2024 INSC 861

Reportable

IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION

Review Petition (C) No. 1565 of 2022 in C.A. No. 5822 of 2022

M/s Siddamsetty Infra Projects Pvt. Ltd. …Petitioner

Versus

Katta Sujatha Reddy & Ors. …Respondents

And With
Review Petition (C) No. 1839 of 2024 in C.A. No. 5823 of 2022

J U D G M E N T

Dr Dhananjaya Y Chandrachud, CJI

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1. The petitioner has instituted proceedings under Article 137 of the Constitution read with Order XLVII Rule 1 of the Supreme Court Rules 2013 seeking a review of the judgment of a three-Judge Bench of this Court dated 25 August 2022. By the judgment, this Court allowed the appeal against the judgment of the High Court of Telangana dated 23 April 2021 by which the suit for specific performance was partially decreed by directing the registration of the suit property in favour of the petitioner proportionate to the extent of the consideration paid. The issue for the consideration of this Court is whether the judgment of this Court dated 25 August 2022 suffers from an error apparent on the face of the record which warrants the exercise of the review jurisdiction.

A. Background

2. On 19 March 1994, Shri Debbad Narayana, Shri Vishweswara Rao (represented by the tenth to twelfth respondents who are his legal representatives), the third respondent, fourth respondent and fifth respondent ("**original owners**") entered into an agreement to sell a land admeasuring 127.29 acs to the first, second, sixth, seventh and eight respondents ("**vendors**"). On the date of the agreement, possession to the extent of 65.23 acs was delivered to the vendors. Upon the payment of the balance sale consideration, the possession of the entire property was delivered. A sale deed was not executed, though the full sale consideration was paid. However, on 28 March 1994, an irrevocable power of attorney was executed in favour of the vendors.

3. On 26 March 1997, the vendors executed an agreement to sell in favour of the petitioner. This agreement will be referred to as the "first agreement to sell". By the agreement, the first and the second respondents offered to alienate the scheduled property of 38.15 acs[1] for a sale consideration of Rs 38,37,500. The agreement notes that the petitioner paid a sum of Rs 5,30,000 in cash and Rs 6,00,000 in cheque as advance and earnest money. The relevant clauses of the agreement to sell are extracted below:

> "3. The purchaser shall pay a sum of Rs. 27,07,200/-
> (Rupees Twenty Seven Lakhs seven thousand five

[1] "All that the agriculture land bearing Sy. Nos. 301 part, 302, 303, 304 part totally admeasuring Ac. 38-15 guntas situated at Budwel village, the then Hyderabad West Tq., now Rajendernagar Mandar, R.R. District, which is bounded by as under:-
East: Sy. No. 381, 380 and 326
West: Sy. No. 54 Village boundary of Irsalgandi
North: Sy. No. 381, 380 and 326
South: Sy. No. 300 and 306"

hundred only) towards the balance sale consideration within three months from this date to the parties of the second part herein and if the purchaser does not honour to pay the balance sale consideration of Rs. 27,07,500/- (Rupees Twenty Seven Lakhs Seven Thousand and Five Hundred Only) within a period of three months from the date of this date, the advance amount paid will be forfeited **and** this agreement of sale will be cancelled if the vendors fail to furnish the non-encumbrance certificate, income tax exemption certificate, agricultural certificates to the purchaser within three months.

[…]

6. The parties of the first part and the parties of the second part herein undertake that they will execute a registered sale deed or deeds or any other nature of documents as desired by the purchaser in favour of the purchaser or its nominee or nominees, after receiving the balance sale consideration.

[…]

20. The parties of the first part and the second part herein undertake to execute the documents either registered or un-registered as desired by the purchaser after receiving the balance sale consideration to the extent to the schedule property.

[…]

21. **The parties of the first part** are not at all concerned to the sale consideration agreed by the parties of the second part herein with the purchaser as already they received the agreed sale consideration from the parties of the second part herein as per the agreement dated 19th March 1994.

[…]

23. The parties of the second part herein undertake on any pretext they will not make any claim for enhancing the agreed sale consideration."

(emphasis supplied)

4. The first agreement to sell refers to the "original owners" as the "parties of the first part". The agreement refers to the "vendors" as the "parties to the second part". The petitioner is referred to as the "purchaser". It must also be noted that the recital to the first sale agreement states that the "parties of the first part and parties 1,3,5 and 6 of the parties of the second part" have been made a party to the agreement only to ensure that there is no "cloud over the title".

5. On 27 March 1997, an agreement to sell was executed by the first and second respondents in favour of the petitioner to sell the scheduled property of 1.33 Acs[2] for a consideration of Rs 1,82,500. This agreement will be referred to as the second agreement to sell.

6. On 8 February 2000, the petitioner issued a legal notice ("**first legal notice**") to the first and second respondents calling upon them to receive the balance sale consideration and execute the sale deed. On 14 April 2000, the second respondent responded to the legal notice claiming to not have received the part-payment and refusing to execute a sale deed in the petitioner's favour. On 6 July 2002, the petitioner issued another legal notice ("**second legal notice**") to all the respondents calling upon them to execute the sale deed upon the receipt of the balance consideration. The first and second respondents replied to the legal notice by a letter dated 22 July 2002 claiming that (a) the execution is barred by limitation; (b) they were ready with the documents required under Clause 3 of the first

[2] "All that the agricultural land bearing Sy. Nos. 304 part totally admeasuring Ac. 1.33 guntas situated at Budwel village, the then Hyderabad West Tq. Now Rajendernagar mandal, R.R. District, which is bounded by as under:-

East: Sy. No. 308
West: Sy. No. 3030
North: Sy. No. 326
South: Sy. No. 305".

agreement to sell but the petitioner was not willing to pay the balance consideration; and (c) the first legal notice dated 8 February 2000 was ante-dated to overcome limitation. The first legal notice was posted on 30 March 2000 by registered post.

7. On 9 August 2002, the petitioner instituted a suit seeking a decree for specific performance of the first and the second agreements to sell. The case of the petitioner in the suit was:

a. Rs.34,70,000 towards the sale consideration for the first agreement and Rs 10,850 as advance for the second agreement was paid. Thus, of the aggregate sale consideration of Rs. 40,20,000, Rs, 34,80,850 was paid and only a balance of Rs 5,39,150 remained outstanding;

b. The possession of the suit land was delivered under the agreement; and

c. The petitioner has always been ready and willing to perform his part of the agreements. Both the agreements required the respondents to furnish the petitioner with necessary permissions and certificates, which they failed to do.

8. The petitioner prayed for a decree for specific performance upon the receipt of the balance sale consideration of Rs 5,39,150. The petitioner sought alternative reliefs of (a) delivery of possession of the suit land; or (b) a direction to refund the consideration of Rs. 34,80,850 paid with interest of 36% per annum.

B. Judgments of the Trial Court, High Court and this Court

9. By a judgment dated 12 December 2010, the Additional District Judge dismissed the suit instituted by the petitioner. The Trial Court held that the petitioner is not entitled to a decree or specific performance for the following reasons:

a. The respondents did not dispute the execution of the two agreements to sell. There is also no dispute over the identity of the property. The petitioner is only required to prove that he was always willing to perform his part of the agreement;

b. It can be inferred from the evidence on record that the petitioner does not have possession of the suit property and that a false plea that possession has been delivered has been made because:

   i. The alternative prayer of the petitioner in the suit was to put him in possession of the property if, for any reason, the Court concludes that the possession of the suit property was not delivered. The petitioner would not have sought the alternative prayer if he were confident about being in possession of the suit property;

   ii. The petitioner did not plead **when** he was put in possession of the property. PW-1 (the petitioner) was not able to respond to a question during cross-examination on when he was put in possession of property;

   iii. Though PW-2 (the owner of the land adjacent to the suit property) deposed that the petitioner developed the suit property by fencing it and constructing internal roads, these aspects did not find a mention in either

the deposition of PW-1 or the plaint. Further, the photographs of the suit property also did not reflect these developments;

iv. The sale agreements also did not conclusively indicate that the petitioner was put in possession of the suit property;

v. The first legal notice issued by the petitioner does not mention that possession was delivered. The claim is only made in the second legal notice; and

vi. The draft sale deed that the petitioner allegedly prepared and sent to the respondents also does not mention that possession was delivered.

c. A cheque of Rs 5,40,000 issued by the petitioner towards consideration was dishonoured. So, the petitioner paid Rs 29,30,000 towards the sale consideration and not Rs 34,70,000, as claimed by him. The petitioner made a false plea that he had paid Rs 34,70,000. The table indicating the payments made by the petitioner is below:

26.3.1997	Rs. 5,40,000 (cheque dated 2.4.1997 which was dishonoured)
26.3.1997	Rs. 11,30,000 (Rs. 5,30,00 by cash and Rs. 6,00,00 by cheque)
26.3.1997	Rs, 13,00,000 by cheque
9.4.1997	Rs. 5,00,000 by cheque

d. Clause 3 of the sale agreements states that the petitioner is required to pay the balance consideration and the respondents must furnish certificates within three months. The clause prescribes a consequence for non-payment, that the agreement would be cancelled. However, the clause does not prescribe any consequence if the respondents fail to furnish the necessary certificates within three months. It cannot be concluded that time is of the essence only because the agreement requires the petitioner to pay the balance consideration within three months. The respondents had not obtained the permissions and certifications required under Clause 3 and they did not inform the petitioner about any steps taken to obtain them. The cross-examination of DW-1 (first respondent) indicates this. Thus, time is not of essence in the agreement;

e. The petitioner claims that he issued the first legal notice on 8 February 2000. However, the postal cover and postal certificate indicate that it was registered on 31 March 2000. Thus, the petitioner ante-dated the legal notice to overcome limitation ;

f. The petitioner is not entitled to the discretionary relief of specific performance if a false plea is made. In this case, the petitioner made three false pleas;

g. The petitioner has been unable to prove that he was willing to perform his part of the contract within three years from the sale agreements and specifically, within three months according to the agreement. If the petitioner was able to perform his part, a notice would have been issued earlier or the balance would have been deposited in the bank;

h. The first part of Article 54 of the Schedule to the Limitation Act 1963 applies to the facts of the case. The petitioner was required to pay the balance consideration within three months from the date of the sale agreement. The suit should have been filed on or before 26 June 2000 (three years from the date fixed for the performance). However, the suit was filed on 9 August 2002, nearly two years after the limitation expired. Thus, the suit was time barred; and

i. The suit was barred by time for recovery of the advance amount in terms of Article 47 of Schedule to the Limitation Act.

10. The petitioner preferred an appeal before the High Court against the judgment of the Additional District Judge. By a judgment dated 23 April 2021, the High Court partly allowed the appeal for the following reasons:

a. The Trial Court did not distinguish between the time fixed for payment of sale consideration and the time for the performance of the contract. The first part of Clause 3 of the agreements only fixes the time for the payment of sale consideration. The performance of the contract hinges on the respondents furnishing the documents. The agreements do not fix a time for the performance of the contract. Thus, the second part of Article 54 of the schedule to the Limitation Act applies. The limitation begins from the date of refusal of performance. The suit was filed on 30 July 2002, which is within three months of 14 April 2000 (the date when the respondents' responded to the first legal notice). Even if the first legal notice issued by the petitioner was ante-dated, it would not affect the merits of the issue since limitation ought to

be calculated from the date of refusal. Further, the conclusion that the petitioner did not file a suit immediately after the issuance of the second legal notice is erroneous. The second legal notice was issued on 6 July 2002. The suit was filed on 30 July 2002. The suit was numbered on 9 August 2002;

b. It cannot be concluded that possession was not delivered merely because there was no mention of it in the sale agreements or the first legal notice. The finding of the Trial Court on the aspect of possession and that the petitioner made a false plea in this regard is erroneous. Even otherwise, the issue of whether the petitioner has possession of the suit property is immaterial for the relief of specific performance. The delivery of possession is inherent and ancillary to the relief of specific performance under Section 55 of the Transfer of Property Act 1882. (Relied on **Babulal** v. **Hajarilal Kishorilal**[3]);

c. The respondents received a substantial amount of the sale consideration of Rs. 38,80,850 out of the total sale consideration of Rs. 40,20,000. The respondents failed to provide the certificates. The first respondent admitted that she received the amount in her cross-examination though she had denied the same earlier in her written statement and chief examination. The sale deed could not be executed because of the fault of the respondents. It cannot be concluded that the petitioner did not approach the respondents for the payment of the balance consideration merely because he could not depose the particulars of **when** he approached them. Further, though the first and the second respondents pleaded that they had obtained the necessary

[3] 1982 (1) SCC 525

documentation as required by Clause 3 of the sale agreement in both the written statement and evidence, this version was denied during the cross-examination of DW-1 and DW-2 (husband of DW-1). The Trial Court concluded that the respondents were not ready with the certifications. This finding was not assailed by the counsel for the respondents;

d. The petitioner would not benefit from not performing the remainder of the contract when he already paid 90 percent of the sale consideration. The petitioner filed an Interlocutory Application to deposit the balance sale consideration of Rs. 5,39,150 which was allowed. The petitioner has shown *bona fides* by depositing the balance consideration. Thus, the oral evidence of the petitioner (PW-1) that he approached the respondents to fulfil the contract cannot be disbelieved. The petitioner has proven his readiness and willingness to perform the contract;

e. The conclusion of the Trial Court that the petitioner made a false plea that he paid Rs. 34,70,000 when he has only paid Rs, 29,30,000 is erroneous. DW-1 in her deposition admitted the payments of the petitioner and admitted that the balance amount of Rs.5,39,150 was deposited in the Court in her cross-examination. Upon the dishonour of the cheque dated 2 April 1997, the plaintiff issued a Demand Draft of Rs. 5,00,000 on 9 April 1997;

f. Merely because the plaintiff did not institute a suit immediately after the reply to the first legal notice in 2000, it cannot be inferred that he was not willing to perform his part of the contract. The suit was filed within limitation (relied on

R Lakshmi Kantham v. **Devaraji** (2019) 8 SCC 62; **Mademsetty Satyanarayana** v. **G. Yelloji Rao** (AIR 1965 SC 1405));

g. Time is not of essence to the contract for the reasons recorded in the Trial Court's judgment; and

h. Section 10 of the Specific Relief Act 1963 was amended in 2018, by which the relief of specific performance is no longer a discretionary power. Section 10 is a procedural provision. All procedural laws are retrospective. The amended provision applies to all pending proceedings.

The High Court directed that since the petitioner had paid 90 percent of the sale consideration, the suit for specific performance can be decreed in favour of the petitioner to the extent proportionate to the consideration paid. The High Court further directed that the amount of Rs, 5,39,150 deposited by the petitioner pursuant to the Interlocutory Application must be refunded along with any interest that is accrued.

11. Proceedings under Article 136 were instituted against the judgment of the High Court. By a judgment dated 25 August 2022, a three-Judge Bench consisting of Chief Justice NV Ramana, Justice Krishna Murari and Justice Hima Kohli allowed the appeal. This Court referred to the judgment in **Chand Rani** v. **Kamal Rani**[4], in which it was held that there is no presumption that time is of essence in a contract for a sale of immovable property and the Court may infer if it was of essence based on (a) the express terms of the contract; (b) the nature of the

[4] (1993) 1 SCC 519

property; and (c) surrounding circumstances such as the object of the contract. Relying on the judgment, this Court held that in the facts of the present case, time is of essence for the following reasons:

a. Both the vendors' and the purchaser's obligations in Clause 3 of the sale agreements were required to be completed within the stipulated time period of three months. The consequences of (in)actions are different. There are no consequences if the vendors do not produce the certificates and permissions. However, the clause spells out a consequence of forfeiture of the advance amount if the purchaser does not pay the balance consideration; and

b. According to Clause 21 of the sale agreements, the parties had entered into an earlier agreement to sell dated 19 March 1994. This agreement did not materialize and the agreed price was no longer applicable. Fresh agreements were entered into "to provide a last opportunity to successfully enter into a sale-purchase agreement." This intention of the parties is also clear from Clause 23 of the agreement.

12. This Court held that the suit was barred by limitation since the suit had to be instituted within three years of the time fixed for completing the performance (which was three months from the sale agreements). The three years ended in June 2000 and the suit ought to have been instituted within that period to not be barred by limitation.

13. This Court also held the following on merits:

a. Section 10 of the Specific Relief Act is not procedural but substantive. Thus, the 2018 amendment to the provision does not apply retrospectively to pending proceedings;

b. Under the unamended provision, the Court's power to grant specific performance was discretionary. This discretion ought not to be exercised arbitrarily[5]. The purchaser must be vigilant to enforce his right. Clause 3 of the agreements was drafted to provide "one last opportunity for the purchaser to make good their lapse which had happened on the earlier occasion." The time for performance of the contract, including payment lasted till June 1997;

c. The plaintiff was not ready and willing to perform the contract. The purchaser did not voluntarily adhere to the time stipulated under the contract. However, the vendors fulfilled their obligation to provide documentation. DW-1 averred that all documents were available and that the petitioner entered into an agreement only after he was satisfied with the title. Specific performance cannot be enforced in favour of a party who has not proven that he was always ready and willing to perform his part of the contract;

d. The Trial Court's reasoning on the question of whether the petitioner has possession of the suit property is correct; and

[5] Saradamani kandappan v. S. Rajalakshmi (2011) 12 SCC 18

e. Section 12 of the Specific Relief Act does not apply to situations where the inability to perform the contract arises out of the party's own conduct.[6] In the instant case, there was no inability on the part of the parties to perform the contract. The petitioner was not willing to perform the contract after entering into a "time-sensitive agreement".

14. This Court directed the respondents/vendors to repay the sale consideration received with an interest of 7.5 percent from the date on which the payment was made till the time the entire amount is paid back. The payment was directed to be made within six months.

15. The petitioner filed a review petition against the judgment of this Court.

C. Submissions

16. Mr Neeraj Kishan Kaul, senior counsel submitted that the judgment of this Court suffers from the following apparent errors that warrants the exercise of the review jurisdiction:

a. Clause 21 of the agreements to sell refers to the sale agreement executed by the original owners in favour of the vendors in 1994. Though petitioner was not a party to that agreement, this court has proceeded on the incorrect premise that the 1994 agreement was between the parties;

b. The Trial Court, after analysing the evidence on record, concluded that the vendors did not produce certificates and permissions as required by Clause

[6] Jaswinder Kaur v. Gurmeet Singh, (2017) 12 SCC 810

3 of the sale agreements. This finding was not challenged before the High Court. This Court wrongly records that the vendors produced the certificates without referring to the direct evidence on record to the contrary; and

c. Clause 3 does not state that the agreement will be cancelled if the petitioner does not pay the balance amount within three months.

17. Mr Rakesh Dwivedi and Mr. Mukul Rohatgi, senior counsel for the respondents argued that this is not a fit case for the exercise of review jurisdiction. It was submitted that the judgment of this Court was sound, independent of the (mis)reference to the 1994 agreement. The learned counsel further submitted that the suit property was alienated after the judgment of this Court and before the review petition was registered. It was argued that the doctrine of *lis pendens* does not apply when the petition was in the registry in a defective state.

D. Grounds for exercising review jurisdiction

18. Before proceeding with the analysis, we will refer to the grounds for exercising review jurisdiction. Order XLVII of the Supreme Court Rules 2013 states that an application for review must be filed on the grounds mentioned in Order XLVII Rule 1 of the Code of Civil Procedure 1908 (**"CPC"**). Order XLVII Rule 1 of CPC lays down the following grounds for review:

a. Discovery of new and important matter or evidence, which after the exercise of due diligence was not within their knowledge or could not be produced by them at the time the decree was passed;

b. Mistake or error apparent on the face of the record; and

c. Any other sufficient reason.

19. This Court has laid down the following principles on the exercise of review jurisdiction[7]:

a. Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC;

b. Error on the face of record must be an error which must strike one on a mere perusal and must not on a long drawn process;

c. The power of review must not be exercised on the ground that the decision was erroneous on merits;

d. The phrase “any other sufficient reason” means a reason that is analogous to the grounds specified in Order 47 Rule 1 CPC; and

e. The mere possibility of two views on the subject cannot be a ground for review.

20. Let us proceed to analyse if the judgment of this Court satisfies the grounds for review. The issues which arose for the consideration of this Court were two-fold: ***first***, whether the suit instituted by the petitioner was barred by limitation; and ***second***, whether the suit for specific performance must be decreed. The finding that time was of essence to the contract was central to the Court’s reasoning on both the issues.

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[7] See Murali Sundaram v. Jothibai Kannan, 2023 SCC OnLine SC 185; Karnail Singh v. State of Haryana, 2021 SCC OnLine SC 961; Kamlesh Verma v. Mayawati, (2013) 8 SCC 320; Sanjay Kumar Agarwal v. State Tax Officer, (2024) 2 SCC 362

E. Limitation

21. The Schedule to the Limitation Act 1963 prescribes the period of limitation. Article 54 of the Schedule prescribes the period of limitation for a suit for specific performance of a contract:

Description of suit	Period of limitation	Time from which period begins to run
54. For specific performance of a contract	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

22. The provision has two parts. The first part deals with situations where the contract fixes a date for performance. The period of limitation of three years runs from the date fixed for completion of performance. The second part deals with situations where the contract does not fix a date for the performance of the contract. In such situations, the period of limitation runs from the date when the plaintiff has notice that the defendant has refused performance.

23. The issue for consideration was whether the sale agreements fix a date for the performance of the agreement. This Court referred to Clauses 3, 21, and 23 to hold that the agreement fixes a date of three months for performance. This Court interpreted Clause 3 as follows:

> "31. At the outset, this Court has perused Clause 3 of the agreements, which is in two parts. The first part provides for the purchaser's obligations, while the second part details the obligation of the vendors to provide the requisite certificates. Although both the obligations were required to be completed within

> the stipulated period of three months, there is a substantive difference between these two sets of obligations. The obligation upon the vendors concerned was production of certain certificates, such as income tax exemption certificate and agriculture certificate**. No consequences were spelt out for non-performance of such obligations**. Whereas the obligation on the purchaser, was to make the complete payment of the sale consideration within three months. **The clause further mandates forfeiture of the advance amount if the payment obligation is not met within the time period stipulated therein**."
>
> (emphasis supplied)

24. This Court observed that Clause 3 casts two obligations: one on the petitioner/purchaser and the other on the respondents/vendors. To this extent, we find no error. However, the conclusion that the Clause only provides consequences for the non-payment of the balance consideration by the purchaser and not for the non-production of certificates by the vendors is an error apparent on the face of the record. The judgment correctly notes that Clause 3 prescribes that the advance amount paid will be forfeited if the balance is not paid by the petitioner in three months. However, this Court missed that the Clause also provides a consequence for not producing the documents within three months, which is the cancellation of the sale agreements. This Court seems to have missed the phrase "and this agreement of sale will be cancelled..". If this Court had read "and this agreement of sale will be cancelled" as a consequence of the non-fulfilment of the obligation cast on the purchaser, it could still be argued that it was a probable (though in our opinion, erroneous) view and not an error apparent on the face of the record. However, the judgment completely disregards the phrase "and this agreement of sale will be cancelled" in Clause 3. In paragraph 32 of the judgement, this Court

further notes that non-payment of the balance consideration would lead to a severe consequence of "forfeiture":

> "33. Coming to the aforesaid indicators, the language of the agreements makes it clear that severe consequences of forfeiture would ensue if the payment is not made within three months of the date of the agreements."

25. Clause 3 has two parts. The first part casts an obligation on the purchaser/petitioner and prescribes consequences for it, that is, the forfeiture of the advance paid. The word "and" disjuncts this part from the second part which casts an obligation on the vendors. The second part prescribes the consequence if the vendors do not furnish the documents.

26. This Court further noted that the "language of the agreements" ensures severe consequences of forfeiture if the balance consideration is not paid within three months. This Court further referred to Clauses 21 and 23 to substantiate this interpretation:

> "32. […] It may be noted that as per Clause 21, the parties had entered into an earlier agreement to sell dated 10.03.1994, which did not materialize and accordingly the agreed price therein was no longer applicable. It is in this context that the fresh agreements were entered into between the parties, so as to provide a last opportunity for them to successfully enter into a sale-purchase agreement. The aforesaid intention of the parties is also made clear through Clause 23 of the agreement to sell, which reads as under:
>
> […]
>
> 33. The aforesaid clause clearly freezes any enhancement of the agreed sale consideration, which cannot be independent of a fixed time period. A contrary interpretation would render the contract commercially unreasonable and unworkable. The

> moratorium on the enhancement of rates prescribed under Clause 23 should be interpreted to be predicated on a fixed time and be executable within a reasonable period. The same should not be utilized to render the commercial wisdom between the parties *otiose*, which is inherent in drafting such clauses."

27. To recall, Clause 21 stipulates that the parties of the "first part" are not concerned with the sale consideration as they have already received the agreed sale consideration from the parties of the "second part" by an agreement dated 19 March 1994. This Court has interpreted the reference to the agreement dated 19 March 1994 as the agreement between the petitioner and the respondents which did not materialise. This is an obvious and apparent error on the face of the record. The agreements refer to the original owners from whom the vendors purchased the suit property as parties of the "first part". The vendors are referred to as parties to the "second part". The agreement dated 19 March 1994 is the agreement to sell that was executed by the original owners in favour of the vendors. The petitioner was not a party to this agreement. The 1997 agreements in favour of the petitioner were executed by the original owners in addition to the vendors because though the vendors were put in possession of the suit property after the sale agreement, a sale deed was not executed. Instead, an irrevocable power of attorney was executed in favour of the vendors. Though only the first and the second respondents offered to alienate the suit property to the petitioner, the agreement is executed by the original owners and vendors other than the first and the second respondent as well to prevent any litigation in the future. The relevant clauses of the recital to the agreement dated 26 March 1997 are extracted below:

"4. Whereas parties of the Second part herein have entered into an agreement of sale with the parties of the first part herein dated 19 March 1994.

5. Whereas the parties of the second part herein have purchased from the parties of the first part to an extent of Articles 127-129 guntas only in lad bearing Sy.No. 301 part 302, 303, 304, 305, 306, 307, 308 and 309 for a valuable consideration and on the date of the agreement possession was delivered to an extent of Articles 65-23 guntas and it was specifically agreed that an irrevocable general power of attorney will be executed through a registered document in the names nominated by the parties of the second part herein, as such parties of the first part herein have executed and irrevocable power of attorney on 28 March 1994 which was registered on 30th day of April 1994.

6. Whereas parties of the second part herein have paid the full sale consideration to the parties of the first part and the parties of the first part herein have also delivered the possession of the remaining extent of Ac. 50-00 gts and to that effect admitting and acknowledging the same the parties of the first part herein have passed receipts and also got executed another regd. Irrevocable power of attorney in favour of the parties of the second part herein, as such the parties of the second part herein become the possessors of the total extent of Ac. 115-29 guntas.

7. Whereas parties 2 and 4 of the second part herein have offered to alienate and extent of Ac. 38-15 guntas in land bearing Sy. No. 301 part, 302,303 and 304 part out of the total extent of Ac. 127-29 guntas @ Rs 1, 00, 000/- per acre which comes to a total sum of Rs. 38, 37, 500/- (Rupees Thirty Eight Lakhs Thirty Seven Thousand give hundred only) and infact, parties of the first part as well parties 1,3,5 and 6 of the parties of the second part herein have no concern either for the agreed sale consideration or for the extent under alienation but they have been made as parties to this agreement not to have a cloud over the title and also to get convey the title in a better way along with the rights for not to give any scope for the litigation in future on any pretext and the parties 1,3,5, and 6 of the parties of the second part herein shall be at liberty either to enjoy or to alienate to their choice of the extent of their share of land situated at Budwel village, Rajendernagar mandal, Ranga Reddy District."

28. Thus, the conclusion that Clause 21 indicates that an agreement was executed in 1994 with the petitioner which did not materialise is an error apparent on the face of the record. The argument of the respondent that the Court concluded that time is of essence independent of the interpretation of Clause 21, in our opinion, does not hold merit. This Court placed considerable weightage on Clause 21. This Court referred to Clauses 3, 21 and 23 to interpret if time was of essence in the backdrop of the principles laid down in **Chand Rani** (supra). To recall, in **Chand Rani** (supra), this Court held there is no presumption that time is of essence in a contract for a sale of immovable property and the Court may infer if it was of essence based on (a) express terms of the contract; (b) nature of the property; and (c) surrounding circumstances such as the object of the contract. Clause 21 was interpreted to cast light upon the surrounding circumstances/the object of the contract and was crucial to its decision.

29. Having concluded that the interpretation of Clauses 3 and 21 of the Sale Agreements was erroneous, there is nothing in Clause 23 alone that could be interpreted to prescribe a time for the performance of the contract. Further, the judgment also does not take note of Clause 6 of the agreements to sell which provides that a sale deed will be executed after receiving the balance sale consideration. This clause does not prescribe any time period within which the sale deed must be executed. Another question is whether Clause 3 can be independently interpreted to prescribe a date for the performance of contract. The consequence of the non-payment of the balance consideration in terms of Clause 3 is the forfeiture of the advance amount paid by the purchaser and not all the

consideration paid by the end of three months. The consequence is not that the sale deed shall not be executed.

30. For the above reasons, Clauses 3, 21 and 23 cannot be interpreted to mean that a time is fixed for the execution of the sale agreements. Thus, the limitation is governed by the second part of Article 54. The limitation of three years prescribed by the second part of Article 54 runs from the date when the plaintiff has notice that performance has been refused. The petitioner/plaintiff had notice that performance is refused only by the reply dated 14 April 2000 to the first legal notice of the petitioner. A portion of the reply is extracted below:

> "That our client along with Smt. Kotta Sujatha Reddy have not received the alleged amount of Rs. 34,80,850/- as part sale consideration of the alleged agreement.
>
> That our client has no any liability to execute the sale deed in your clients favour on any account under the alleged agreement of sale deed 26.3.1997 or 27.3.1997. As such the execution of any sale deed in your client's favour does not arise."

31. Thus, the limitation prescribed by Article 54 sets in from the date when the petitioner received the above reply refusing performance. Irrespective of whether the suit was instituted on 9 August 2002 (as concluded by the Trial Court) or 30 July 2002 (as concluded by the High Court), it was within limitation.

F. Specific performance

32. The next issue is whether the petitioner is entitled to a decree for specific performance. This Court held that the 2008 amendment to Section 10 of the Specific Relief Act does not apply retrospectively and decided the matter based on

Section 10 before the amendment. Section 10, before the amendment, conferred courts with the discretion to provide a decree for specific performance. In exercise of review jurisdiction, we must not disturb a finding unless there is an error apparent on the face of record. Even assuming that the grant of relief of specific performance continued to be discretionary to a suit instituted before the date of the amendment, we are of the opinion that this Court committed a grave error in its analysis of whether the Court ought to use its discretionary power in this matter. Section 10 of the Specific Relief Act before the 2018 amendment read as follows:

> "10. Cases in which specific performance of contract enforceable.- Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced-
>
> (a) when there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done; or
>
> (b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.
>
> Explanation.- Unless and until the contrary is proved, the court shall presume
>
> (i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and
>
> (ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases:
>
> (a) where the property is not an ordinary article of commerce, or is of special value of interest to the plaintiff, or consists of goods which are not easily obtainable in the market;
>
> (b) where the property is held by the defendant as the agent or trustee of the plaintiff."

33. This Court referred to the judgment in **Saradamani Kandappan** v. **Rajalakshmi**[8], which laid down the factors that the Courts must consider while deciding whether to exercise the discretion of decreeing specific performance of a contract:

> "43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in *K.S. Vidyanadam* [(1997) 3 SCC 1] :
> (*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 supplied)

34. Section 16(c) of the Specific Relief Act states that specific performance of a contract cannot be enforced in favour of the person who fails to prove that he is ready and willing to perform the essential terms of the contract which are to be performed by him, other than the terms which are prevented or waived by the

[8] (2011) 12 SCC 18

defendant. The explanation to clause (c) states that it is not essential for the plaintiff to tender money to the defendant where the contract involves the payment of money, unless directed by court. Section 16(c) reads as follows:

> "16. Personal bars to relief.- Specific performance of a contract cannot be enforced in favour of a person-
>
> […]
>
> (c) who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.
>
> *Explanation.*- For the purposes of clause (c),-
>
> (i) where a contract involved 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;"

35. This Court concluded that the petitioner was not ready and willing to perform his part (as required by Section 16(c)) because the balance sale consideration was not paid within three months as required by Clause 3:

> "58. From the aforesaid, it is clear that the purchaser ought to have been vigilant in the case at hand to enforce his right and could not have been lackadaisical in his approach. From the facts, it is clear that the purchaser had entered into an agreement way back on 26/27/.03.1997, which had a clause mandating completion of the contract by payment of the remaining consideration within three months. **The aforesaid clause was drafted, as alluded to earlier, for providing one last opportunity for the purchaser to make good their lapse which had happened on the earlier occasion**. In this context, the time for performance of the contract including the payment lasted till the month of June 1997."
>
> (emphasis supplied)

36. It is clear from the above extract that this Court held that the petitioner was not ready and willing to perform the contract in which **time was of essence**. The conclusion that time was of essence was derived based on an interpretation of Clause 3 read with Clause 21. The reasoning based on which this Court held that the petitioner was not ready and willing to perform the contract falls in view of the conclusion that the interpretation of Clause 21 and Clause 3 by this Court is erroneous because of the factual misconception and omission, respectively.

37. In paragraph 67 of the judgment, this Court also held that the first and the second respondents were ready and willing to perform their obligation of providing the documents:

> "67. On the aspect of the vendor's obligation to provide requisite and necessary documents, DW1 (Smt. Katta Sujatha Reddy), has averred that all the documents were available. It is only after the purchaser was satisfied about the sound title that he entered into the agreement to sell."

38. There is an error apparent on the face of the record in the factual finding recorded above. The Trial Court recorded that the respondents did not produce the records. The Trial Court expressly noted that DW-1 initially stated that they produced the certificates. However, during the cross-examination, DWs 1-3 deposed that they had not obtained and produced these documents. The observations of the Trial Court in this regard are extracted below:

> "70. […] It is in the written statement and as well as in the reply lawyers notice as if the defendants got secured these documents. But, the fact remains and undisputed is, the defendant have not obtained such certificates and they have not furnished them to the plaintiff and they have not even informed to the plaintiff what are the steps taken by them in obtaining

> these documents and the proceedings taken by them in that context. **But it is in the pleading and in the evidence of DW-1 at the earliest part of time that they have obtained these documents. But from the later part of evidence of DW-1 by filing further chief examination affidavit and from the cross-examination of DW-1 to 3 it is made out the defendants have not obtained and they are not informed to the plaintiff and that they have secured such certificates."**
>
> (emphasis supplied)

39. In the appeal, the High Court categorically noted that the above finding of the trial court was not challenged:

> "40. It is also pertinent to note about categorical admission by the defendants 6 & 8 that they have not obtained certificates and documents for completing the sale transaction. But the defendants 6 & 8 pleaded that they have obtained necessary documents both in the written statements and also in the evidence. **In the cross-examination that version of D.W.1 is dismantled and trial Court also comes to the conclusion that the defendants without obtaining documents and certificates simply pleaded that they are ready with the certificates. However, that finding is not attacked in this appeal,** which goes to show that the defendants are at fault in not obtaining certificates for fulfilling their part of the contract, though, the plaintiff paid 90% of the sale consideration requesting the defendants 6 & 8 to receive balance sale consideration."
>
> (emphasis supplied)

40. The judgment of this Court in paragraph 67 only refers to the deposition of DW-1 without referring to her cross-examination or the fact that the respondents did not challenge the finding of the Trial Court on this aspect. This is another error apparent on the face of the record.

41. Having held that the basis of the reasoning of this Court on whether the petitioner was willing to perform the contract has an error apparent on the face of the record, we are required to decide the issue of whether the petitioner was ready and willing to perform the contract. We are of the considered opinion that the petitioner was ready and willing to perform the contract in terms of Section 16(c) of the Specific Relief Act. The first agreement to sell noted that the purchaser paid a sum of Rs.11,30,00 as earnest money. Subsequently, the petitioner paid Rs. 13,00,000 on the same day by cheque and paid another Rs. 5,00,000 by Demand Draft on 9 April 1997. If the petitioner was unwilling to perform the contract, he would not have paid nearly 75 percent of the sale consideration. Thus, the petitioner with the payment of the additional sum above the earnest money, has proved his readiness and willingness to perform the contract. Further, this aspect must be analysed in the backdrop of the explanation to Section 16(c) of the Specific Relief Act which states that if the contract involves the payment of money, it is not necessary that the plaintiff actually tenders the money. It cannot be concluded that the petitioner was not ready or willing to perform his part of the contract merely because the balance sale consideration was due to be paid.

42. Section 10, before the amendment in 2018 stated that the Court can exercise its discretion to award specific performance of contract where (a) there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done; or (b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief. The Explanation provided that unless there is anything to the contrary, the court shall presume that the compensation in money is not an

adequate relief for the breach of a contract to transfer immovable property. There is nothing in the agreements to sell to rebut this statutory presumption. On an application of the facts to the principles in Sections 10 and 16 of the Specific Relief Act, we are of the considered opinion that this is a fit case for this Court to exercise its discretion to direct specific performance.

G. Lis pendens

43. The respondents submitted that a sale of the suit property was executed after the judgment of this Court (25 August 2022) and before the review petition was registered (13 December 2022). It was submitted that the third party is in possession and enjoyment of the suit property.

44. On 23 September 2022, the petitioner filed a review petition against the judgment of this Court dated 25 August 2022. The review was filed within thirty days, the prescribed period of limitation in terms of Order XLVII Rule 2 of the Supreme Court Rules 2013. On 14 October 2022, the Registry sent a letter to the petitioner asking him to cure defects. On 11 November 2022, the petitioner cured the defects. On 13 December 2022, the review petition was registered. On 27 January 2023, the counsel for the petitioner sought six weeks to bring some documents on record. On 1 March 2023, the matter was listed before a three-Judge Bench of Justice Krishna Murari, Justice Hima Kohli and one of us (Justice DY Chandrachud). The matter was not taken up. By an order dated 31 August 2023, Justice D Y Chandrachud allowed the application for listing the review petition in open court and issued notice, returnable in six weeks. Justice Hima Kohli did not agree and was of the view that the review petition be dismissed. Justice Narasimha

who was the third member of the Bench recused from the matter for personal reasons. Subsequently, Justice Manoj Misra was nominated as the third member of the Bench. By an order dated 26 September 2024, notice was issued in the review petition.

45. Section 52 of the Transfer of Property Act 1882 states that during the pendency in any court of any suit in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceedings. The explanation to the provision states that for the purposes of the Section, the pendency of a suit or proceedings shall be deemed to commence from the date of the presentation of the plaint or institution of the proceeding in a Court, and shall continue until the suit or proceeding is disposed by a "final decree or order" and complete satisfaction of the order is obtained, unless it has become unobtainable by reason of the expiry of any period of limitation. Section 52 of the Transfer of Property Act reads as follows:

> "52. During the **pendency in any Court** having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government **of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question**, the property cannot be transferred or otherwise dealt with **by any party to the suit or proceeding** so as to affect the rights of any other party thereto under any decree or order which may be made therein, **except under the authority of the Court and on such terms as it may impose**.
>
> *Explanation.*-- For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue **until the**

> **suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained**, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."
>
> (emphasis supplied)

46. The following conditions ought to be fulfilled for the doctrine of *lis pendens* to apply:

a. There must be a pending suit or proceeding;

b. The suit or proceeding must be pending in a competent court;

c. The suit or proceeding must not be collusive[9];

d. The right to immovable property must be directly and specifically in question in the suit or proceeding;

e. The property must be transferred by a party to the litigation; and

f. The alienation must affect the rights of any other party to the dispute.[10]

47. In short, the doctrine of *lis pendens* that Section 52 of the Transfer of Property Act encapsulates, bars the transfer of a suit property during the pendency of litigation. The only exception to the principle is when it is transferred under the authority of the court and on terms imposed by it. Where one of the parties to the suit transfers the suit property (or a part of it) to a third-party, the latter is bound by

[9] A collusive suit is not a real suit but a sham where the claim that is put forward if fictitious. See Nagubai Ammal v. B Shama Rao, 1956 SCC 321
[10] See Amit Kumar Shaw v. Farida Khatoon, (2005) 11 SCC 403

the result of the proceedings even if he did not have notice of the suit or proceeding. The principle on which this doctrine rests was explained by Lord Turner in **Bellamy** v. **Sabine**[11] as follows:

> "It is, as I think, a doctrine common to the courts both of Law and Equity and rests, as I apprehend, upon this foundation that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations *pendente lite* were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendants alienating before the judgment or decree, and would be driven to commence his proceedings *de novo,* subject again to be defeated by the same course of proceedings."

48. Justice M H Beg in **Jayaram Mudaliar** v. **Ayyaswami**[12] set out the content of the doctrine of *lis pendens* as follows:

> **"**14. The background of the provision set out above was indicated by one of us (Beg, J.,) in *Jayaram Mudaliar* v. *Ayyaswami* [(1972) 2 SCC 200, 217 : AIR 1973 SC 569] . There, the following definition of the lis pendens from *Corpus Juris Secundum* (Vol. LIV, p. 570) was cited:
>
> "Lis pendens literally means a pending suit, and the doctrine of lis pendens has been defined as the jurisdiction, power, or control which a court acquires over property involved in a suit pending the continuance of the action, and until final judgment therein."
>
> It was observed there:
>
> "Expositions of the doctrine indicate that the need for it arises from the very nature of the jurisdiction of Courts and their control over the subject-matter of litigation so that parties litigating before it may not remove any part of the subject-matter outside the power of the Court to deal with it and thus make the proceedings infructuous."

[11] (1857) 1 De G&J 566
[12] AIR 1973 SC 569

49. The purpose of *lis pendens* is to ensure that the process of the court is not subverted and rendered infructuous. In the absence of the doctrine of *lis pendens,* a defendant could defeat the purpose of the suit by alienating the suit property. This purpose of the provision is clearly elucidated in the explanation clause to Section 52 which defines "pendency". Amending Act 20 of 1929 substituted the word "pendency" in place of "active prosecution". The Amending Act also included the Explanation defining the expression "pendency of suit or proceeding". "Pendency" is defined to commence from the "date of institution" until the "disposal". The argument of the respondents that the doctrine of *lis pendens* does not apply because the petition for review was lying in the registry in a defective state cannot be accepted. The review proceedings were "instituted" within the period of limitation of thirty days. The doctrine of *lis pendens* kicks in at the stage of "institution" and not at the stage when notice is issued by this Court. Thus, Section 52 of the Transfer of Property Act would apply to the third-party purchaser once the sale was executed after the review petition was instituted before this Court. Any transfer that is made during the pendency is subject to the final result of the litigation.[13]

H. Relief

50. The High Court relied on Section 12 of the Specific Relief Act to decree specific performance only to the extent of the consideration paid by the petitioner. The directions of the High Court are extracted below:

> "89. […], this court is of the considered opinion that by exercising power under Section 12, in order to

[13] See GT Girish v. Y Subba Raju, 2022 8 SCR 991

> meet the ends of justice, suit can be decreed for specific performance only to the extent of 90% of the amount paid by the plaintiff to the defendants 6 & 8 towards sale consideration.
>
> 90. In the result, Appeal Suit is allowed in part directing the defendants 6 & 8 to register the suit schedule property in favour of the plaintiff proportionate to the extent of amount paid by the plaintiff i.e., 90% of the total sale consideration[…].
>
> 91. It is needless to state that the Suit Schedule Land is required to be divided by metes and bounds in the execution proceedings by the Execution Court, as indicating above i.e., 90% and 10% with the assistance of an advocate commissioner and the 90% of the part of the Suit Schedule Land, so determined, shall be registered in favour of the Appellant in accordance with the law."

51. On appeal, this Court held that it was not a fit case to exercise discretion to grant relief in terms of Section 12 because the purchaser breached an essential condition of the agreements to sell and the suit was filed beyond limitation:

> "77. […] In this case, the petitioner breached the essential condition of the contract, which altogether disentitles him to claim specific performance. There is no doubt that the claim of purchaser is hit by delay and laches on their part as they did not take appropriate measures within the stipulated time and filing of the suit was delayed by almost five years […]
>
> 78. Therefore, we do not think that it is an appropriate case for granting relief to the purchaser in terms of Section 12 of the Specific Relief Act 1963 as the claim of the purchaser is barred by delay, laches and limitation."

52. Having concluded that the errors apparent on the face of the record identified above go to the root of the reasoning on both the issues of limitation and specific performance, we recall the judgment of this Court dated 25 August 2022. The judgment of the High Court dated 23 April 2021 is restored.

53. The review petitions are allowed in the above terms.

54. Pending application(s), if any, is disposed of.

……CJI
[Dr Dhananjaya Y Chandrachud]

……J
[J. B. Pardiwala]

……J
[Manoj Misra]

New Delhi;
November 08, 2024