

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2852 OF 2010
[Arising out of SLP (C) No. 19025 of 2008]

SHAMIM JAHAN

.... APPELLANT

Versus

SHAMBHU PRASAD

.... RESPONDENT

ORDER

1. Leave granted.
2. This appeal is directed against the judgment and decree dated 18th April, 2008, passed by the High Court of Judicature at Allahabad reversing the judgment and decree passed by the First Appellate Court as also by the trial Court. By the said judgment and decree, the suit of the plaintiff-appellant stood dismissed.
3. The appellant herein filed a suit on the basis of an agreement to sell in respect of a plot of land praying for specific performance

of the said agreement on the ground that the respondent-defendant had failed to perform his part of the contract. The consideration money which was fixed in terms of the said agreement was Rs. 1,17,000/- and on the date of entering into the said agreement an advance money of Rs. 15,000/- only was paid by the plaintiff-appellant to the defendant-respondent. There was a recital in the said agreement to the effect that since the plaintiff does not have enough money with her, an amount of Rs. 15,000/- is being paid by the appellant to the respondent as advance money, the balance sale consideration would be paid by 30th April, 1992, whereupon the defendant would execute the sale-deed and on his failure get the same executed through Court.

4. The plaintiff-appellant in the plaint has pleaded that she was always ready and willing to perform her part of the contract but the defendant failed to execute the sale-deed despite the issuance of a legal notice to him and, therefore, a decree should be passed in her favour granting a decree of specific performance of the agreement. The respondent-defendant contested the suit by filing a written statement. On the basis of the pleadings of the parties, six issues were framed by the trial Court. The parties led their evidence and on completion and

recording of the evidence, arguments were heard and the trial Court by its judgment and decree dated 04.09.1998 decreed the suit granting a decree of specific performance of the agreement.

5. Being aggrieved by the aforesaid judgment and decree, the respondent herein filed an appeal before the First Appellate Court which affirmed the judgment and decree passed by the trial Court and dismissed the appeal.

6. Still being aggrieved, the respondent had filed an appeal before the High Court of Judicature at Allahabad and by the aforesaid impugned judgment and decree both the judgments of the trial Court as also of the First Appellate Court were set aside by allowing the appeal. The High Court held the plaintiff – appellant entitled to recover Rs. 30,000/-, i.e., double the amount of advance money paid by her (Rs. 15,000/- towards principal amount and Rs. 15,000/- towards interest) which the defendant-respondent was directed to pay within a period of four months.

7. As against the aforesaid judgment and decree, the present appeal is filed on which we have heard the learned counsel appearing for the parties and have scrutinized the documents placed on record.

8. Counsel appearing for the appellant submitted that the judgment and decree passed by the trial Court and affirmed by the First Appellate Court should not have been interfered with by the High Court as the findings of fact recorded by the two courts below could not be said to be perverse or in any manner illegal. It is also submitted that time being not the essence of the contract, the issuance of notice by the appellant showing her readiness and willingness to perform her part of the contract should have been accepted by the High Court as sufficient compliance of the requirement as provided for under Section 16 of the Specific Relief Act, 1963 and, therefore, the interference by the High Court in the manner as aforesaid was unjustified and thus liable to be set aside and quashed.

9. Counsel appearing for the respondent has, however, submitted that the High Court was right and justified in setting aside the judgment and decree passed by the Courts below as the said judgments wrongly placed the burden on the respondent-defendant to prove that the plaintiff-appellant was not ready and willing to purchase the property and, therefore, the findings recorded by the Courts below are illegal and setting aside the same by the High Court is just and legal.

10. In order to appreciate the aforesaid contentions, we have considered the materials on record including the agreement to sell. A bare look at the aforesaid agreement to sell which is Exhibit 15 would indicate that the aforesaid agreement to sell was entered into between the parties for a total sale consideration of Rs. 1,17,000/-. It is also revealed therefrom that the plaintiff-appellant did not have enough money in hand to pay the sale consideration and therefore, she could just pay Rs. 15,000/- only as the advance money and therefore a specific stipulation was made in the agreement that the remaining amount of Rs. 1,02,000/- would be paid by 30th April, 1992, upon receipt of which the respondent would be duty bound to execute the sale-deed without any objection in her favour. And if that is not done, the vendee would get the sale-deed executed and registered in her favour by depositing the money in the Court.

11. Counsel appearing for the appellant has vehemently submitted that the aforesaid stipulation does not indicate that time was essence of the contract. But the real issue that falls for consideration in the present appeal is as to whether the appellant was ready and willing to perform her part of the contract and in what manner she has been able to prove and

establish the said fact.

12. Although it is not disputed that an advance money of Rs. 15,000/- was paid by the appellant there was a stipulation made in the said agreement to sell that the balance amount of Rs. 1,02,000/- would be paid by 30th April, 1992. There is no cogent and concrete evidence on record to indicate that on the said relevant date the appellant had the said balance amount of sale consideration available with her to enable her to pay the amount. This was essential to show that she was ready and willing to perform her part of the contract. There is nothing on record to show that any notice was issued to the respondent on or about the same time to execute the sale-deed after receiving the amount of balance consideration. In fact, the notice was only issued after expiry of about 2 years and 4 months from the said date. No other evidence has been led to indicate that the appellant had that much of amount available in her bank account or otherwise on the said date as would have enabled her to pay the said balance sale consideration.

13. As stated hereinabove, notice came to be issued by the appellant only after expiry of about 2 years and 4 months of the date stipulated in the agreement for making payment of the

amount. There is no correspondence between the parties placed on record to indicate that the parties were seeking for extension of time or otherwise and, therefore, it cannot be said that the appellant has been able to prove and establish her readiness and willingness to perform her part of the contract. The findings arrived at by the High Court, therefore, cannot be said to be in any manner illegal.

14. Having held thus, we are of the considered opinion that the judgment and decree passed by the High Court does not suffer from any infirmity. No other issue either arises for our consideration or is being urged by the learned counsel for the parties.

15. The appeal therefore has no merit and is dismissed.

.....J.
[Dr. Mukundakam Sharma]

S.....J.
[C.K. PRASAD]

*New Delhi,
March 30, 2010.*