

CASE NO.:
Appeal (civil) 644 of 2002

PETITIONER:
Shri Rameshwar Prasad (d) By Lrs

RESPONDENT:
Shri Basanti Lal

DATE OF JUDGMENT: 07/04/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 644 OF 2002

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of the Madhya Pradesh High Court, Indore Bench dismissing LPA No. 16 of 1993 filed by the appellant Rameshwar Prasad. In this appeal the legal representatives of Rameshwar Prasad have been impleaded after his death. By the impugned judgment by which two LPAs. i.e. LPA Nos.16 and 19 of 1993 were disposed of. LPA No.16 of 1993 was filed by Rameshwar Prasad whereas other LPA was filed by the present respondent Basanti Lal. Rameshwar Prasad had filed a suit for the relief of specific performance of contract. The trial court granted the relief of specific performance of the contract. First appeal No.45 of 1976 was filed by Basanti Lal, the respondent. The appeal was allowed and the judgment and decree of the trial court was set aside on the following terms:

a) That the appellant shall refund the sum of Rs.3000/- as agreed in Ex. P/3 to the respondent by payment or deposit in trial court within a period of one month from today.

b) That the respondent on payment or deposit of this amount, shall put the appellant in vacant. possession of the property covered by Ex. P/3 within a period of 15 days thereafter on analogy of Section 65 of the Contract Act.

c) The appellant shall be liable to pay interest at the rate of 1% per month on this amount in case payment or deposit is made beyond the period of one month from the date of default till compliance.

d) The respondent shall be liable to pay mesne profits, determinable by the trial court in terms of Order 20 Rule 12 of the Code and ordered in the shape of final decree in that behalf in pursuance of this direction on failure to deliver possession within 15 days as directed above from the date of default till delivery of possession. No claim of standing crops shall be admissible in view of enjoyment of usufruct for such a long duration and that possession shall be delivered along with the standing crops, if in existence.

e) Parties are left to bear their own costs of this appeal as incurred. Counsel fee on each side shall, on certification, be Rs.1500/-.

2. Both Rameshwar Prasad and Basanti Lal preferred appeals before the Division Bench. By the impugned judgment so far as the appeal filed by Rameshwar Prasad is concerned the High Court held that the plaintiff had neither pleaded nor proved that he was ever ready and willing to pay interest, having failed to prove the purported waiver of interest, as claimed, the Division Bench held that the plaintiff has not established basic ingredients for decree of specific performance of contract. On that ground alone the appeal was dismissed and other points raised were not considered.

3. Learned counsel for the appellants submitted that the High Court categorically noted that in paragraph 13 of the plaint as was shown in the notice sent to the defendant, it was categorically stated that he was compelled to comply with all terms and conditions of agreement. The High Court wrongly construed the statement and came to the conclusion that the said statement cannot be construed to mean that plaintiff was ready to pay the amount of interest, particularly in view of the stand of the defendant. It was pointed out that in the paragraph 13 it has been stated that the plaintiff was always ready and willing and even ready and willing today for performance of his part of the contract.

4. It is submitted that the question of interest of delay was never raised before the trial court.

5. Learned counsel for the respondent submitted that there was dispute as regards the claim of payment of Rs.4,500/- and if there was delay interest was payable. Plaintiff raised an absolutely frivolous plea that payment was being made on behalf of the defendant.

6. The agreement dated 13.9.1963 contains the following clause which is of significance:

"Till the payment of instalment, interest at the rate of Rs.0.75 paise percent shall be payable on Rs.5,000/- Interest shall be payable w.e.f. 13.9.1963."

Following averment in the plaint needs to be quoted:

"That the plaintiff was always ready and willing to execute the sale deed and fulfill his part of the contract and is even so today. The plaintiff had even informed through his counsel Sh. U.N. Bhachawat, to the defendant in reply to his notice dated 7.10.1968 that he was ready and willing to pay balance amount of sale consideration of Rs.500 and to comply the terms of the sale agreement which were applicable on the plaintiff and the plaintiff was so ready even before. The defendant should execute the sale deed and should get Rs.500/- from the plaintiff and get the same registered."

7. There is a specific statement that the plaintiff was willing to comply with the terms of the sale agreement which were applicable and was so ready even before. One of the terms in

the agreement related to payment of interest. Therefore the conclusion of the High Court that there is no specific plea regarding readiness to pay interest is contrary to the factual scenario, in view of the categorical averment made in the plaint.

8. The provisions of Section 16(c) of the Specific Relief Act, 1963 (in short the 'Act') are as follows:

"Section 16 - Personal bars to relief: Specific performance of a contract cannot be enforced in favour of a person--

(a)\005\005.

(b)\005\005

(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 of the performance of which has been prevented or waived by the defendant."

The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.

9. Section 16(c) of the Act mandates the plaintiff to aver in the plaint and establish as the fact by evidence aliunde that he has always been ready and willing to perform his part of the contract. On considering almost identical fact situation it was held by this Court in *Surya Narain Upadhyaya v. Ram Roop Pandey and Ors.* (AIR 1994 SC 105) that the plaintiff had substantiated his plea.

10. These aspects were also highlighted in *Sugani v. Rameshwar Das & Anr.* (2006 (11) SCC 587).

11. The High Court's conclusions are clearly contrary to the materials on record. The High Court was wrong in holding that there was no indication about the readiness and willingness to pay interest. Since the High Court has not decided the other issues, we set aside the impugned judgment and remit the matter to it for considering the matter afresh in accordance with law. The impugned conclusions stand nullified by this judgment.

12. As the matter is pending since long, let the High Court decide the matter as early as practicable preferably by the end of August, 2008.

13. The appeal is disposed of accordingly with no orders as to costs.