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2024 INSC 28

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.8185 OF 2009

ALAGAMMAL AND ORS. … **APPELLANTS**

VERSUS

GANESAN AND ANR. … **RESPONDENTS**

A1: ALAGAMMAL
A2: PALANIAMMAL
A3: MARIAMMAL
A4: PATTAYEE AMMAL
A5: KARUPPARAJ
A6: LAKSHMI
A7: THANGAM
A8: MARUTHAMBAL

R1: GANESAN
R2: MAGUDEESWARI

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

Heard learned counsel for the parties.

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2. The present appeal is directed against the Final Judgment dated 28.04.2009 (hereinafter referred to as the "Impugned Judgment") passed by the Madurai Bench, Madras High Court (hereinafter referred to as "the High Court") dismissing a Second Appeal [S.A. (MD) No.1127 of 2008] filed by the appellants/original defendants.

BRIEF FACTS:

3. The appellants no.1, 2 and 3 entered into a registered Agreement of Sale (hereinafter referred to as the "Agreement") with the respondents on 22.11.1990 to sell the suit property for a consideration of Rs.21,000/-, against which Rs.3000/- had been received in advance. Further, six months' time was fixed for completion of the transaction. The appellants No.1, 2 & 3, in the meantime, had executed a Sale Deed with regard to the property in question with appellant no.7 on

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05.11.1997 for a consideration of Rs.22,000/-. On 18.11.1997, the respondents sent a Notice to the appellants calling upon them to execute the Agreement. This led to the respondents filing of Original Suit No.165 of 1998 before the Munsif, District Court, Dindigul against the appellants for specific performance of the Agreement, damages and for recovery of money with interest. The suit stood dismissed by the Principal District Munsif Judge, Dindigul by order dated 10.09.2000. An appeal bearing A.S. No.258 of 2008 filed by the respondents was allowed by the First Appellate Court, and the same has been upheld by the High Court by the Impugned Judgment dated 28.04.2009.

SUBMISSIONS BY THE APPELLANTS:

4. Learned counsel for the appellants submitted that as per the Agreement, the balance consideration amount of Rs. 18,000/- was to be paid within six months which was admittedly not

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done. He submitted that the so-called subsequent payments on 16.12.1990 of Rs.1,000/-; on 15.04.1991 of Rs.3,000/-, and; on 17.09.1991 of Rs.2,500/- though were not actually paid to the appellants and even without admitting the same and accepting it for the sake of argument, the same is incorrect as the fingerprint expert has found the thumb-impression of the appellant no.1 as not matching the admitted actual sample thumb-impression of the appellant no.1. and, thus, the very basis of holding that time was not the essence of the agreement gets washed away. It was submitted that the Agreement stipulated that if there was default on the part of the respondents, the advance paid would be forfeited, and the entitlement to obtain the Sale Deed and get possession free from all encumbrances would also end.

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5. It was submitted that once the fingerprint has been disapproved of by an expert and such report has been brought before the First Appellate Court, the claim based on such a document on which forgery has been committed itself renders the whole transaction inadmissible in law on the well-settled principle that the respondents did not come before the Court with clean hands as the entire claim was based on a forged document.

6. It was submitted that the claim of the respondents to have paid Rs.3,000/- on 18.09.1992; Rs.1,800/- on 24.07.1996; Rs.1,300/- on 25.07.1996 and Rs.1,000/- on 29.07.1996 i.e., a total of Rs.20,425/- and ultimately Rs.1,000/- on 21.04.1997 i.e., an excess of Rs. 425/- over the amount indicated in the Agreement, was false.

7. Learned counsel submitted that the endorsement(s) made not having been proved, it cannot be assumed that the respondents were ready

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and willing, or that they had, in fact, paid the excess amount.

8. It was contended that the Legal Notice sent on behalf of the respondents dated 18.11.1997 was clearly to get over the fatal lapses on their part and to give life to a dead cause i.e., revive the Agreement, which already stood incapable of being executed through Court due to efflux of time. On this issue, the contention was that readiness and willingness must be pleaded and proved which has not been done as is clear from the averments made in the plaint filed by the respondents. Thus, it was submitted that the trial court and even the First Appellate Court not recording any finding on the aspect of the readiness and willingness on the part of the respondents, the High Court's observation in the Impugned Judgement on readiness and willingness of the respondents is without basis.

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9. Learned counsel submitted that readiness and willingness has to be specifically pleaded and proved as per Section 16(c) of the Specific Relief Act, 1963 (hereinafter referred to as the "1963 Act") and there cannot be any question of drawing inference. Thus, he submitted that the respondents were obliged to obtain stamp-paper and draw up the Sale Deed, of which there is no indication in the plaint. It was urged that this establishes that there was no readiness and willingness to comply with their obligations in terms of the Agreement.

10. Learned counsel submitted that the thumb-impression(s) in the endorsement(s) have neither matched nor been found to be identical as per the fingerprint expert's report which has been referred to in the judgment of the First Appellate Court.

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11. Learned counsel submitted that as per the judgment rendered by the First Appellate Court and affirmed by the High Court, the last payment made and endorsed on 17.09.1991 has been accepted and thus three years from such date would be 16.09.1994 but the suit was instituted only on 23.03.1998, which is clearly barred by limitation.

12. It was submitted that the Trial Court had found that the endorsements were silent regarding extension of time, which finding has not been disturbed either by the First Appellate Court or the High Court and looking at the issue from such angle, six months' time under the Agreement would expire on 21.05.1991 and a three-year limitation would end on 22.05.1994. On this, learned counsel submitted that the contention of the respondents that the limitation would start from the judgment rendered in Original Suit No.551 of 1992 dated 24.07.1996, filed by appellant no.1 for seeking

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possession and eviction of her husband and mother-in-law from the suit property, is not the correct legal perspective, as mere absence of possession would not have defeated the passing of title from the appellants in favour of the respondents by the execution of a Sale Deed. The object of the Agreement was only for conveying the title of the property in question.

13. Learned counsel submitted that neither Original Suit No.551 of 1992 nor the judgment rendered therein have been mentioned by the respondents in Original Suit No.165 of 1998 for computing the cause of action for filing suit in the year 1998 with regard to the Agreement, which was entered into in 1990. Further, it was urged that it was incumbent upon the respondents to have obtained the Sale Deed and possession through Court as set forth in the Default Clause in the Agreement and thus, the Legal Notice dated

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18.11.1997 by the respondents would not extend the time as it had expired much before and such unilateral issuance of notice would not get over the legal bar of Article 54 of the Limitation Act, 1963 (hereinafter referred to as the "Act").

14. Learned counsel summed up arguments by contending that in any view of the matter, prior to filing of the suit, the property in question had already been sold under registered Sale Deed to the appellant no.7 and the suit for specific performance was required to be dismissed as the Sale Deed to appellant no.7 has not been challenged.

15. Learned counsel relied upon the decision of this Court in ***K.S. Vidyanadam v Vairavan*****, (1997) 3 SCC 1**, at Paragraphs 10, 11 and 13 for the proposition that Courts in India have consistently held that in the case of agreement of sale relating to immovable property, time is not the

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essence of the contract unless specifically provided to that effect, and the period of limitation prescribed by the Act for filing a suit was 3 years.

16. It was contended that in the aforesaid judgment, the terms of the agreement therein were identical to the instant Agreement, inasmuch as there was no reference to any tenant in the building and it was stated that within six months, the plaintiff should purchase the stamp-papers and pay the balance consideration upon which the defendants shall execute the Sale Deed either in his name or the name(s) proposed by him before the Sub-Registrar. It was restated that there was no prior letter/notice from the plaintiffs (respondents) to the defendants (appellants) calling upon them to get the Sale Deed executed till the issuance of the Legal Notice dated

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18.11.1997 i.e., after a gap of 6 ½ years, identical to the facts in ***K.S. Vidyanadam*** (*supra*).

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

17. In opposition to the appeal, learned counsel for the respondents submitted that on 23.03.1992, appellant no.1 had filed Original Suit No.551 of 1992 against her husband, mother-in-law, second wife of her husband and the son of the second wife, which was decreed. He submitted that appellants even after accepting Rs.425/- over and above the amount indicated in the Agreement and even after getting a decree for declaration and possession of the suit property in her favour on 24.07.1996, did not execute the Sale Deed due to which Legal Notice was sent to her on 18.11.1997. As no action was taken, the respondents were forced to file a suit on 23.03.1998 seeking specific performance.

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18. Learned counsel submitted that the First Appellate Court had recorded that the Sale Deed executed by appellant no.1 in favour of appellant no.7 dated 05.11.1997 was not *bonafide* as the said sale was effected after getting an order for declaration and recovery of possession of the suit property in favour of appellant no.1 on 24.07.1996 in Original Suit No.551 of 1992.

19. Learned counsel submitted that the issue whether time is the essence of the contract i.e., the Agreement would depend also on the conduct of the parties and in the present case, when money was accepted by appellant no.1, much after the stipulated time, clearly the Agreement's validity so as to culminate in sale could not be said to have been extinguished, as by accepting money later, the time indicated for completion of the transaction by execution of Sale Deed had been relaxed.

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20. It was contended that the actual intention of the parties was not only to execute the Sale Deed but also handover the possession which is an implied term of every sale of immovable property and thus only when on 24.07.1996, the appellant concerned became capable of handing over possession, limitation would start from such date as otherwise even if the Sale Deed was executed in favour of the respondents, it would have been of no real consequence in the absence of possession being capable of hand over.

21. Learned counsel contended that the stand taken by the appellants, that the proposed sale was only for transfer of title and not possession, cannot be accepted since the sale of immovable property is always for the transfer of possession from the seller to the buyer in terms of Section 5 read with Section 54 of the Transfer of Property Act, 1882 (hereinafter referred to as the "TP

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Act”). Further, it was submitted that Section 55(f) of the TP Act contemplates duty of the seller to hand over possession of the property at the time of sale, and if the seller is not in possession of the property at the time of the agreement to sell or thereafter, it is a “material defect” in the property necessarily to be disclosed to the purchaser at the time of sale in accordance with Section 55(1)(a) of the TP Act. Thus, according to him, it is the obligation of the seller to hand over possession at the time of sale, as was stipulated in the Agreement.

22. On the question of whether time is of the essence in such a contract, it was contended that when a party is not in possession to hand over the same at the time of execution of an agreement for sale, then time would not be of the essence as the right to sue would accrue in favour of the person to whom the suit property is required to be sold

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only upon the vendor being in a position to hand over possession of the property to the buyer. It was further submitted that subsequent conduct of parties is also relevant for testing whether time is of the essence of the contract in question. It was submitted that in the present case, the acceptance of money much after the expiry of the six-month period by the appellant no.1 from the respondents leaves no doubt that time was not the essence and the time for performance of the Agreement would commence only after obtainment of physical possession by the appellants.

23. In support of his contentions, learned counsel relied upon the decision of this Court in ***Godhra Electricity Company Limited v State of Gujarat*, (1975) 1 SCC 199**, the relevant paragraphs being 11 to 16; of the United Kingdom Supreme Court in ***The Commissioners for Her Majesty's Revenue and Customs v Secret Hotels2 Limited***

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***(formerly Med Hotels Limited)*, [2014] UKSC 16** dated 05.03.2014, the relevant being paragraph 33[1], and; ***The Interpretation of Contracts*, 7th Edition** by **Sir Kim Lewison**, the relevant being paragraph 3.189.

ANALYSIS, REASONING AND CONCLUSION:

24. Having considered the matter, this Court finds that the Judgment impugned cannot be sustained. The moot question revolves around whether the Agreement dated 22.11.1990 discloses a fixed time-frame for making payment in full by the respondents that is, in terms of the recitals in the agreement for sale executed by the appellant no.1 in favour of the respondents. The admitted position is that the time indicated in the

[1] '*33. In English law it is not permissible to take into account the subsequent behaviour or statements of the parties as an aid to interpreting their written agreement – see FL Schuler AG v Wickman Machine Tool Sales Ltd [1974] AC 235. The subsequent behaviour or statements of the parties can, however, be relevant, for a number of other reasons. First, they may be invoked to support the contention that the written agreement was a sham – ie that it was not in fact intended to govern the parties' relationship at all. Secondly, they may be invoked in support of a claim for rectification of the written agreement. Thirdly, they may be relied on to support a claim that the written agreement was subsequently varied, or rescinded and replaced by a subsequent contract (agreed by words or conduct). Fourthly, they may be relied on to establish that the written agreement represented only part of the totality of the parties' contractual relationship.*'

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Agreement was six months from 22.11.1990 i.e., till 21.05.1991 and as per the Legal Notice dated 18.11.1997 sent by the respondents to the appellants, only Rs.7000/- was paid within the time stipulated. Perusal of the Agreement reveals that the respondents had agreed to pay the appellants Rs.21,000/- for the property in question, out of which Rs.3,000/- was already paid as earnest money and the rest was to be paid within 6 months. The respondents were to purchase stamp papers at their expense and the appellants had to register the Sale Deed either in the name of the respondent no.1 or as proposed by him before the Sub-Registrar after paying the remaining/balance amount. If the appellants failed to register the Sale Deed, respondent no.1 had a right to deposit the balance of sale consideration in the Civil Court and get sale with possession effected through Court from the first party i.e., appellants no.1 to 3.

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25. At this juncture, the Court would indicate that within six months there existed the onus of paying the entire balance amount of Rs.18,000/- by the respondent no.1 to the appellant no.1. It is not the case of the respondents that they had even offered to pay the remaining/balance amount before the expiry of the six-month period. Thus, payment of Rs.3,000/- only out of Rs.21,000/- having been made, or at best Rs.7,000/- out of Rs.21,000/-, which is the amount indicated in the Legal Notice sent by the respondents to the appellants, the obvious import would be that the respondents had not complied with their obligation under the Agreement within the six-month period.

26. Pausing here, it is notable that the appellant no.1 having accepted payment of Rs.1,000/- on 21.04.1997 i.e., after appellant no.1 had executed a Sale Deed in favour of appellant no.7 on 05.11.1997, coupled with the fact that the

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forensic expert found the two thumb-impressions purportedly acknowledging payment after the expiry of the time fixed not matching the fingerprints of appellant no.1 is clearly indicative that time having not been extended, no enforceable right accrued to the respondents for getting relief under the 1963 Act. At the highest, if the appellant no.1 had accepted money from respondent no.1 after the expiry of the time-limit, which itself has not been conclusively proved during trial or even at the first or second appellate stages, the remedy available to the defendants was to seek recovery of such money(ies) paid along with damages or interest to compensate such loss but a suit for specific performance to execute the Sale Deed would not be available, in the prevalent facts and circumstances. In the present case, there is also no explanation, as to why, an excess amount of Rs.425/-, as claimed, was paid by respondent no.1 to the appellant no.1, when the

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respondents’ specific stand is that due to the appellants not being in possession of the property so as to hand over possession to the respondents, delay was occasioned. The submission that no adverse effect could be saddled on the respondents as decree for declaration and recovery of possession was obtained by appellant no.1 in her favour only on 27.04.1996 is not acceptable for the reason that there is no averment that pursuant to such decree, she had also obtained possession through execution. Thus, the decree dated 27.04.1996 also remained only a decree on paper without actual possession to appellant no.1. The contention of the respondents becomes self-contradictory especially with regard to cause of action having arisen after such decree in favour of the appellant no.1 since even at the time of filing the underlying suit, actual possession not being with appellant no.1, the Sale Deed could not have been executed.

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27. Another important aspect that the Court is expected to consider is the fact that the appellant no.7 in whose favour there was a Sale Deed with regard to the suit premises, much prior to issuance of any Legal Notice and the institution of the suit in question and that no relief had been sought for cancellation of such Sale Deed, a suit for specific performance for execution of sale deed *qua* the very same property could not be maintained. The matter becomes worse for the respondents since such relief was also not sought even at the First Appeal stage nor at the Second Appeal stage, despite the law permitting and providing for such course of action. Even the Legal Notice dated 18.11.1997 has been issued after almost seven months from the alleged last payment of Rs.1.000/-, as claimed by the respondents to have been made on 21.04.1997.

28. Pertinently, though appellant no.7 was arrayed as a defendant in the suit, yet no relief

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seeking cancellation of his Sale Deed was sought for.

29. The ratio laid down in ***K.S. Vidyanadam*** *(supra)* which had a similar factual matrix squarely applies in the facts and circumstances of the present case, on the issue that time was the essence of contract and even if time is not the essence of the agreement, in the event that there is no reference of any existence of any tenant in the building and it is mentioned that within a period of six months, the plaintiffs should purchase the stamp paper and pay the balance consideration whereupon the defendants will execute the Sale Deed, there is not a single letter or notice from the plaintiffs to the defendants calling upon them to the tenant to vacate and get the Sale Deed executed within time. Further, the Legal Notice was issued after two and a half years from expiry of the time period in

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K.S. Vidyanadam (*supra*), whereas in the present case, the Legal Notice has been issued after more than six and a half years. The relevant paragraphs from ***K.S. Vidyanadam*** (*supra*) read as under:

> '**10.***It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time-limits stipulated in the agreement for doing one or the other thing by one or the other party. That would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time-limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion*

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vested in the court by both Sections 10 and 20. As held by a Constitution Bench of this Court in Chand Rani v. Kamal Rani [(1993) 1 SCC 519]: (SCC p. 528, para 25)

> *"… it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are (evident?): (1) from the express terms of the contract; (2) from the nature of the property; and (3) from the surrounding circumstances, for example, the object of making the contract."*

In other words, the court should look at all the relevant circumstances including the time-limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised. Now in the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades — particularly after 1973 [It is a well-known fact that the steep rise in the price of oil following the 1973 Arab-Israeli war set in inflationary trends all over the world. Particularly affected were countries like who import bulk of their requirement of oil.]. In this case, the suit property is the house property situated in Madurai, which is one of the major cities of Tamil

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Nadu. <u>The suit agreement was in December 1978 and the six months' period specified therein for completing the sale expired with 15-6-1979. The suit notice was issued by the plaintiff only on 11-7-1981, i.e., more than two years after the expiry of six months' period. The question is what was the plaintiff doing in this interval of more than two years? The plaintiff says that he has been calling upon Defendants 1 to 3 to get the tenant vacated and execute the sale deed and that the defendants were postponing the same representing that the tenant is not vacating the building. The defendants have denied this story. According to them, the plaintiff never moved in the matter and never called upon them to execute the sale deed. The trial court has accepted the defendants' story whereas the High Court has accepted the plaintiff's story. Let us first consider whose story is more probable and acceptable. For this purpose, we may first turn to the terms of the agreement. In the agreement of sale, there is no reference to the existence of any tenant in the building. What it says is that within the period of six months, the plaintiff should purchase the stamp papers and pay the balance consideration whereupon the defendants will execute the sale deed and that prior to the registration of the sale deed, the defendants shall vacate and deliver possession of the suit house to the</u>

plaintiff. There is not a single letter or notice from the plaintiff to the defendants calling upon them to get the tenant vacated and get the sale deed executed until he issued the suit notice on 11-7-1981. It is not the plaintiff's case that within six months', he purchased the stamp papers and offered to pay the balance consideration. *The defendants' case is that the tenant is their own relation, that he is ready to vacate at any point of time and that the very fact that the plaintiff has in his suit notice offered to purchase the house with the tenant itself shows that the story put forward by him is false. The tenant has been examined by the defendant as DW 2. He stated that soon after the agreement, he was searching for a house but could not secure one. Meanwhile (i.e., on the expiry of six months from the date of agreement), he stated, the defendants told him that since the plaintiff has abandoned the agreement, he need not vacate. It is equally an admitted fact that between 15-12-1978 and 11-7-1981, the plaintiff has purchased two other properties. The defendants' consistent refrain has been that the prices of house properties in Madurai have been rising fast, that within the said interval of 2 1/2 years, the prices went up three times and that only because of the said circumstance has the plaintiff (who had earlier abandoned any idea of going forward with the purchase of*

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the suit property) turned round and demanded specific performance. Having regard to the above circumstances and the oral evidence of the parties, we are inclined to accept the case put forward by Defendants 1 to 3. We reject the story put forward by the plaintiff that during the said period of 2 1/2 years, he has been repeatedly asking the defendants to get the tenant vacated and execute the sale deed and that they were asking for time on the ground that tenant was not vacating. The above finding means that from 15-12-1978 till 11-7-1981, i.e., <u>for a period of more than 2 1/2 years, the plaintiff was sitting quiet without taking any steps to perform his part of the contract under the agreement though the agreement specified a period of six months within which he was expected to purchase stamp papers, tender the balance amount and call upon the defendants to execute the sale deed and deliver possession of the property.</u> We are inclined to accept the defendants' case that the values of the house property in Madurai town were rising fast and this must have induced the plaintiff to wake up after 2 1/2 years and demand specific performance.

11. *Shri Sivasubramaniam cited the decision of the Madras High Court in S.V. Sankaralinga Nadar v. P.T.S. Ratnaswami Nadar [AIR 1952 Mad 389 : (1952) 1 MLJ 44] holding that mere rise in prices is no*

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ground for denying the specific performance. With great respect, we are unable to agree if the said decision is understood as saying that the said factor is not at all to be taken into account while exercising the discretion vested in the court by law. We cannot be oblivious to the reality — and the reality is constant and continuous rise in the values of urban properties — fuelled by large-scale migration of people from rural areas to urban centres and by inflation. Take this very case. <u>The plaintiff had agreed to pay the balance consideration, purchase the stamp papers and ask for the execution of sale deed and delivery of possession within six months. He did nothing of the sort.</u> The agreement expressly provides that if the plaintiff fails in performing his part of the contract, the defendants are entitled to forfeit the earnest money of Rs 5000 and that if the defendants fail to perform their part of the contract, they are liable to pay double the said amount. Except paying the small amount of Rs 5000 (as against the total consideration of Rs 60,000) the plaintiff did nothing until he issued the suit notice 2 1/2 years after the agreement. Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties — evolved in times when prices and values were stable and inflation was

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unknown — requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so. The learned counsel for the plaintiff says that when the parties entered into the contract, they knew that prices are rising; hence, he says, rise in prices cannot be a ground for denying specific performance. May be, the parties knew of the said circumstance but they have also specified six months as the period within which the transaction should be completed. The said time-limit may not amount to making time the essence of the contract but it must yet have some meaning. Not for nothing could such time-limit would have been prescribed. Can it be stated as a rule of law or rule of prudence that where time is not made the essence of the contract, all stipulations of time provided in the contract have no significance or meaning or that they are as good as non-existent? All this only means that while exercising its discretion, the court should also bear in mind that when the parties prescribe certain time-limit(s) for taking steps by one or the other party, it must have some significance and that the said time-limit(s) cannot be ignored altogether on the ground that time has not been made the essence of the contract (relating to immovable properties).

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> ***13.*** *In the case before us, it is not mere delay. It is a case of total inaction on the part of the plaintiff for 2 1/2 years in clear violation of the terms of agreement which required him to pay the balance, purchase the stamp papers and then ask for execution of sale deed within six months. Further, the delay is coupled with substantial rise in prices — according to the defendants, three times — between the date of agreement and the date of suit notice. The delay has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff.'*
>
> (Emphasis supplied)

30. The decisions relied upon by the respondents, relating to the conduct of parties are of no avail to them in the circumstances, as even if the case of later payments by the respondents to the appellants is accepted, the same being at great intervals and there being no willingness shown by them to pay the remaining amount or getting the Sale Deed ascribed on necessary stamp paper and giving notice to the appellants to execute the Sale Deed, it cannot be said that in the present

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case, judged on the anvil of the conduct of parties, especially the appellants, time would not remain the essence of the contract.

31. For reasons afore-noted, the Impugned Judgment of the High Court as also the judgment of the First Appellate Court stand set aside. The judgment/order of the Trial Court is revived and restored.

32. The appeal is allowed accordingly.

33. In the facts and circumstances, no order as to costs is proposed.

.........................J.
[VIKRAM NATH]

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.........................J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
JANUARY 10, 2024