

the principles laid down in its earlier pronouncement in Anil Kumar Singh Vs. Shivnath Mishra alias Gadasa Guru, and JT 1997 (7) SC 226 (para14) Vijay Pratap and Anr. v. Sambbu Saran Sinha and Ors. Such being the position in law, the title of the vendor of a claim by any person of title adverse to that of the vendor would not impact adjudication in the vendee's suit for specific performance of the agreement for sale of the property.

Therefore in view of the afore noticed position in law, the filing of the case by Ms. Leena Mehta or the claim set up by her has no bearing on the issues raised or the adjudication in the present case.

86. The instant case has to be examined from yet another angle. It is not the defendant's case that she is not the owner of the property. Her case in the written statement and in the submissions made before this Court is that she was the absolute and exclusive owner of the suit property having the full right to deal with the property. The reasons on which she has sought the agreement to sell entered into with the plaintiff have been introduced in the detailed judgment recorded on is No. 9578/2006. Therefore, the instant case is not even a case in which the vendor is pleading that it has no title. There is no dispute by the defendant with regard to the execution of the agreement in favor of the plaintiff.

Consequently, the filing of the case by Leena Mehta who is a daughter of the plaintiff has no bearing on the adjudication in the present case.

Needless to say if the defendant is acting bonafide, she shall place the facts noticed herein before the court in CS(OS) No. 2188/2006 Smt. Leena Mehta v. Smt. Vijaya Myne and seek vacation of the interim orders which may have been passed therein and dismissal of the case against her.

So far as the pleaded hardship based on the adjudication of the rights of the defendant in the defense Colony property is concerned, the same has been considered at length hereinabove.

87. This application has been filed after judgment was reserved on is No. 9578/2006. The defendant was fully conscious that in case the court found in favor of the plaintiff in this application, a decree in favor of the plaintiff would necessarily follow. Consequently, the effect of reserving a judgment in the application under Order 12 Rule 6 of the CPC was reservation of the judgment in the suit of the plaintiff.

88. This application has been filed after judgment stood reserved on is No. 9856/2006 of the plaintiff and before pronouncement of the judgment thereon. Counsel for the plaintiff has questioned the maintainability of the present application also on the ground that hearing in the matter stood concluded and the defendant had no right to file the application.

A similar question had arisen for consideration before the Supreme Court in Arjun Singh Vs. Mohindra Kumar and Others, where an application for filing the order directing ex-parte proceedings against the defendant was filed after the

hearing stood concluded before pronouncement of the judgment. The contention of counsel in this case and the findings of the court deserve to be considered in extenso and read thus:

19. xxx Thus every contingency which is likely to happen in the trial vis-a-vis the non-appearance of the defendant at the hearing of a suit has been provided for and Order IX Rule 7, and Order IX Rule 13 between them exhaust the while gamut of situations "that might arise during the course of the trial. If, thus provision has been made for every contingency, it stands to reason that there is no scope for the invocation of the inherent powers of the Court to make an order necessary for the ends of justice. Mr. Pathak, however, strenuously contended that a case of the sort now on hand where a defendant appeared after the conclusion of the hearing but before the pronouncing of the judgment had not been provided for. We consider that the suggestion that there is such a stage is, on the scheme of the Code, wholly unrealistic. In the present context where once the hearing starts, the Code contemplates only two stages in the trial of the suit: (1) where the hearing is adjourned or (2) where the hearing is completed. Where the hearing is completed the parties have no further rights or privileges in the matter and it is only for the convenience of the Court that Order XX Rule 1 permits judgment to be delivered after an interval after the hearing is completed. It would, Therefore, follow that after the stage contemplated by Order IX, Rule 7 is passed the next stage is only the passing of a decree which on the terms of Order IX Rule 6 the Court is competent to pass. And then follows the remedy of the party to have that decree set aside by application under Order IX Rule 13. There is thus no hiatus between the two stages of reservation of judgment and pronouncing the judgment so as to make it necessary for the Court to afford to the party the remedy of getting orders passed on the lines of Order IX Rule 7. ; We are, Therefore, of the opinion that the Civil Judge was not competent to entertain the application dated May 31, 1958 purporting to be under Order IX Rule 7; and that consequently the reasons given in the order passed would not be res judicata to bar the hearing of the petition under Order IX Rule 13 filed by the appellant.

In view of the above, there is no hiatus between reservation of a judgment and pronouncing the same in open court. The plaintiff has objected to the maintainability of the present application on this ground.

I have examined the grounds in the application in the interests of justice.

I find that for all the foregoing reasons, the filing of CS(OS) No. 2188/2006 can not impact the result in is 9578/2006 or adjudication in the present suit.

I find no merit in this application which has resulted in wastage of substantial and valuable judicial time.

Accordingly, for all these reasons, this application is dismissed with costs of Rs. 25,000/- to be equally apportioned between the National Legal Aid Fund and Prime Minister"s Relief Fund. The costs shall be deposited within two weeks.

Proof of deposit of the costs shall be filed before this Court.

Copy of this direction shall be sent to the authorities concerned.