

(7) The grievance appears to be that instead of serving a show-cause notice in writing, the petitioner should have been told of the same verbally and should have been verbally asked as to what he had to say. Surely, the procedure envisaged by the proviso is more satisfactory. Further, the perusal of the clause (ix) would show that it has not envisaged any personal hearing at all. What it envisages is that the punishing authority would summon the delinquent officer, tell him the charge that has been proved against him and ask him verbally to show cause and whatever he states verbally that is to be reduced in writing which would form part of the record and shall be taken into consideration.

(8) For the reasons aforementioned, there is no merit in this petition and the same is dismissed *in limine*.

H.S.B.

Before J. V. Gupta, J.

HARBANS ATMA SINGH,—Appellant

*versus*

SHRI RAMESH KUMAR,—Respondent.

Regular First Appeal No. 1169 of 1984.

April 30, 1985.

*Specific Relief Act (XLVII of 1963)—Section 20—Plot of land allotted to the defendant—Defendant, however, prohibited under the allotment order from selling the plot without the permission of the Estate Officer—Agreement to sell executed by the defendant in favour of the plaintiff—Permission to sell applied for and refused—Suit by the plaintiff for specific performance—Specific performance—Whether should be granted in such circumstances—Agreement to sell providing for liquidated damages—Plaintiff—Whether entitled to such specified amount of damages.*

*Held*, that where there is a contract of sale of immovable property between the parties, but the sale requires permission of someone who is not a party before the Court and is not amenable to its jurisdiction and that permission is refused, specific performance of the contract cannot be granted. The only remedy for the aggrieved party is to claim damages for breach of contract. Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary and the Court is not bound to

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grant such relief merely because it is lawful to do so, but the discretion of the Court is not arbitrary but sound and reasonable guided by judicial principles and capable of correction by a Court of Appeal. Where the performance of the contract would involve some hardship on the defendant, which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff, the Court may properly exercise discretion not to decree specific performance.

(Paras 6 and 7).

*Held*, that where the agreement to sell provided for liquidated damages against the party committing default, the Court should normally award such damages against the defaulting party:

(Para 9).

*Regular First Appeal from the decree of the Court of the Sub-Judge 1st Class, Chandigarh, dated the 10th day of April, 1984, decreeing the suit of the plaintiff for possession by specific performance of the agreement of sale dated 2nd April, 1980 of plot No. 118, Sector 28-A, Chandigarh with costs and allowing the defendant four months time to execute the sale deed in favour of the plaintiff after recovering a balance consideration of Rs. 2,70,000 from the plaintiff.*

D. V. Sehgal, Senior Advocate (P. S. Rana, Advocate with him) and Achhra Singh and K. S. Grewal, Advocates, for the Appellant.

R. S. Mongia, Ravi Sodhi and Harish Gupta, Advocates, for the Respondents.

#### JUDGMENT

J. V. Gupta, J.—

(1) This is defendant's appeal against whom decree for possession by specific performance of the agreement of sale has been passed by the trial Court.

(2) The defendant Smt. Harbans Atma Singh widow of Major General Atma Singh was allotted a residential plot on instalments by the Chandigarh Administration from the defence quota in the year 1967. Regular conveyance-deed for the said plot was executed between the defendant and the Chandigarh Administration on 27th July, 1971, Photo-stat copy of which is Exhibit DY. According to the terms of the conveyance-deed the transferee was to complete the construction of the house on the said site, in accordance with the

Punjab Capital (Development and Regulation) Building Rules, 1952 within one year from the date of issue of allotment order, i.e., from 29th May, 1967, provided that the time limit could be extended by the Estate Officer if he was satisfied that the failure to complete the building within the said time was due to some causes beyond the control of the transferee. It was also provided therein that since the plot was allotted at a concessional price, the transferee was refrained, except with the previous permission in writing of the Estate Officer, from transferring by way of sale, gift, mortgage or otherwise the site or any right, title or interest therein for a period of ten years from the date of completion of construction on the said date. Subsequently, on 31st December, 1979 the said plot was resumed for non-construction of the building as per the terms of the conveyance deed. The transferee approached the Chief Commissioner, Union Territory, Chandigarh by way of revision petition against the said order of resumption. *Vide* order, dated 29th May, 1980, copy Exhibit D. 4, the learned Chief Commissioner found that it was a fit case in which relief should be granted, the operative part of the order is as under:—

“The site is restored subject to the condition that the petitioner completes the construction by the 31st June, 1981, failing which the site shall stand resumed. The petition is allowed accordingly.”

In the meanwhile, the transferee entered into an agreement Exhibit P-1, of sale of plot on 2nd April, 1980 with the plaintiff Shri Ramesh Kumar, for a sum of Rs. 2,90,000. A sum of Rs. 20,000 was paid by way of earnest money at the time of the execution of the agreement. As per the terms of the said agreement last date for the execution of the sale-deed was fixed on or before 5th June, 1980 or after thirty days of receipt of “No Objection Certificate” from the Estate Officer, Chandigarh. It was also provided in the said agreement that if the seller-party backsout, he will pay double the amount received by him or paid on behalf of the sellers to the Estate Office, Chandigarh. According to the plaintiff he was ready and willing to perform his part of the agreement but from the act and conduct of the defendant it was revealed that she was not interested in the sale of the plot from the very beginning and she has very cleverly duped the plaintiff and cheated him of Rs. 20,000. It was also alleged that no steps were taken by the defendant for obtaining the requisite permission and certificates from the concerned authority. He even did not apply for the said purpose to any officer or authority for getting the necessary permission to transfer the said plot. With these allegations a suit for possession by specific performance of the agreement of

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sale of plot was filed on 16th July, 1980. In para 11 thereof it was also stated:—

“That in case, this Hon’ble Court holds that the plaintiff is not entitled to the possession of the plot by specific performance of the contract due to any reason or reasons and can be compensated otherwise (which facts are not admitted by the plaintiff) in that event the plaintiff is entitled to compensation by way of damages for more than Rs. 50,000.”

In the written statement filed on behalf of the defendant the execution of the agreement as such was admitted but it was pleaded that substantial construction has already taken place on the said plot and the same has reached the roof level and, therefore, suit for specific performance was not maintainable. It was further pleaded that the plot was restored by the Chandigarh Administration to the defendant with clear undertaking that the said plot could not be sold and the construction of the house on the said plot had to be completed within one year. Thus the suit for specific performance of the contract was not maintainable as the same was violative of the Public Policy and the statutory rules framed under the Capital of Punjab (Development and Regulation) Act, 1952. In any case, according to the defendant, no decree for specific performance of the agreement as such could be passed. At the most the plaintiff was entitled to the compensation as per the terms of the agreement. From the pleadings of the parties, the trial Court framed the following issues:

1. Whether the present suit is not maintainable ? OPD.
2. Whether the agreement dated 2nd April, 1980 is the result of fraud, misrepresentation etc ? OPD.
3. Whether the plaintiff has been ready and willing to perform his part of the agreement ? OPP.
4. Whether the plaintiff is entitled to the specific performance of the agreement dated 2nd April, 1980 ? OPP (onus objected to).
5. Whether the plaintiff is entitled to recover Rs. 71,000 as detailed in the para No. 11 of the plaintiff ? OPP.
6. What is the effect of the refusal by the Estate Officer to sell the property in question ? OPD.
7. Relief.

Issues Nos. 1 and 2 were decided in favour of the plaintiff and against the defendant. Issues Nos. 3 and 4 were dealt together and it was held that the plaintiff had been ready and willing to perform his part of the agreement and, therefore, he is entitled to the specific performance of the agreement, dated 2nd April, 1980. No finding was given on issue No. 5. In view of the findings under issues Nos. 3 and 4, issue No. 6 was decided against the defendant and it was held that the defendant procured letter dated 11th February, 1982 in order to save herself from the civil liability and, therefore, this letter had absolutely no effect on the suit of the plaintiff. With these findings, the suit of the plaintiff for possession by specific performance of the agreement of sale was decreed with costs after payment of balance consideration of Rs. 2,70,000.

(3) It is mainly issue No. 4 which has been contested on behalf of the defendant in this Court. The findings on other issues as such except issue No. 6 were not challenged. According to the learned counsel for the defendant-appellant the plaintiff was not entitled to the relief of specific performance of the agreement in view of the facts and circumstances of the present case. According to the learned counsel, the resumption order passed by the Estate Office was never set aside as such. The learned Chief Commissioner,—*vide* his order dated 29th May, 1980, Exhibit DY only restored the site in order to enable the defendant to raise the construction thereon and that was with the condition that the construction was to be completed by 31st June, 1981, failing which the site was to stand resumed. This period was further extended by the Chief Commissioner,—*vide* his order dated 7th July, 1981, for one year more from that date, i.e., upto July, 1982. The defendant had to raise the construction in order to save the plot from its resumption and, therefore, after spending a sum of Rs. 4/5 lacs, the building was constructed on the said plot within the extended period. The plaintiff had filed an application in this suit for injunction restraining the defendant from raising any construction. Though the application was dismissed by the trial Court, in appeal in the High Court, it was stated on behalf of the defendant that the construction will be raised by her at her own risk. Since the resumption could only be avoided if the construction was raised by her within the time, so this statement was made by her in the High Court. According to the learned counsel as per the terms of the agreement, Exhibit P. 1, sale deed was to be executed on or before 5th June, 1980 or after 30 days of receipt of "No Objection Certificate" from the Estate Office. Since this permission by the Estate Officer was refused and in the absence of any such permission no transfer could be made as per the term of

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the conveyance-deed as well as the terms of the agreement. According to the learned counsel all these facts were known to the plaintiff at the time of the agreement and knowing fully well about it he entered into an agreement, Exhibit P-1, and since the permission had been refused by the Estate Officer,—*vide* order Exhibit DX, dated 11th February, 1982, the contract as such was frustrated and was made impossible for its performance. Under these circumstances, argued the learned counsel, the question of specific performance of the agreement did not and could not arise. In support of his contention reference was made to *Mrs. Chandnee Widya Vati Madden v. Dr. C. L. Katial and others*, (1), *Golab Ray and another v. Muralidhar Modi and others*, (2), *Ganga Singh and others v. Santosh Kumar and others*, (3) and *Shib Kumar Banerjee v. Rasul Bux*, (4). On the other hand, the learned counsel for the respondent submitted that it is the act and conduct of the defendant on account of which the necessary permission could not be obtained from the Estate Office. No application was filed by the defendant within time provided in the agreement of the sale. An application was filed during the pendency of the suit and since the necessary documents particularly the copy of the agreement of sale were not filed along with the said application, permission was not granted by the Estate Officer. Thus, the defendant could not be allowed to take benefit of her own wrong. According to the learned counsel if the plot could have been transferred to him within time stipulated between the parties the construction could be raised by the plaintiff himself within time allowed by the Chief Commissioner and, therefore, the question of resumption of the plot for non-construction of the building thereon did not arise. Fault, if any, was of the defendant and, therefore, it does not lie in the mouth of the defendant to plead that the decree for specific performance could not be granted. In any case, argued the learned counsel, the defendant has failed to bring on record the necessary facts which may disentitle the plaintiff from specific performance of the agreement. In support of its contention reference was made to *Mademsetty Satyanarayana v. G. Yelloji Ram and others*, (5).

(4) I have heard the learned counsel for the parties at a great length and have also gone through the evidence on the record. The

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- (1) AIR 1964 S.C. 978.
  - (2) AIR 1964 Orissa, 176.
  - (3) AIR 1963 All 201.
  - (4) AIR 1959 Cal. 302.
  - (5) AIR 1965 S.C. 1405.

admitted facts are that the plot was allotted to the defendant out of the defence quota by way of concession because of the services rendered by her husband Major General Atma Singh. As per the terms of the conveyance-deed, the plot could not be transferred or sold for a period of 10 years from the date of the completion of the construction thereon and the said construction was to be raised within one year from 29th May, 1967. The plot was resumed by the Estate Officer, Chandigarh Administration, because of the non-construction of the building within the time stipulated. Later on, the Chief Commissioner, set aside the resumption order,—*vide* order dated 29th May, 1980, Exhibit DY on the condition that construction is completed by 30th June, 1981 failing which the plot was to stand resumed. It was during the pendency of these proceedings that the parties entered into an agreement Exhibit P-1, dated 2nd April, 1980. As per the terms of the agreement, its sale-deed was to be executed on or before 5th June, 1980 or within 30 days from the receipt of "No Objection Certificate" from the Estate Officer. From these facts it is quite obvious that the plot could not be sold to the defendant unless necessary permission was granted by the Estate Officer as per the terms of the conveyance-deed, Exhibit DY as well as the agreement, Exhibit P-1. That permission was refused by the Estate Officer—*vide* order, dated 11th February, 1982, copy Exhibit DX.

(5) The main question to be decided is, if the permission has been refused by the Estate Officer, can a decree for specific performance of the agreement be passed in favour of the plaintiff. The view taken by the trial Court is that the letter of the Estate Office, dated 11th February, 1982 rejecting the request of the defendant to sell the plot does not make any difference in this case. According to Prem Chand, DW. 3, the plot could be sold with the permission of the Estate Officer and the Estate Officer did not refuse permission immediately after 2nd April, 1980 and before 5th June, 1980, because there was no application with the Estate Officer to accord permission. The said approach, in my opinion, is wholly wrong, illegal and misconceived. Prem Chand, Clerk, of the Estate Office, was examined as DW. 3 in order to prove the copy of the order, Exhibit DX, refusing permission for sale. In the cross-examination, he stated that the application given by the defendant for permission to sell the plot was dated 15th December, 1981 and a copy of the agreement was not enclosed with the said application nor the details of agreement to sell were mentioned. From this statement it was argued on behalf of the plaintiff that permission was not granted because it was not accompanied with a copy of the agreement nor the details of the agreement were mentioned. The fact remains that the necessary

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permission was not granted by the Estate Officer. In the copy of the order, Exhibit DX, no reasons have been given. It reads as under:—

“Reference your letter dated 15th December, 1981 on the above subject.

Your request for the sale permission of your above said plot has been considered and rejected.”

Thus from the said order it could not be said that on what ground permission was not granted. It was for the plaintiff to prove by summoning the Estate Officer as to why the permission was not granted and not from Prem Chand, D.W. 3, Clerk of the Estate Office. Nor he has stated that the permission was not allowed on that account.

(6) Apart from that, from the history of the case it is quite evident that permission to sell could not be granted ordinarily in the circumstances of the case because the plot had already been resumed. The defendant was allowed time to raise construction thereon within particular time. Unless construction was raised within the time, the plot could not be restored. Under these circumstances the defendant had to raise construction over the said plot in order to save its resumption. Under these circumstances there was nothing wrong on her part when she stated in the High Court that the construction will be raised at her own risk. Thus, taking into consideration all the facts and circumstances of the case, I am of the considered view that the plaintiff was not entitled to decree for specific performance of the agreement in the absence of necessary permission for transfer from the Estate Officer. In somewhat similar situation it was observed by their lordships of the Supreme Court in *Mrs. Chandnee Widya Vati Madden's case* (supra) that in the event of permission being refused the vendees shall be entitled to the damages and not specific performance of the agreement of sale as such. It was also held in *Golab Ray and another's case* (supra) where there is a contract of sale of immovable property between the parties, but the sale requires the permission of some one who is not a party before the Court and is not amenable to its jurisdiction and that permission is refused, specific performance of the contract cannot be granted. The only remedy for the aggrieved party is to claim damages for breach of contract.

(7) Section 20 of the Specific Relief Act provides that the jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do



so, but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. In sub-section (2) (b) it has been provided that where the performance of the contract would involve some hardship on the defendant, which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff, the court may properly exercise discretion not to decree specific performance.

(8) Admittedly, in the present case the defendant raised construction over the plot in dispute after spending a huge amount of Rs. 4/5 lacs, though it had been done by her at her own risk but that was necessary in order to save the plot from its resumption. On this ground also the specific performance of the agreement could not be allowed in view of sub-section (2) (b) of section 20 of the Specific Relief Act.

(9) The next question is as to what damages the plaintiff is entitled under the terms of the agreement. As stated in para 11, above, the plaintiff claimed a sum of Rs. 50,000 as damages. In the agreement as per the stipulation in clause 7 thereof it has been provided that if the purchase party fails to get the sale deed in his own name or in the name of his nominee, his earnest money or his part payment will be forfeited by the sellers and if the sellers party backs out he will pay double the amount received by him or paid on behalf of the sellers to the Estate Office, Chandigarh. Thus the parties have themselves agreed upon the compensation to be paid by the defaulting party. The plaintiff is thus entitled to double the amount of the earnest money i.e., Rs. 40,000 by way of damages. Since the amount of Rs. 20,000 was paid on 2nd April, 1980, and the defendant has made use of the amount, the plaintiff is entitled to the interest on the said amount of Rs. 20,000 from the date of the suit till its realisation at the rate of 6 per cent per annum as contemplated under section 34 of the Civil Procedure Code.

(10) Thus, the appeal succeeds, the judgment and decree of the trial Court is set aside and instead the plaintiff's suit is decreed for the recovery of Rs. 40,000 by way of damages for the breach of the agreement for sale. The plaintiff will also be entitled to the interest on the earnest money of Rs. 20,000 from the date of the suit till its realisation at the rate of 6 per cent per annum. Moreover, the plaintiff will also be entitled to costs of both the courts.

N.K.S.