

10C/2010, the original defendants have preferred the present appeals.

2. The facts leading to the present appeals are as under: -

2.1 That a “sale agreement” was entered into between appellant No. 1 as attorney of appellant No. 2 (original defendants) and the respondent herein (original plaintiff) for sale of the suit plot in question for a consideration of Rs. 17,61,700/-. The date for execution and registration of sale deed was tentatively fixed as 18.09.2004. A total amount of Rs. 2 lakh was paid as earnest money by the respondent. That thereafter, respondent – original plaintiff instituted the civil suit in the Court of Additional Civil Judge (Senior

Division), Faridabad, seeking specific performance of sale agreement and consequential relief of injunction. The suit was resisted by the appellants herein – original defendants on all grounds including the ground that even as per the agreement to sell and on failure of the defendants to execute the sale deed, the plaintiff shall be entitled to double the amount given as an advance and therefore, the plaintiff is not entitled to the decree for specific performance.

2.2 The learned Trial Court vide judgment and decree dated 16.01.2010 refused to pass a decree for specific performance of the sale agreement, however, decreed the suit for recovery of Rs. 4 lakhs i.e., double of the

earnest money paid by the plaintiff in accordance with the contract i.e., sale agreement.

2.3 The First Appellate Court dismissed the appeal. Feeling aggrieved and dissatisfied with the judgment and decree passed by the learned Trial Court confirmed by the First Appellate Court refusing to grant the relief of specific performance of the sale agreement, the respondent herein – original plaintiff preferred the second appeal before the High Court. The appellant(s) also filed the cross objection in the second appeal on the findings recorded by the learned Trial Court and the First Appellate Court that the plaintiff was ready and willing to perform his part of the

contract. By the impugned judgment and order dated 27.07.2016 the High Court allowed the second appeal by way of overturning the concurrent judgments of the learned Trial Court confirmed by the First Appellate Court and consequently, granted the relief of specific performance of the sale agreement by observing that as the plaintiff was ready and willing to perform his part of the contract and therefore, he is entitled to the decree for specific performance. The High Court dismissed the cross objection preferred by the appellants – original defendants.

2.4 That aggrieved by the judgment and order dated 27.07.2016 passed by the High Court allowing the second appeal and dismissing

the cross objection, the appellants herein preferred Special Leave Petition (C) Nos. 32215-32216/2016 before this Court. The appellants were relegated to file a review petition before the High Court as according to the appellants the High Court did not consider the relevant clauses of the sale agreement which as such were considered by the learned Trial Court as well as the First Appellate Court.

2.5 That thereafter, the appellants filed the present Review Application No. 149/2016 before the High Court. By the impugned judgment and order the High Court has dismissed the review application by observing that there is no error apparent on record and

no ground for review is made out. Hence, the present appeals.

3. Shri Guru Krishna Kumar, learned Senior Advocate appearing on behalf of the appellants – original defendants, has vehemently submitted that in the facts and circumstances of the case the High Court has committed a very serious error in dismissing the review application which as such was filed pursuant to the liberty reserved by this Court. It is submitted that as while allowing the second appeal the relevant clauses of the sale agreement was not considered by the High Court and there were certain factual errors and even the cross objection was rejected without consideration; the High

Court ought to have allowed the review application and ought to have considered the entire appeal on merits. It is further submitted that even otherwise the High Court has materially erred in passing the decree for specific performance of the sale agreement which as such was refused by the learned Trial Court as well as the First Appellate Court.

3.1 It is submitted that even while allowing the second appeal the High Court did not specifically frame any substantial question of law which as such was required to be framed as per Section 100 of the CPC.

3.2 It is further submitted that the High Court has not properly appreciated and considered

the fact that even as per the sale agreement if the first party – appellant fail or refuse to execute the sale agreement within the stipulated time, the seller shall be responsible to pay double the amount given as an advance. It is submitted that therefore, assuming that there was failure on the part of the defendant(s) to execute the sale deed in favour of the plaintiff within the stipulated time, the plaintiff shall only be entitled to double the amount given as an advance. It is submitted that therefore, as such both the Courts below rightly refused to pass a decree of specific performance.

3.3 Making the above submissions and relying upon paragraph 31 of the decision of this

Court in the case of **P. D'Souza Vs. Shondrilo Naidu (2004) 6 SCC 649**, it is prayed to allow the present appeals.

4. While opposing the present appeals, Shri Daya Krishan Sharma, learned counsel appearing on behalf of the respondent – original plaintiff has vehemently submitted that in the present case there are concurrent findings recorded by all the courts below on readiness and willingness on the part of the plaintiff to perform his part of the contract and it was the defendant(s) who did not perform their part of the contract and did not execute the sale deed though, the plaintiff was ready and willing to pay the sale amount. It is submitted that therefore, in view of the

concurrent findings recorded by all the courts below, the High Court has not committed any error in passing the decree for specific performance of the sale agreement.

4.1 It is submitted that therefore, the impugned judgment and order passed by the High Court granting relief for specific performance of the sale agreement may not be interfered with by this Court. Reliance is also placed on the decision of this Court in the case of **P. D'souza (supra)**.

5. We have heard learned counsel appearing on behalf of the respective parties at length.

6. At the outset, it is required to be noted that as such there are concurrent findings of facts recorded by all the courts below on the

readiness and willingness of the plaintiff to perform his part of the contract which are not required to be interfered with by this Court in exercise of powers under Article 136 of the Constitution of India. However, at the same time, what is required to be considered is whether in the facts and circumstances of the case, the High Court is justified in overturning the judgment(s) of the learned Trial Court as well as the First Appellate Court refusing to pass the decree for specific performance of the sale agreement?

6.1 At the outset, it is required to be noted that as such while allowing the second appeal and overturning the judgment(s) and order(s) passed by the learned Trial Court as well as

the First Appellate Court, the High Court has not framed the substantial question of law, which is required to be framed under Section 100 of the CPC.

6.2 Even otherwise on merits also looking to the terms and conditions stipulated in the sale agreement the High Court has erred in passing the decree for specific performance which was refused by the learned Trial Court as well as the First Appellate Court. The relevant clause in the sale agreement reads as under: -

“2. That if the 2nd party fails to pay the balance amount within stipulated time, the advance will be forfeited and if the first party fail or refuse to execute the sale deed and other necessary document in favour of the purchaser or in the name of his nominees within the stipulated

time, the seller will be responsible to pay the double of the amount given as advance.”

6.3 Thus, as per clause 2 of the sale agreement, if the second party fails to pay the balance amount within stipulated time, the advance will be forfeited and if the seller fail or refuse to execute the sale deed and other necessary document in favour of the purchaser/buyer or in the name of his nominees within the stipulated time, the seller will be responsible to pay double the amount given as an advance. Therefore, on failure on the part of the seller to execute the sale deed within the stipulated time, the purchaser/buyer shall be entitled to the double of the amount given as an advance. It cannot be disputed that the plaintiff being a party to the agreement to sell

is bound by the terms and conditions stipulated in the sale agreement. Therefore, on true interpretation of clause 2 of the sale agreement, the learned Trial Court as well as the First Appellate Court as such rightly refused to pass the decree for specific performance of the sale agreement and rightly passed the decree for recovery of Rs. 4 lakhs being double the amount given as an advance which as such was in consonance with the clause 2 of the sale agreement.

6.4 An identical question came to be considered by this Court in the case of **P. D'souza (supra)** and after considering the earlier decision of this Court in the case of **M.L. Devender Singh Vs. Syed Khaja (1973) 2**

SCC 515, this Court observed and held that where the sum named is an amount the payment of which may be substituted for the performance of the act at the election of the person by whom the money is to be paid or the act done, the Court may refuse to pass the decree for specific performance. In the present case, the condition specifically stipulates that in case of failure on the part of the seller to execute the sale deed within the stipulated time the buyer shall be entitled to double the amount given as an advance. Therefore, the sum is specifically named i.e., double the amount of advance paid. Though, the High Court has relied upon the decision in the case of **P. D'souza (supra)**, the aforesaid aspect has not been considered by

the High Court, more particularly, the observations made in paragraph 31 in its true perspective.

7. In view of the above, the High Court has materially erred in setting aside the concurrent judgment(s) of the learned Trial Court as well as the First Appellate Court refusing to pass the decree for specific performance and passing the decree for recovery of Rs. 4 lakhs being double the amount of advance paid. Under the circumstances, the impugned judgment and order passed by the High Court is unsustainable.
8. In view of the above and for the reasons stated above, present appeal(s) arising out of

rejecting the review application and the judgment and order passed by the High Court in second appeal are allowed. Consequently, order passed in review application and the judgment and order passed by the High Court in second appeal granting relief for specific performance of the sale agreement deserve to be quashed and set aside and is/are accordingly quashed and set aside. Consequently, the judgment and decree passed by the learned Trial Court affirmed by the First Appellate Court stands restored. The appeal arising out of the dismissal of the cross objection stands disposed of.

.....J.
[M.R. SHAH]

.....J.
[C.T. RAVIKUMAR]

NEW DELHI;
APRIL 28, 2023