

Before K. Kannan, J.

RAMANDEEP SINGH AND ANOTHER —Petitioners

versus

AMRIT PAL SINGH—Respondent

CR No. 684 of 2013

January 30, 2013

Code of Civil Procedure, 1908 - S.115 - Specific Relief Act, 1963 - S.16(C) - Plaintiff filed suit alleging that he is ready and willing to pay balance amount under agreement but defendant is delaying the same - Defendants had earlier filed suit for rescission of agreement - Ultimately admission in suit that he was willing to execute the sale deed - On such admission trial court in the present suit filed by buyer directed the plaintiff to bring balance sale consideration in court - Order challenged in High Court by plaintiff to contend that court had no power in a suit for specific performance to direct the deposit of balance of sale consideration before grant of decree - Held, that in exceptional situation if defendant is willing to execute sale deed and it is plaintiff who is dragging his feet, trial court is well within its jurisdiction to assess whether plaintiff's contention is bona fide or not - Direction given by trial court to deposit balance sale consideration is well within the discretion of trial court - Revision Petition dismissed.

Held, that learned counsel argues that at best the Court can only pass a judgment and decree on the basis of an admission by him and even before passing a decree, there cannot be a direction for deposit. I have already observed that there is no such law that without passing a decree there cannot be a direction for deposit in a suit for specific performance. This is so, particularly in view of the language of Section 16 of Specific Relief Act. In C.L. Jain Vs. Gopi Chand AIR 1990 Del 280, the Delhi High Court said,:

"In view of the provisions of Section 16 of Specific Relief Act, I consider it necessary and desirable that in this case, the plaintiff be directed to deposit the entire balance consideration in this Court so that the same can be easily and readily available to the defendant at the time the contract is performed by execution of sale deed and by taking such further actions, as may be necessary."

(Para 5)

Further held, that it is an exceptional situation in this case that the plaintiff who wants a specific performance is attempting to impose conditions which the agreement itself does not propound. If the defendant is willing to execute the sale deed and the plaintiff is still dragging his feet it was only apposite that the Court assessed whether the plaintiff's contention is bona fide or not. The direction given by the Court was well within the discretion of the trial Court and I would find no reason to interfere with the same in revision.

(Para 6)

Rakesh Punj, Advocate, *for the petitioner*:

K. KANNAN, J. (ORAL)

(1) The revision petition is against a direction given by the trial Court in a suit for specific performance that the plaintiff brings the balance of sale consideration payable under the agreement before a stipulated date. The plaintiff had filed a suit on an averment that he is ready and willing to pay the balance of the amount but the defendant has been delaying the same. Although the defendant appears to have earlier filed a suit for rescission of the agreement and for payment of the advance paid by the plaintiff to

him, on his admission later in the suit that he was willing to execute the sale deed in the manner sought for in the suit, the Court has directed the plaintiff to bring the balance of sale consideration before a particular date.

(2) The counsel appearing on behalf of the plaintiff/petitioner is before this Court to contend that the Court had no power in a suit for specific performance to direct the deposit of the balance of sale consideration before the grant of decree. Learned counsel for the petitioner would refer to two decisions of this Court observing that a direction for deposit shall not be made. In **Dharam Pal Singh Vs. Ajit Singh and others** decided on 22.12.2009 the Court found that it would suffice to observe that the if the suit was decreed, the plaintiff could be directed to deposit the balance. The Court also added that finding on readiness of the plaintiff to perform his part of contract is a question of fact to be proved by leading the required evidence and need not be tested before hand. The judgment does not reveal about the particular stand of the defendant in that case and therefore it cannot provide any illustration of a situation in this case where the defendant joins issues with a prayer for specific performance in suit and expresses himself willing to execute a sale deed. If the plaintiff was suing for specific performance, he was doing so on an express requirement mandated under Section 16 (c) of the Specific Relief Act that he is ready and willing to perform his part of contract. It is not an empty formality, although the explanation under Section 16 (c) itself makes it evident that it shall not be at all times necessary to direct a deposit of the amount.

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

a) xx xx xx ,

b) xx xx xx

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation for the purpose of clause (c)

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

(ii) xx xx xx

The explanation makes it clear that in a case where the defendant expresses himself ready to execute the sale deed, there is nothing that would hamper discretion of the Court to direct such a deposit. Otherwise the later part of the explanation would become meaningless.

(3) The other decision relied on by the counsel is a judgment in **Kushal Kumar Vs. Samim in CR No.1323 of 2011** decided on 15.3.2012. That was a case where the plaintiff was pleading that the defendant was required to perform certain obligations. There were encumbrances which had to be cleared and an offer for execution of sale could not be completed without allowing for this obligation to be discharged. The Court in such a situation relied on the decision in **Dharam Pal Singh Vs. Ajit Singh (supra)** and held that there was no need to direct a deposit of the amount of sale consideration. In this case, the plaintiff who files a suit for specific performance pleads inability to have the sale deed on a plea that the defendant's brother has filed a suit for a restraint against alienation and that there were partition proceedings pending. In the order passed on 17.10.2010 by the Additional District Judge, Ludhiana, the Court has observed, while disposing of an interim relief for injunction sought by the defendant's brother, that any sale by the defendant would be subject to the partition proceedings. As such, there is no impediment for execution of the sale deed itself.

(4) If the plaintiff finds, after his agreement of sale that the defendant's title is suspect, he can seek for rescission of the contract and obtain refund of the amount which he has already paid and also claim damages. Alternatively, he can take a sale deed in the manner agreed to and seek for appropriate damages against his vendor for any defect in title. The law obligates, under Section 55 (1) of the Transfer of Property Act the seller to the best of his information all relevant questions put to him in respect of title and entitled under Section 55 (6) the buyer to sue for rescission and claim damages with change on the property. Here is a case where the plaintiff wants a direction for specific performance and the buyer is willing to execute the sale.

(5) Learned counsel argues that at best the Court can only pass a judgment and decree on the basis of an admission by him and even before passing a decree, there cannot be a direction for deposit. I have already observed that there is no such law that without passing a decree there cannot be a direction for deposit in a suit for specific performance. This is so, particularly in view of the language of Section 16 of Specific Relief Act. In **C. L. Jain Vs. Gopi chand AIR 1990 Del 280**, the Delhi High Court said, :

"In view of the provisions of Section 16 of Specific Relief Act, I consider it necessary and desirable that in this case, the plaintiff be directed to deposit the entire balance consideration in this Court so that the same can be easily and readily available to the defendant at the time the contract is performed by execution of sale deed and by taking such further actions, as may be necessary.

The Court found an equity in such a situation when it said,:-

" In my opinion, it would be very unfair if only the buyer is tied down to a price in the bargain, and the seller is unable to benefit by price escalation, if due to no fault of the seller time is taken in completion of statutory requirements. In my view, by ordering the deposit of the balance consideration amount in this Court, both the parties will be placed in an equal situation, as it will be possible for the money deposited to earn interest. In case the sale consideration is ultimately ordered to be handed over to the defendant, as he has to specifically perform the contract, he will have in addition to the interest accrued also. Equally, the money which is put in fixed deposit when ordered to be paid to the plaintiff, in the event of the failure of the suit, will be returned with interest. Both the parties' interest will be safeguarded by order of deposit of the balance consideration to an equal extent."

(6) The Andhra Pradesh High Court in **Gonugunta Gopala Krishna Murthy Vs. Uppala Jwala Narasimham and another 2002 AIR AP 68** invoked Section 16(c) of the Specific Relief Act to hold that the Court is empowered to give direction to deposit remaining part of sale consideration in case plaintiff is not in position to get registration of sale agreement after

passing of decree and not at time of inception of suit for specific performance. The Court observed as follows:-

“ The direction envisaged in the explanation is a measure of exception and it cannot be understood at the stage of inception of the suit for the purpose of registering plaint and entertaining the suit, the amount has to be deposited. On the other hand, the Court is empowered to issue direction to deposit the balance consideration, if it is satisfied that the plaintiff is not in a position to get registration of the sale agreement, if decree is passed in his favour. At this stage, the Court under the above said provision, is entitled to direct the plaintiff to deposit the remaining sale consideration in the Court, but it cannot direct the plaintiff to deposit the balance sale consideration even at the stage of inception of the plaint or at the stage of registration and entertaining the suit.

It is an exceptional situation in this case that the plaintiff who wants a specific performance is attempting to impose conditions which the agreement itself does not propound. If the defendant is willing to execute the sale deed and the plaintiff is still dragging his feet it was only apposite that the Court assessed whether the plaintiff's contention is bona fide or not. The direction given by the Court was well within the discretion of the trial Court and I would find no reason to interfere with the same in revision.

7. The revision ought to fail and is accordingly dismissed.

A. Jain