



Principles of grant or refusal of equitable relief of specific performance of contracts for sale of immovable properties



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The Hon'ble Supreme Court (“**SC**”) was recently concerned with a matter^[i] where the question as to whether or not courts ought to grant or refuse specific performance of a contract for sale of an immovable property was occasioned to be answered. Whilst deciding the aforesaid question, the SC also observed that in any given case a preliminary issue as to the existence of the jurisdictional fact (i.e., facts pertaining to the maintainability of that suit) ought to be framed and answered by the trial court. However, in a scenario where the trial court fails or omits to frame such an issue, the appellate court is also empowered to frame and answer such issue in its discretion.

The facts in brief, for the present matter, are thus. A contract for sale dated 20th January, 2005 (“**agreement**”), was made between a group of sellers of an immovable property (“**sellers**”) and a lady who proposed to purchase such property from the former group (“**buyer**”) on the terms as mentioned hereinafter. Towards consideration, the buyer agreed to pay Rs.2,30,00,000/- (Rupees Two Crore and Thirty Lakh Only) to the sellers (“**full sale consideration**”), out of which Rs.10,00,000/- (Rupees Ten Lakh Only) was paid as advance. The balance sale consideration was to be paid within four months from the date of the agreement; however, the property was then occupied by certain tenants. Accordingly, the sellers agreed to have the tenants vacate the property and deliver vacant possession thereof to the buyer at the time of sale.

An interesting turn of events took place thereafter. The buyer started effecting payments in instalments, and had paid a total of Rs.15,00,000/- (Rupees Fifteen Lakh Only) till 24th July, 2006, in addition to the advance payment of Rs.10,00,000/- (Rupees Ten Lakh Only) made earlier. However, the sellers had issued a letter on 23rd February, 2006, to the buyer recording cancellation of the agreement inasmuch as the period of four months for completion of payment of the balance sale consideration had expired and the buyer had not shown any interest to complete the deal. The buyer issued reply letter dated 24th February, 2006, noting that the last tenant had vacated the property only on 2nd February, 2006, and recorded her intention to complete the purchase. The sellers thereafter again invited the buyer to complete the purchase and pay the full sale consideration, which was time and again evaded by the buyer on various pretexts including new requirements of an ‘encumbrance certificate’ to be provided by the sellers and inspection to be offered of ‘original parent documents’, which were never a part of the agreement.

Accordingly, a suit was filed by the buyer seeking specific performance of the agreement and in the alternate a decree for refund of the advance amount of Rs.25,00,000/- (Rupees Twenty Five Lakh Only) with interest. Permanent injunction restraining the sellers from alienating or encumbering the property was also prayed for by the buyer. The trial court dismissed the suit and observed that though the agreement was enforceable, the plaintiff-buyer was not ready and willing to pay the balance sale consideration. The decision of the trial court was challenged before the Hon'ble Madras High Court (“**HC**”) and the HC reversed this decision in favour of the buyer. Thus, the decision of the HC was assailed by the sellers before the SC.

The SC analysed a few important facets of law that were in connection with the facts and circumstances of the present matter.

Firstly, the SC analysed the position of law on whether time is the essence of a contract, while considering the plea of specific performance. In doing so, it was observed that in recent years (post-1975) the aspect of time being of the essence of the contract in transactions of sale of immovable properties had taken a drastic turn due to rising inflation and an observed increase in the prices of immovable properties. Accordingly, it was observed that steep increase in prices made it inequitable to grant the relief of specific performance where a purchaser does not take steps to complete the sale within the agreed period, and a vendor has not been responsible for any delay or non-performance.^[ii]

The SC also analysed the equitable considerations for granting or refusing specific performance would depend upon whether a valid agreement existed, whether the plaintiff was ready and willing to perform his part of the contract, and whether such performance had already been done, whether any hardship would be done to a defendant if specific performance was ordered and whether the plaintiff would be entitled to the grant of any alternative relief or remedy.^[iii] The SC also observed that whether a person is ‘ready and willing’ to perform his part of the contract must be made out by the averments in the plaint and by the evidence adduced thereafter.^[iv]

Next, the SC observed that declaratory relief that termination of the agreement is bad in law is required to be sought in a suit for specific performance.^[v] In this context, it had been observed that unless an issue as to maintainability is framed by the trial court, the suit cannot be held to be not maintainable at the appellate stage only because appropriate declaratory relief has not been prayed.^[vi]

Finally, it was observed that in case of any inconsistency between clauses in a contract, the former clause shall be upheld and the latter clause is required to be rendered nugatory and repugnant. This principle would be followed, unless it could be shown that the latter clause merely qualifies the former clause and does not in fact render it unenforceable.^[vii]

In the background of the aforesaid discussion, the SC in the present matter held that the facts and circumstances, as also the pleadings before the trial court and the HC would show that the buyer was not entitled to the relief of specific performance in the present matter. The same was due to two factors, the first of which was that the clause for vacation of the property by the tenants merely qualified the clause for payment of the full sale consideration within four months of the agreement and that the full sale consideration ought to have been paid latest by four months from the date when the last tenant had vacated the property (i.e., latest by 1st June, 2006).

The second, and more important, factor was that the buyer had not neither pleaded nor provided any evidence to inspire confidence in her conduct that would suggest that she was ready and willing to perform her part of the contract. In fact, it was also observed that in her cross-examination the buyer had stated that sufficient funds were in fact not available to pay the balance sale consideration. The other actions on her part of making lame excuses such as requirements of 'encumbrance certificate' and inspection of 'original parent documents' also suggest that she was not entitled to the discretionary equitable relief of specific performance.

Thus, the SC set aside the decision of the HC and upheld the decision of the trial court. However, as stated at the beginning, the SC also observed that the existence of a jurisdictional fact was to be decided as a preliminary issue by the trial court and if such issue was omitted to be framed by the trial court, the appellate court is empowered to decide the same.^[viii] The SC observed this in the context that the decisions referred to earlier state that absent a declaratory relief for the termination of a contract, no specific performance could be decreed.^[ix] Thus, in the present matter, since the maintainability of the suit was never questioned before the trial court, the HC also did not offer its view on the same. The SC, however, did not offer its opinion on the maintainability of the suit in the present matter.

In the opinion of the author, the present decision comprehensively clarifies various legal positions in connection with the grant or refusal of the discretionary equitable relief of specific performance of contracts for sale of immoveable properties. Additionally, the SC has also clarified the position of law that was earlier in uncertainty. That is the principle that a trial court is bound to adjudicate the maintainability of a suit as a preliminary issue, and if the same was omitted to be done, the appellate court is certainly empowered to decide the same. All in all, the present decision is extremely helpful and informative on the various points of law discussed therein.

^[i] R. Kandasamy (dead) and Ors. v. T.R.K. Sarawathy and Anr. (2024 SCC OnLine SC 3377), decision dated 21st November, 2024. The coram comprised of Dipankar Datta and Sanjay Karol, JJ. The decision was authored by Dipankar Datta, J.

^[ii] Please see *Chand Rani v. Kamal Rani* [(1993) 1 SCC 519] and *Saradamani Kandappan v. S. Rajalakshmi* [(2011) 12 SCC 18].

^[iii] Please see *Prakash Chandra v. Angadlal* [(1979) 4 SCC 393]; *N.P. Thirugnanam v. R. Jagan Mohan Rao (Dr)* [(1995) 5 SCC 115]; *Nirmala Anand v. Advent Corpn. (P) Ltd.* [(2002) 8 SCC 146]; *Kamal Kumar v. Premlata Joshi* [(2019) 3 SCC 704] and *P. Daivasigamani v. S. Sambandan* [(2022) 14 SCC 793].

^[iv] Please see *C.S. Venkatesh v. A.S.C. Murthy* [(2020) 3 SCC 280] and *U.N. Krishnamurthy v. A.M. Krishnamurthy* [(2023) 11 SCC 775].

^[v] Please see *I.S. Sikandar v. K. Subramani* [(2013) 15 SCC 27]; *Mohinder Kaur v. Sant Paul Singh* [(2019) 9 SCC 358]

^[vi] Please see *A. Kanthamani v. Nasreen Ahmed* [(2017) 4 SCC 654] and also refer to *I.S. Sikander*, *ibid.*

^[vii] Please see *Forbes v. Git* [(1922) 1 A.C. 256]; *Radha Sundar Dutta v. Mohd. Jahadur Rahim* [AIR 1959 SC 24] and *Bharat Sher Singh Kalsia v. State of Bihar* [(2024) 4 SCC 318].

^[viii] Please see *Shrisht Dhawan (Smt.) v. Shaw Bros.* [(1992) 1 SCC 534].

^[ix] *Supra*, note 5.