
(2012) 08 DEL CK 0149
In the Delhi High Court
Case No : CS (OS) No. 1735 of 1997

Shri Sushil Jain

APPELLANT

Vs

Shri Meharban Singh and Others

RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Contract Act, 1872 — Section 73

Specific Relief Act, 1963 — Section 12, 12(1), 16(c), 20, 20(3)

Citation : (2012) 131 DRJ 421 : (2012) 6 ILR Delhi 186

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : R.S. Tomar, for the Appellant; J.P. Sengh, with Mr. Ankit Jain, Sumeet Batra and Ms. Ankita Gupta for D-1 and Mr. Rohit Gandhi, for D-2, for the Respondent

Judgement

Valmiki J Mehta, J.—This suit for specific performance has been filed with respect to property being Plot No. QP-57, Maurya Enclave, Pitampura, Delhi-34 measuring approximately 150 sq.yds. The plot is built upon and it has a two and a half storey structure on the same. The plaintiff admits that the suit property belongs to the two brothers-defendants No. 1 and 2. It is pleaded that the defendant No. 1 entered into a receipt-cum-agreement with the plaintiff on 21.11.1995 (Ex.P1/Ex.PW1/1) whereby the defendant No. 1 was said to have agreed to sell not only his half portion, but also the half portion belonging to the defendant No. 2. It is the case of the plaintiff that the defendant No. 1 agreed to get the consent of defendant No. 2 to sell his other half portion to the plaintiff. Total sale consideration was fixed at Rs.29 lacs and of which the plaintiff paid the defendant No. 1 a sum of Rs.1,00,000/- on 21.11.1995. The plaintiff is said to have made a further payment of Rs.2,50,000/- on 26.11.1995 when another receipt-cum-agreement (Ex.P2/Ex.PW1/2) was signed, again only between plaintiff and defendant No. 1. The plaintiff thereafter states that the parties entered into another agreement dated 31.1.1996 (Ex.P3/Ex.PW1/3) and in which time for payment was extended to 9.2.1996 and the defendant No. 1 once again

undertook to get the defendant No. 2 to agree for executing the sale documents qua his half share in favour of the plaintiff. The plaintiff has pleaded that the defendants committed breach of contract and refused to sell the suit property. Plaintiff also alleges breach of contract on the part of the defendant No. 1 in not getting the permission from the defendant No. 2 to sell the half portion belonging to the defendant No. 2 to the plaintiff. The plaint thereafter makes reference to a legal notice dated 29.01.1996 calling upon the defendants to obtain sale permission, Income Tax Returns, NOC, etc from the competent authority. The plaint also makes reference to a suit filed by the defendant No. 2 against the plaintiff whereby the defendant No. 2 had prayed that he should not be forced to sell his half portion to the plaintiff inasmuch as there is no agreement with the plaintiff. I need not dwell much on this aspect inasmuch as admittedly there is no agreement to sell entered into by the defendant No. 2 with the plaintiff. The above referred suit filed by the defendant No. 2 is admitted by the parties to be adjourned sine die awaiting the decision of the present suit. The subject suit for specific performance came to be filed as the plaintiff pleaded that the defendants have refused to perform their part of performance of selling the suit property to the plaintiff.

2. Written statements have been filed by defendant No. 1 and also defendants No. 2 and 3 i.e. one is the written statement of defendant No. 1 and second is the written statement of defendants No. 2 and 3 jointly. Defendant No. 3 who is the father of defendant No. 2 was neither a necessary nor a proper party. He has expired during the pendency of the suit and he is now represented by the defendants No. 1 and 2 who are the sons.

3. The defendant No. 1 in the written statement did not dispute entering into the receipt-cum-agreements on 21.11.1995 and 26.11.1995 and the receipt of the sum of Rs.3,50,000/-, however, entering into of the agreement dated 31.1.1996 was disputed as having been signed on account of coercion in the Police Station. It is pleaded that within 3 days after the agreement dated 31.1.1996 was entered into in the Police Station on account of force and coercion, a suit was filed by the defendant No. 2 that the agreement dated 31.1.1996 is not binding upon the defendant No. 2. The defendant No. 1 in his written statement has alleged that it was the plaintiff who was guilty of breach of contract. Though he said that he was agreeable to sell his portion, however, it was simultaneously pleaded that the plaintiff was guilty of breach of contract because he had failed to arrange the monies for balance sale consideration. Dismissal of the suit was also sought on the ground that the plaintiff is not entitled to the discretionary relief of specific performance. It is also pleaded in the written statement of defendant No. 1 that the agreement to sell stood frustrated because the defendant No. 2 did not agree to sell his portion to the plaintiff. The defendant No. 1 has also denied that the defendants had assured the plaintiff that they would complete the formalities and inform the plaintiff of the date and time of the execution of the necessary documents. It was pleaded that the agreement to sell/undertaking dated 31.1.1996 was procured under coercion and threat and is

hence illegal and void. The defendant No. 1 thus prayed for dismissal of the suit.

4. In the written statement filed by the defendant No. 2, alongwith the defendant No. 3, the defence is that there was never any agreement with the defendant No. 2 to sell his half portion of the suit property to the plaintiff, and therefore, the plaintiff is not entitled to decree with respect to specific performance of the agreements to sell dated 21.11.1995, 26.11.1995 and 31.1.1996. In the written statement the defendants No. 2 and 3 have also taken their stand that defendant No. 1 was not authorized to enter into agreements with respect to half portion of the defendant No. 2 with the plaintiff.

5. Issues in this suit were framed on 31.8.2005 and they read as under:-

1. Whether the plaintiff is entitled for specific performance of agreement to sell dated November 21, 1995, November 26, 1995 and November 31, 1996? OPP
2. Whether the suit has been properly valued for the purpose of court fee and jurisdiction ? OPP
3. Whether the plaintiff has always been ready and willing to perform his part of agreement? OPP
4. Whether the agreement to sell and undertaking dated January 31, 1996 were obtained from defendant No. 1 and his father, defendant No. 3 by force, coercion and undue influence by the plaintiff ? If so, to what effect? OPD
5. Whether the suit is bad for mis-joinder of parties? OPD
6. Relief.

6. So far as the issue No. 2 is concerned, the defendants did not oppose this issue and therefore issue is decided in favour of the plaintiff.

Issues No. 1, 3, 4 & 5

7. Issue Nos. 1, 3, 4 and 5 can be dealt with together and are accordingly being disposed of together. The first aspect will be as to whether the plaintiff is entitled to specific performance of the agreements dated 21.11.1995, 26.11.1995 and 31.1.1996. Included in this aspect will be the issue No. 4 as to whether the agreement to sell/undertaking dated 31.1.1996 was obtained from the defendant No. 1 and defendant No. 3 by force, coercion and undue influence. Within the discussion on this subject it will also have to be decided as to who is guilty of breach of contract assuming that there existed all the three agreements.

8. So far as the agreements to sell dated 21.11.1995 and 26.11.1995 are concerned, there is no dispute that they were entered into. However, it is also undisputed that the defendant No. 2 is not a signatory to any of these agreements with respect to his half ownership share in the suit property. Therefore, obviously there cannot be granted to the plaintiff specific performance of the agreement to sell with respect to half portion of the defendant No. 2. In fact, no specific performance of even the half portion belonging to the defendant

No. 1 can be granted to the plaintiff inasmuch as admittedly in the suit the plaintiff seeks specific performance with respect to the entire property and not only the half portion of the defendant No. 1. As per the provision of Section 12(1) of the Specific Reliefs Act, 1963, a Court cannot grant specific performance of a part of the contract. Specific performance can be granted of a part of the contract in terms of the sub-Sections (2) to (4) of Section 12 if the plaintiff gives up his claim with respect to that portion of the agreement to sell which cannot be performed. As already stated above, the plaintiff has not given up his claim for specific performance with respect to the half portion belonging to the defendant No. 2 and on the contrary is claiming the sale of the entire property in his favour. Since admittedly there is no agreement of defendant No. 2 with the plaintiff, and the plaintiff seeks specific performance of the agreement to sell as a whole; Section 12(1) is a complete bar to the grant of the relief of specific performance. Therefore, the suit has necessarily to fail on this ground itself.

9. Now let me take up the position that the suit is not liable to fail because of Section 12(1) of the Specific Reliefs Act, 1963. I have now to see whether it is the plaintiff who is guilty of breach of contract or it is the defendant No. 1 who is guilty of breach of contract. When we look at the two so-called receipt-cum-agreements to sell dated 21.11.1995 and 26.11.1995, these documents are basically two paragraph documents and they do not contain any terms with respect to any obligation upon the defendant No. 1. All that these receipts basically provide for is the recording of giving of the amounts of Rs.1,00,000/- and Rs.2,50,000/- respectively and of forfeiture on behalf of the seller/defendant No. 1 in case the plaintiff/buyer fails to give balance consideration and for the plaintiff/buyer to receive double the bayana amount in case of seller/defendant No. 1 fails to sell the suit property. So far as the agreement dated 31.1.1996 is concerned; though the defendant No. 1 has set up a case and led evidence and has also put suggestions in the cross-examination to the witnesses of the plaintiff that the agreement dated 31.1.1996 has been entered into on account of fraud and coercion; considering the balance of probabilities, I would take that the agreement dated 31.1.1996 was in fact executed by the defendant No. 1. This agreement contained two important terms. The first was the undertaking on behalf of the defendant No. 1 to get the defendant No. 2 to sell the portion of the defendant No. 2 to the plaintiff, and, the second term was that the time for payment was extended upto 9.2.1996. I have already dwelt upon above that the defendant No. 2 never agreed to sell his share, and surely, even if the defendant No. 1 gave such an undertaking, it was the plaintiff's look out as to why he took such an undertaking from the defendant No. 1, knowing very well that the defendant No. 1 need not have necessarily persuaded the defendant No. 2 to sell his half portion of the property to the plaintiff. As already concluded above, the fact that the plaintiff still pursues for a sale deed with respect to the entire property, shows that the suit has to necessarily fail because once the defendant No. 1 failed to persuade the defendant No. 2 to sell the property, there could not be specific performance of the agreement as a whole.

So far as the second aspect of the breach of contract on the part of the plaintiff on account of having failed to arrange the monies for payment of the balance sale consideration by 9.2.1996, this is an issue I will take up with the issue of readiness and willingness on the part of the plaintiff, the subject matter of issue No. 3 as dealt with immediately hereinafter.

10. Section 16(c) of the Specific Reliefs Act, 1963 requires every plaintiff in a suit for specific performance to aver and prove readiness and willingness to perform his part of the contract. Readiness means existence of financial capacity and willingness means intention to go ahead with the transaction. Admittedly, there is not a single document on record which shows the financial capacity of the plaintiff right from November, 1995 till the filing of the suit and even thereafter till the present stage of final arguments. Plaintiff has not filed any bank account statement to show that he had monies with him during the entire period from November, 1995; January, 1996; and thereafter till date. Plaintiff has also not filed his Income Tax Returns. Plaintiff has also not filed any document whatsoever to show that he had the financial capacity during this period to make payment of the balance consideration. Of course a person may not have ready liquid funds, however surely he must show his financial capacity that he has necessary assets or other wherewithal to make payment of balance consideration. An important point to be noted is that plaintiff has led no evidence as to his station in life, his education, his business, his status etc etc. What the plaintiff is and what he does is therefore a mystery. As already stated above nothing whatsoever has been filed on behalf of the plaintiff with respect to his financial capacity and therefore I hold that it is the plaintiff who committed breach of contract inasmuch as he did not have monies to make payment of balance sale consideration by 9.2.1996, the extended date as per the agreement dated 31.1.1996. In fact I must at this stage also observe that from the fact that the date of payment was extended to 9.2.1996 under the agreement dated 31.1.1996 is also an indication that the plaintiff did not have with him funds till 31.1.1996 to make the payment of the balance sale consideration of Rs.25,50,000/-. The plaintiff also is therefore held not to be ready and willing to perform his part of the contract. Since the requirement of Section 16(c) has not been satisfied, I hold issue No. 3 in favour of the defendants and against the plaintiff and hold that the plaintiff was not ready and willing to perform his part of contract and therefore he is not entitled to the relief of specific performance.

11. I have recently had an occasion to consider the issue of readiness and willingness in facts which are very similar to the facts of the present case, in the case of Shri Jinesh Kumar Jain vs. Smt. Iris Paintal & Ors. being CS(OS) No. 1154/1989 decided on 10.7.2012. Paras 10, 11 and 12 of this judgment are relevant and they read as under:-

10. On the aspect as to who is guilty of breach of contract, one thing is clear that the agreement to sell does provide for the necessary permissions to be obtained by the defendants. The defendants have not proved on record that they ever

applied to the Income Tax Authority or appropriate authority under the 1972 Act for permission to transfer the land. Of course, I have already stated above that the appropriate authority under the 1972 Act would never have given permission because there is an absolute bar u/s 3 of the Act where the land has already been acquired, however, so far as the permission of the Income Tax Authority is concerned, I do not find any document placed on record whereby the defendants have applied for permission. In my opinion, however, this is not the end of the matter because the defendant No. 1 sent a notice dated 2.12.1988 (Ex.P2), and in which notice there is an allegation against the plaintiff of having committed breach of contract in not completing the transaction within 45 days as provided under the agreement to sell. Reference in this notice, Ex.P2 therefore is clearly to the lack of availability of finances with the plaintiff for completing the transaction of sale. Though this aspect will also be dealt with by me while dealing with the issue of readiness and willingness, it is clear in the facts of the present case, that the plaintiff is also guilty of breach of contract inasmuch as the plaintiff has not filed even a single document of any substance whatsoever of his having financial capacity from 26.9.1988 to the period of 45 days after entering into agreement to sell, and thereafter till filing of the suit. No doubt, plaintiff may want to say that he was liable to have the moneys ready only after the defendants had obtained the necessary permissions, however, one cannot overlook the fact that considering the period of performance to be a short period of 45 days, the plaintiff cannot presume that the permissions will not be applied for; nor obtained, and therefore, he need not be ready to perform his part of the bargain by having the balance sale consideration of Rs.44,00,000/- in the 45 days period. I do not think that it is open for the plaintiff to urge that he need not have established on record his financial capacity during this period of 45 days after entering into the agreement to sell. I must hasten to add that where no period of performance is provided for or where there is a very long period to enable the proposed buyer for completion of his obligations the position possibly may have been different than in this case where the period is only of 45 days. I therefore hold that both the parties were guilty of breach of their respective obligations to be performed under the agreement dated 26.9.1988.

11. Now on to the related crucial issue No. 4 framed on 11.4.1991 with respect to readiness and willingness on the part of the plaintiff to perform his obligation under the agreement to sell. I take up this issue for disposal. Section 16(c) of the Specific Relief Act, 1963 requires that the plaintiff in a suit for specific performance must aver and prove that he has always been ready and willing and continues to be ready and willing to perform his part of the contract. The Courts have interpreted the expression "readiness" u/s 16(c) to mean capacity to perform i.e. financial capacity of a purchaser to pay the balance consideration. Willingness is the intention to go ahead with the agreement to sell.

12. The undisputed position which emerges on record is that the plaintiff has miserably failed to prove his readiness and willingness i.e. his financial capacity with respect to making available the balance sale consideration of

Rs.44,00,000/-. No Income Tax Returns of the plaintiff have been filed for any of the years including post the filing of the suit. The plaintiff has similarly failed to file his bank accounts to show availability with him of amounts to pay balance consideration of Rs.44,00,000/-. The plaintiff has in fact not even filed details of his assets in any form to show his financial capacity to pay the balance consideration of Rs.44,00,000/-. In my opinion, merely stating in legal notices or replies that the plaintiff is ready to perform his part of the contract is neither here nor there inasmuch as the issue of readiness is a crucial aspect which requires that by clear-cut evidence, which can be believed by the Court, the plaintiff proves his financial capacity. The plaintiff has wholly failed to do so in the present case. I therefore hold that the plaintiff has totally failed to prove the financial capacity to pay the balance consideration and, hence it cannot be said that the plaintiff was and continued to be ready and willing to perform his part of the obligation under the agreement to sell at all points of time i.e. for the period of 45 days after entering into the agreement to sell, after the period of 45 days till the filing of the suit, and even thereafter when evidence was led. I therefore hold that the plaintiff has failed to comply with the requirement of Section 16(c) of the Specific Relief Act, 1963, and therefore, the plaintiff is not entitled to the relief of specific performance.

(underlining added)

12. I therefore hold that the plaintiff is not entitled to discretionary relief and is guilty of breach of contract and he was not ready and willing to perform his part of contract and therefore, the suit is liable to be dismissed on this ground alone.

13. This finding takes me to the aspect whether the plaintiff is entitled to the discretionary relief of specific performance, and which is one of the aspects under issue No. 1. Before dealing with this aspect, I would again seek to refer to certain paragraphs in the case of Shri Jinesh Kumar Jain (supra) which have dealt with this aspect extensively. The relevant paras in that judgment are paras 13 to 18 of the said judgment and which read as under:-

13. Now let us assume that the agreement to sell dated 26.9.1988 was not hit by the 1972 Act; the defendants were guilty of breach of their obligation to perform their part of contract; and that the plaintiff was ready and willing to perform his part; even then, can it be said that the plaintiff is yet entitled to the discretionary relief of specific performance. It will be appropriate at this stage to refer to Section 20 of the Specific Relief Act, 1963, and more particularly sub-Section 3 thereof. Section 20 reads as under:-

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 capably 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.

(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.

14. Sub-Section 3 makes it clear that Courts decree specific performance where the plaintiff has done substantial acts in consequence of a contract/agreement to sell. Substantial acts obviously would mean and include payment of substantial amounts of money. Plaintiff may have paid 50% or more of the consideration or having paid a lesser consideration he could be in possession pursuant to the agreement to sell or otherwise is in the possession of the subject property or other substantial acts have been performed by the plaintiff, and acts which can be said to be substantial acts u/s 20(3). However, where the acts are not substantial i.e. merely 5% or 10% etc of the consideration is paid i.e. less than substantial consideration is paid, (and for which a rough benchmark can be taken as 50% of the consideration), and/or plaintiff is not in possession of the subject land, I do not think that the plaintiff is entitled to the discretionary relief of specific performance.

15. The Supreme Court in the recent judgment of Mrs. Saradamani Kandappan Vs. Mrs. S. Rajalakshmi and Others, has had an occasion to consider the aspect of payment of a nominal advance price by the plaintiff and its effect on the discretion of the Court in granting the discretionary relief of specific performance. Though in the facts of the case before the Supreme Court, it was the buyer who was found guilty of breach of contract, however, in my opinion, the observations of the Supreme Court in the said case are relevant not only because I have found in this case the plaintiff/ buyer guilty of breach of contract, but also because even assuming the plaintiff/buyer is not guilty of breach of contract, yet, Section 20 sub-Section 3 of the Specific Relief Act, 1963 as reproduced above clearly requires substantial acts on behalf of the plaintiff/proposed purchaser i.e.

payment of substantial consideration. Paras 37 and 43 of the judgment in the case of Saradamani Kandappan (*supra*) are relevant and they read as under:

37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and "non-readiness". The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed

when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and received rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees.

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43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyanandam.

(i) The courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) The courts will apply greater scrutiny and strictness when considering whether the purchaser was "ready and willing" to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. The courts will also "frown" upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three-year period is intended to assist the purchasers in special cases, as for example, where the major part of the consideration has

been paid to the vendor and possession has been delivered in part-performance, where equity shifts in favour of the purchaser.

(emphasis is mine)

16. A reading of the aforesaid paras shows that Courts have a bounden duty to take notice of galloping prices. Surely it cannot be disputed that the balance of convenience i.e. equity in the present case is more in favour of the defendants who have only received 10% of the consideration. If the hammer has to fall in the facts of the present case, in my opinion, it should fall more on the plaintiff than on the defendants inasmuch as today the defendants cannot on receiving of the balance consideration of Rs.44,00,000/-, and even if exorbitant rate of interest is received thereon, purchase any equivalent property for this amount. Correspondingly, the plaintiff has had benefit of 90% of sale consideration remaining with him (assuming he has any) and which he could have utilized for purchase of assets including an immovable property. In specific performance suits a buyer need not have ready cash all the time and his financial capacity has to be seen and thus plaintiff can be said to have taken benefit of the 90% balance with him. It is well to be remembered at this stage that in a way that part of Specific Relief Act dealing with specific performance is in the nature of exception to Section 73 of the Contract Act, 1872 i.e. the normal rule with respect to the breach of a contract u/s 73 of the Contract Act, 1872 is of damages, and, the Specific Relief Act, 1963 only provides the alternative discretionary remedy that instead of damages, the contract in fact should be specifically enforced. Thus for breach of contract the remedy of damages is always there and it is not that the buyer is remediless. However, for getting specific relief, the Specific Relief Act, 1963 while providing for provisions of specific performance of the agreement (i.e. performance instead of damages) for breach, requires discretion to be exercised by the Court as to whether specific performance should or should not be granted in the facts of each case or that the plaintiff should be held entitled to the ordinary relief of damages or compensation.

17. I have recently in the case titled as Laxmi Devi vs. Mahavir Singh being RFA No. 556/2011 decided on 1.5.2012 declined specific performance, one of the ground being payment of only nominal consideration under the agreement to sell. Para 11 of the said judgment reads as under:-

11. Besides the fact that respondent/plaintiff was guilty of breach of contract and was not ready and willing to perform his part of the contract lacking in financial capacity to pay the balance consideration, in my opinion, the facts of the present case also disentitle the respondent/plaintiff to the discretionary relief of specific performance. There are two reasons for declining the discretionary relief of specific performance. The first reason is that the Supreme Court has now on repeated occasions held that unless substantial consideration is paid out of the total amount of consideration, the Courts would lean against granting the specific performance inasmuch as by the loss of time, the balance sale consideration

which is granted at a much later date, is not sufficient to enable the proposed seller to buy an equivalent property which could have been bought from the balance sale consideration if the same was paid on the due date. In the present case, out of the total sale consideration of Rs.5,60,000/-, only a sum of Rs.1 lakh has been paid i.e. the sale consideration which is paid is only around 17% or so. In my opinion, by mere payment of 17% of the sale consideration, it cannot be said that the respondent/plaintiff has made out a case for grant of discretionary relief or specific performance.....

18. Therefore, whether we look from the point of view of Section 20 sub-Section 3 of the Specific Relief Act, 1963 or the ratio of the judgment of the Supreme Court in the case of Saradamani Kandappan (supra) or even on first principle with respect to equity because 10% of the sale consideration alongwith the interest will not result in the defendants even remotely being able to purchase an equivalent property than the suit property specific performance cannot be granted. In fact, on a rough estimation, the property prices would have galloped to at least between 30 to 50 times from 1988 till date. I take judicial notice of this that in the capital of our country, like in all other megapolis, on account of the increase in population and rapid urbanization, there is a phenomenal increase in the prices of urban immovable property.

(underlining added)

14. The facts of the case of Shri Jinesh Kumar Jain (supra) are strikingly similar not only with respect to the breach of contract and the lack of readiness and willingness when compared with the facts of the present case, but they are also strikingly similar with respect to disentitlement of the plaintiff to the discretionary relief for specific performance. The plaintiff in this present case has only paid a sum of Rs.3,50,000/- out of Rs.29 lacs i.e. roughly about 13% of the sale consideration. Admittedly the plaintiff is not in possession of the suit property. The agreements to sell in this case are of the year 1995/96 i.e. about 17 years earlier. As per the ratio in the case of Shri Jinesh Kumar Jain (supra), the plaintiff cannot be held entitled to the discretionary relief of specific performance inter alia for the reasons that not only the prices would have gone up about 20 to 30 times during this period but also that the plaintiff has taken benefit of the balance of about 87% of the consideration (assuming he had any) with him and which obviously if he had, he would have wisely invested in any other assets including in an immovable property. Since I have already extensively dealt with this aspect in the case of Shri Jinesh Kumar Jain (supra), I adopt the ratio of the said case and which will apply with respect to the facts of the present case also. I therefore hold that the plaintiff is also not entitled to the discretionary relief for specific performance. Issue No. 1 is therefore decided against the plaintiff including for the reason of the fact that the plaintiff is not entitled to the discretionary relief of specific performance. Issue Nos. 5 and 3

15. So far as the issue No. 5 is concerned, the same would get decided under that part of issue No. 1 wherein I have said that the defendant No. 2 being not a

party to the agreements to sell, he is not liable to sell his half portion of the property to the plaintiff, and therefore, the suit is bad for misjoinder of defendant No. 2. So far as the defendant No. 3 is concerned he had no interest whatsoever in the suit property, and he was therefore unnecessarily joined. Issue No. 5 is decided accordingly.

16. I may state that in this case after broadly understanding the facts of the present case I put counsel for both the parties to notice that I would be awarding actual costs as per the result of the present case. Plaintiff also rejected the offer to take back the amount paid with a substantially high rate of interest. Imposition of actual costs has become a prime need in these days in order to send a message to those sections of the litigants who speculate in litigations. Not only there are speculative litigations, and because of such litigations a defendant/seller suffers considerably inasmuch as he not only incurs actual expenses towards litigation including the lawyers, but also there is a cloud created over his title to the property. The Supreme Court in the recent judgment in the case of Rameshwari Devi and Others Vs. Nirmala Devi and Others, has held that it is high time that now actual costs should be awarded. The relevant paras of the judgment are as under:-

43. We have carefully examined the written submissions of the learned Amicus Curiae and learned Counsel for the parties. We are clearly of the view that unless we ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that court's otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases.

47. We have to dispel the common impression that a party by obtaining an injunction based on even false averments and forged documents will tire out the true owner and ultimately the true owner will have to give up to the wrongdoer his legitimate profit. It is also a matter of common experience that to achieve clandestine objects, false pleas are often taken and forged documents are filed indiscriminately in our courts because they have hardly any apprehension of being prosecuted for perjury by the courts or even pay heavy costs. In Swaran Singh Vs. State of Punjab, this Court was constrained to observe that perjury has become a way of life in our courts.

52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials.

A. ...

B. ...

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

55. The other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. The Appellants in the instant case have harassed the Respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts for the last 40 years.

56. On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs. 2,00,000/- (Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation.

(underlining added)

17. Considering the facts of the present case, as also that I have decided all the issues against the plaintiff, I exercise my discretion under Rule 14 of the Delhi High Court (Original Side) Rules, 1967 to exempt the applicability of rules on the aspect of costs in the present case. I therefore award actual costs to the defendants No. 1 and 2 at the time of dismissing of the suit. The defendants are directed to file an affidavit within a period of 3 weeks from today of the actual costs incurred by them for the present litigation including the costs incurred by them towards payment for their lawyers. The certificates of the lawyers of having actually received the fees must also be attached with the affidavit. Such costs will be the costs awarded against the plaintiff and in favour of the defendants No. 1 and 2 in the present suit. I take on record the statement made on behalf of the plaintiff in Court today that his residential address has changed and now he is presently residing at KP 85, Maurya Enclave, Pitampura, Delhi.

Relief:-

In view of the above suit of the plaintiff for specific performance is dismissed with actual costs as stated above. Decree sheet be prepared. Suit is dismissed

and disposed of accordingly.