A SILVEY & ORS.

v.

ARUN VARGHESE & ANR.

(Civil Appeal No. 830 of 2002)

FEBRUARY 26, 2007

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[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Specific Relief Act, 1963 – Agreement to sell land – Suit for specific performance by purchasers – Dismissed by trial C *court, however, decree for specific performance granted by High Court – Correctness of – Held: High Court rightly held that vendors were not ready to perform their obligation in terms of the contract and took false plea in written statement – Purchasers have always been and are ready and willing to* D *perform their part of contract from its inception - Hence, order of High Court upheld.*

The appellants-defendants entered into an agreement for sale of property with the respondents-plaintiffs. The plaintiffs paid the advance amount. The sale deed was to E **be executed by a given date. The defendants were to furnish the plaintiffs with all the documents. The plaintiffs filed suit for specific performance of agreement for sale since the defendants did not perform their part of contract. The trial court held that the plaintiffs were never ready** F **and willing to perform their part of contract and did not take prompt steps for enforcing its obligations under the agreement and on that basis the defendants expended amounts for improvement of the property. The trial court dismissed the suit, however, granted the decree for** G **recovery of advance amount paid to the defendants. In appeal, High Court decreed the suit in favour of the plaintiffs. Hence the present appeal.**

Dismissing the appeal, the Court

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HELD: 1.1 High Court found that plaintiffs can be said to have been always ready and willing to perform their part of the contract from the inception of the contract to the date of the decree of the trial court. High Court rightly noted that the plaintiffs pleaded in terms of section 16 C of the Specific Relief Act, 1963 that they have always been and are ready and willing to perform their part of the contract. The case of the plaintiffs was that the defendants were not ready with the document as contemplated in the agreement for sale which resulted in the delay in the performance of the contract and in the plaintiffs seeking the performance of the contract by the defendants. [Paras 8 and 10] [447-H; 448-A, E, F, G]

1.2. The High Court noticed that the agreement in respect of the adjacent land was entered into much before the agreement in question. There was no impediment on the plaintiffs obtaining a sale deed in respect of adjacent land or that they apprehended it at any point of time that they were not going to get an assignment to that extent. The assignment in fact was obtained in respect of the adjacent land. The High Court rightly highlighted that the defendants had not performed their part of the contract under agreement for sale as they had not obtained requisite licence for planting rubber plant, except in case of defendant No. 3. None of the other defendants had obtained the registration book for registration as a rubber estate with the Rubber Board as envisaged by Clause 7 of the Agreement for sale. [Para 11] [448-G, H; 449-A, B]

1.3. Defendant no.3 accepted that possession certificates could not be obtained by the defendants in view of the nature of the property involved in the context of Kerala Land Reforms Act, and the Kerala Private Forest (Vesting and Assignment) Act. The defendants never responded to the letter issued by the plaintiffs seeking performance of the contract. No response was also sent to the other letters. A letter sent through registered post

was refused. The lawyer's notice was also not responded to. [Para 12] [449-C, D]

1.4 The defendants pleaded that defendant No. 3 had gone to the house of plaintiff No. 2 in place 'A' prior to receiving any letter from the plaintiffs and had spoken that they had told him that they were not keen in enforcing the obligation under the agreement for sale. But when examined the defendant No. 3 admitted that he had never met the plaintiff as pleaded in the written statement and that he or any other defendant had never gone to place 'A' to meet plaintiff No. 2 at his residence to speak about the performance of the contract. The plea stated in the written statement was abandoned in evidence. The High Court after analyzing the factual position, come to the conclusion that the defendants were really not ready to perform their obligation in terms of the contract and had taken a false plea in the written statement. [Para 13] [449-E-H; 450-A]

Ardeshir H. Mama v. Flora Sassoon **AIR 1928 PC 208;** *Lourdu Mari David and Ors. v. Louis Chinnaya Arogiaswamy and Ors.* **1996(5) SCC 589 – referred to.**

Raineri v. Miles and Anr. **1980 (2) All ER 145 155 – referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 830 of 2002.

From the final Judgment dated 14.3.2001 of the High Court of Kerala at Ernakulam in A.S. No. 245/1991.

T.L. Vishwanatha Iyer and T.G. Narayanan Nair for the Appellants.

P. Krishnammoorthy and Romy Chacko for the Respondents.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Kerala High Court allowing the appeal filed by the respondents who were the plaintiffs in a suit for specific performance of an agreement to sell immovable properties.

2. The plaintiffs in a suit for specific performance of an agreement to sell immovable properties are the respondents. The defendants, four in number entered into an agreement for sale of the respective portions held by them under Exhibit A1 dated 23.2.1986. Thereunder, they agreed to convey to the plaintiffs an extent of 10 acres of property held by the four of them at a price of Rs. 19,750/- per acre. They received an advance of Rs. 50,000/-. The agreement provided that the sale deed was to be executed by 17.4.1986. The defendants were to furnish the plaintiffs with all documents in their possession and power and also furnish tax receipts for taxes paid up-to-date, the registration book for registration as a Rubber Estate with the rubber Board and the licence for planting rubber plants, get the properties measured by competent persons at the expense of the vendors-defendants in the presence of the plaintiffs-purchasers or their agents. According to the plaintiffs, the defendants were never ready with the requisite documents for executing the sale deed in favour of the plaintiffs and repeated demands by the plaintiffs for execution of the document did not meet with the proper response and, therefore, they had ultimately to send a notice through a lawyer on 16.3.1988 demanding performance and the defendants having failed to respond to that notice, the suit was being filed on 5.7.1988 for specific performance of the agreement for sale. The plaintiffs pleaded that they were and they have always been ready and willing to perform their part of the contract. The defendants filed a written statement contending that the plaintiffs were in default. The plaintiffs never demanded performance of the agreement. The defendants, therefore, were under the impression that the plaintiffs have abandoned the agreement. The defendants have, therefore, effected improvements in the property and the value

A of the property has increased. It was, therefore, not a fit case where a decree for specific performance should be granted to the plaintiffs. It was pleaded that the plaintiffs were never ready and willing to perform their part of the contract.

3. The trial Court held on the materials that time was not of
B essence of the contract and that the plaintiffs had the requisite capacity to raise funds for the purchase of the property covered by Exhibit Al. But, the trial Court held that plaintiffs had not taken prompt steps for enforcement of the obligations under Exhibit A 1 agreement for sale. But, it did find that the defendants had not
C yet obtained the certificates of registration from the Rubber Board as envisaged by the agreement for sale and they had not even obtained possession certificates, since obviously there was considerable dispute about the properties covered in the survey number, of which the plaintiff schedule properties formed
D a part. The trial Court stating that in view of the delay in the plaintiffs approaching the Court, the plaintiffs have not shown themselves to be ready and willing to perform their part of the contract and in the matter of exercise of discretion, specific performance should be refused to the plaintiffs since the
E defendants have, on the basis that the plaintiffs were not any more interested purchasing the property, expended amounts for improvement of the property. Thus stating that the discretion has to be exercised against the plaintiffs, the trial court dismissed the suit for specific performance. But the trial court granted a
F decree for recovery of the advance of Rs.50,000/- paid by the plaintiffs to the defendants at the time of entering into Exh. A1 agreement along with interest at the rate of 6% per annum thereon from the date of suit till date of realization. It is feeling aggrieved by the refusal to grant the plaintiffs a decree for
G specific performance that the plaintiffs have filed appeal before the High Court.

4. In appeal, the High Court reversed the judgment and decree of the trial court and held that the suit was to be decreed in favour of the plaintiffs for specific performance as prayed for.

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5. Learned counsel for the appellants submitted that A
though time may not be the essence of an agreement but
circumstances can show that it was really so. Though extension
was granted, that was not for very long period. Though originally
it was stipulated in the agreement that the sale was to be
completed before off set of monsoon, the last extension granted B
was for a short period thereafter. There was no extension after
17.4.1986. For long time no demand was made by the plaintiffs.
The plaintiffs were really not interested for executing the sale
deed as they were waiting to see whether the intended
purchases of the neighbouring land would be completed. There C
was no material to show that at all relevant points of time, the
plaintiffs were ready and willing to perform their part of the
agreement. Reference is made to the evidence of PW 1 to show
that the purchase of the agreed land depended upon acquisition
of the neighbouring land.

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6. It is submitted that there must be material to show about
the readiness and willingness throughout, even though a person
may have funds or is capable of raising funds. These aspects
have been lost sight of by the High Court.

7. Learned counsel for the respondents on the other hand E
submitted that though in a given case even in respect of an
agreement for sale of immovable property, time may be the
essence of agreement yet it would depend upon several factors.
If the circumstances show that the time was the essence of the
agreement that fact can also be taken note of. In the instant F
case, it is submitted that the defendants themselves have
accepted that the time was extended and the agreement was
to be given effect to before monsoon set in. But the period
extended itself to a period which was admittedly after monsoon
had set in. A false plea was taken by the defendants about the G
plaintiffs having told them to have abandoned the agreement.
This conduct itself disentitled the defendants from opposing the
suit for specific performance of contract.

8. The High Court has found that plaintiffs can be said to
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A have been always ready and willing to perform their part of the contract from the inception of the contract to the date of the decree of the trial court, relying on the principles highlighted in *Ardeshir H. Mama v. Flora Sassoon* (AIR 1928 PC 208).

9. In *Raineri v. Miles and Anr.* (1980 (2) All ER 145 at B page 155) it was held as follows:

> "In the instant case the date for completion was not expressed to be of the essence, and it has not been suggested (though I think it might possibly have been) that C the surrounding circumstances nevertheless so rendered it. In that state of affairs the appellants submit that the law as it has stood ever since 1875 exculpated them from all liability for the foreseeable damage sustained by the respondents as a direct result of their failure to keep their D word. My Lords, were this indeed right the respondents would suffer a substantial injustice. The fact that time had not been declared to be of the essence does not mean that the express date for completion could be supplanted by the court's treating it as a mere 'target' date and, in effect, enabling the defaulting party to insert into the E contractual provision some such words as'.....or within a reasonable time thereafter.'"

10. As rightly noted by the High Court, the plaintiffs have pleaded in terms of Section 16 C of the Specific Relief Act, F 1963 (in short the 'Act') that they have always been and are ready and willing to perform their part of the contract. Plaintiff No. 2 as PW 1 has also spoken about this fact. The case of the plaintiffs was that the defendants were not ready with the document as contemplated in clause 2 of Exh. A1 which resulted G in the delay in the performance of the contract and in the plaintiffs seeking the performance of the contract by the defendants.

11. The High Court has noticed that the agreement in respect of the adjacent land was entered into much before the agreement in question. It has also been noticed by the High H Court that there was no impediment on the plaintiffs obtaining a

sale deed in respect of adjacent land or that they apprehended it at any point of time that they were not going to get an assignment to that extent. The assignment in fact was obtained in respect of the adjacent land. The High Court also highlighted, in our opinion rightly, that the defendants had not performed their part of the contract under Exh. A1 as they had not obtained requisite licence for planting rubber plant, except in case of defendant No. 3. None of the other defendants had obtained the registration book for registration as a rubber estate with the Rubber Board as envisaged by Clause 7 of the Agreement for sale.

12. DW1 accepted that possession certificates could not be obtained by the defendants in view of the nature of the property involved in the context of Kerala Land Reforms Act, and the Kerala Private Forest (Vesting and Assignment) Act. The defendants never responded to the letter – Exh, A2 issued by the plaintiffs seeking performance of the contract. No response was also sent to the letters Exh. A2 to A10. Exh. A6 was a letter sent through registered post which was refused. The lawyer's notice Exh. A11 was also not responded to.

13. As regards the false plea of the defendants, the effect needs to be noted. It was pleaded that defendant No. 3 had gone to the house of plaintiff No. 2 in Alleppey prior to the receiving any letter from the plaintiffs and had spoken that they had told him that they were not keen in enforcing the obligation under Exh. A1. But when examined as DW1, the said defendant No. 3 admitted that he had never met the plaintiff as pleaded in the written statement and that he or any other defendant had never gone to Alleppey to meet plaintiff No. 2 at his residence to speak about the performance of the contract. The plea stated in the written statement was abandoned in evidence. In *Lourdu Mari David and Ors. v. Louis Chinnaya Arogiaswamy & Ors.* (1996(5) SCC 589), it was noted that the conduct of the defendant cannot be ignored while weighing the question of exercise of discretion for decreeing or denying a decree for

A specific performance. The High Court has, after analyzing the factual position, come to the conclusion that the defendants were really not ready to perform their obligation in terms of the contract and had taken a false plea in the written statement.

14. The appeal is without merit, deserves dismissal, B which we direct, but in the circumstance without any order as to costs.

N.J. Appeal dismissed.