As the rooms in question were not let out as part of a hotel or for hotel purposes, I must hold that they are not rooms in a hotel within the meaning of section 2 of the Act.

In this view; the appellants are not exempted from the operation of the Act. The judgment of the High Court is correct. The appeal fails and is dismissed.

ORDER

In accordance with the opinion of the majority, the appeal is allowed. No order as to costs.

B.R.T.

APPELLATE CIVIL

Before D. K. Mahajan, J.

ACHHRU RAM AND OTHERS,—*Defendants-Appellants.*

versus

HARI SINGH,—*Plaintiff-Respondent*

Regular Second Appeal No. 596 of 1957

1959

May, 19th

Specific Relief Act (I of 1877)—Section 20—Contract in the alternative—Meaning and enforcement of.

Held, that it is only when the contract provides for either performance or for payment of money as damages for its breach that a contract can be said to be a contract in the alternative. In such a case an election has to be made as to which relief is to be sought for when the party entitled to the relief can only seek one of the two alternative reliefs and not both. But where the term as to payment of money as damages is put in to secure the performance of the main condition, i.e., in the instant contract, to secure the transfer of property within the time specified in the contract, it cannot be said that the contract provides for two separate alternatives. Such contract clearly falls within the ambit of section 20 of the Specific Relief Act.

Second appeal from the decree of the Court of Shri Sardari Lal Chopra, District Judge, Barnala, dated the 18th May, 1957, affirming that of Shri Shugan Chand Jain, Sub-Judge, II class, Malerkotla, dated the 9th January, 1957 granting the plaintiff a decree with costs for specific performance of the contract, dated 12th July, 1956, and directing that the defendants would execute and register the sale deed for Rs. 3,000 in favour of the plaintiff of agricultural land measuring 16 bighas comprising of Khasra Nos. 91/9-8 Salam, Khasra No. 89/4-1, Salam and 2 bighas and 1 biswas out of Khasra No. 88 Khatauni No. 23 alongwith share in well and further ordering that the land from Khasra No. 88 would be from that of eastern side and alongwith the wall, and directing that the plaintiff would pay Rs. 2,800, the remaining amount at the time of registration of the sale deed to the defendants and also directing that the expenses for executing and registration of the sale deed would be borne by the defendants and they were given 30 days time to get the sale deed executed and registered and deliver possession of the land in dispute to the plaintiff and further ordering that in case the defendants neglected or refused to obey the decree, the following procedure would be adopted in execution of the decree:—

(a) *Decree holder to prepare a draft of the sale deed;*

(b) *The court shall thereupon cause the draft to be served on the Judgment debtors alongwith a notice requiring their objections, if any;*

(c) *After deciding the objection, the Decree Holder shall deliver to the Court, a copy of the draft (sale deed) with such alteration, if any, that the Court may have ordered;*

(d) *The requisite stamp paper shall be purchased in the name of the Judgment debtors by the Court;*

(e) *The expenses of the stamp and of registration shall be met by the Decree holder and he will be entitled to deduct the same from the sale money, that he is to pay to the J. D's.*

(f) *The sale deed will be put by the Court for registration on behalf of the Judgment debtors before*

the Sub-Registrar, Malerkotla, and shall put the decree holder in possession of the land.

The lower appellate Court allowed costs to the plaintiff-respondent.

F. C. MITAL, for Appellants.

M. R. AGGARWAL and H. L. SARIN, for Respondent.

JUDGMENT

Mahajan, J.

MAHAJAN, J.—This is a second appeal arising out of a breach of contract for the sale of land. The facts giving rise to this appeal are that on the 12th of July, 1956, defendants Achhru Ram and others agreed to sell 16 bighas of land in village Mani Majra for Rs. 3,000 to Hari Singh, Hari Singh paid Rs. 200 in advance. The balance was to be paid at the time of registration and the sale-deed was to be executed within one week and in default of the execution of the sale-deed, the party defaulting was to pay Rs. 500 as damages. On the 17th of July, 1956, the defendants entered into a sale contract with regard to this very land with one Gurdial Singh and agreed to sell the suit land to him for a sum of Rs. 4,000. On the 24th of July 1956, i.e. wihin twelve days of the first sale, the plaintiff Hari Singh brought the present suit for specific performance of the contract and in the alternative claimed a decree for Rs. 700 (Rs. 500 as the stipulated damages and Rs. 200 as the refund of the earnest money). The defence raised to this suit was that the plaintiff had rescinded the contract on the 16th of July, 1956, and that he was not ready and willing to perform his part of the contract and that he was not entitled to its specific performance. Both the Courts below have decreed the suit for specific performance on the ground that the defendants were guilty of the

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breach of contract and that there is no default on the part of the vendee. Against this decision the vendors have come up in second appeal to this Court.

Mr. Mital for the vendors has strenously contended before me that the contract in dispute (Exhibit PA) provides two alternatives: —

(i) to specifically enforce the contract; or

(ii) to claim stipulated damages.

On reading the contract I find that there is no such alternative at all. There is merely an additional provision made for damages in case of breach. The vendee has no where either given up the claim for specific performance or to have agreed in the alternative to claim damages alone in case of breach. Thus on the interpretation of the contract itself Mr. Mittal's argument falls to the ground.

Mr. Mittal has also referred to *Monfar Raja Choudhury* v. *Dewan Rowsin Kumar Khatun Choudhury and others* (1), *Dayaram Chainrai* v. *Karmumal Kotumal and another* (2), *and Narayan Nagorao* v. *Amrit Haribhau* (3), for the proposition, that where in a contract there are stipulated damages prayer for specific performance should be refused. I have gone through these decisions and in my opinion they do not lay down what Mr. Mittal wants me to hold and none of these decisions really helps Mr. Mittal. In *Monfar Raja Choudhury* v. *Dewan Rowsan Kumar Khatun Choudhury* (1), the contract itself provided that on the breach of the contract, the contract would come

(1) A.I.R. 1943 Cal, 586
(2) A.I.R. 1937 Sind 263
(3) A.I.R. 1957 Bom. 241

to an end and the only right left to the party who suffered by its breach was a claim to damages. In *Dayaram Chainrai* v. *Karmumal Kotumal and another* (1), both the Courts below had come to a finding of fact that the plaintiff had elected to take damages in the alternative and therefore it was not proper to decree the suit for specific performance. In *Narayan Nagorao* v. *Amrit Haribhau* (2); it was observed at page 242:—

> "That being so, the general rule of equity that if a thing is agreed to be done the very thing ought to be done must apply even though there is a penalty annexed to secure its performance or a sum is named in the contract to be paid in case of its breach. It is no doubt true that it is open to the parties who are entering into a contract to stipulate that on failure to perform what has been agreed to be done a fixed sum shall be paid by way of compensation. The question which therefore arises in such a case is the interpretation of the contract. Where there is a contract containing a clause for payment of money in the event of non-performance, the court has to determine whether it is a contract stipulating that one certain act shall be done with a sum annexed to secure the performance of this very act; or it is a contract stipulating that one of two things shall be done at the election of the party who has to perform it; e.g.; either performance or payment in money. Where the contract is of the

(1) A.I.R. 1937 Sind 263
(2) A.I.R. 1957 Bom. 241

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latter type, it is called an alternative contract and the provisions of section 20 of the Specific Relief Act do not apply to it. They however apply to a contract of the former type."

Thus as I have already said this also does not help Mr. Mittal.

It seems to me that the complete answer to Mr. Mittal's argument is furnished by section 20 of the Specific Relief Act (I of 1877). And in this connection reference may be made to a decision of the Lahore High Court *Kanhaya Lal* v. *Devi Das* (1). It is only when the contract provides for either performance or for payment of money as damages for its breach that a contract can be said to be a contract in the alternative. In such a case an election has to be made as to which relief is to be sought for when the party entitled to the relief can only seek one of the two alternative reliefs and not both. But where the terms as to payment of money as damages is put in to secure the performance of the main condition i.e. in the instant contract to secure the transfer of property within the time specified in the contract, it cannot be said that the contract provides for two separate alternatives. Such contract clearly falls within the ambit of section 20 of the Specific Relief Act. The observations in *S. Ramalinga Pillai* v. *G. R. Jagadammal alias Jagdamba Ammal and another* (2) may also be read with advantage in this connection.

For the reasons given above; this appeal fails and is dismissed, but without an order as to costs in this Court.

B.R.T.

(1) A.I.R. 1931 Lah. 227
(2) A.I.R. 1951 Mad. 612