

CASE NO.:
Appeal (civil) 6329-6330 of 2004

PETITIONER:
B.K. Sri Harsha (D) By L.R. & Anr

RESPONDENT:
M/s Bharath Heavy Electricals Ltd

DATE OF JUDGMENT: 08/02/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NOS.6329-6330 OF 2004

Dr. ARIJIT PASAYAT, J.

1. Challenge in these appeals is to the judgment of the learned Single Judge of the Karnataka High Court dismissing the First Appeals filed under Section 96 of the Code of Civil Procedure, 1908 (in short 'CPC'). The First Appeals were filed against the judgment and decree passed in OS No.285/1984 and OS No.286/1984 on the file of XXXI Additional City Civil Judge, Bangalore, decreeing the suit for specific performance.

2. Background facts in a nutshell are as follows:

Two suits were filed by the respondent, which were consolidated. The respondents as plaintiff sought specific performance in respect of certain properties which were allegedly agreed to be sold by the appellants Smt. B. Saroja Devi and her husband Sri B.K. Harsha under the contract. Since the validity and the genuineness of two agreements Exhibits P-1 and P-2 were not disputed, the Trial Court was of the view that the only question which arises for consideration was whether the respondent was entitled to the relief of specific performance. The Trial Court came to hold that the respondent-company was always ready and willing to perform its part of the contract. It was also found that the two agreements were never revoked or cancelled by the appellants at any time. Further, it was held that the suit for specific performance was filed within the period of limitation. The Trial Court further came to hold that the respondent-company being in possession of the suit property from 2.5.1974, equality lies in its favour in granting specific performance and more so, when major portion of the agreement consideration had already been paid. Therefore, both these suits were decreed. The High Court as noted above, dismissed the First Appeals.

3. Learned counsel for the appellants submitted that though the judgment and decree impugned run to several pages, major part of it consists of the averments and reproduction of the part of the trial Court's judgment.

4. It is submitted that this was not an appropriate way for

disposal of the First Appeals. It was also submitted that some of the conclusions were legally unsupportable. It was submitted that when the suit is for specific performance, the special features of such a suit have to be kept in view, which has not been done.

5. Learned counsel for the respondent on the other hand submitted that the High Court had referred to the factual and legal position in detail and, therefore, the judgment and decree do not suffer from any infirmity to warrant interference.

6. It is to be noted that pages 4 to 18 of judgment (in the paper book) are quotations from the Trial Court's judgment. The quotation was made after briefly referring to the major issues. Upto page 21 contentions were noted. Learned Single Judge dismissed the appeals in purported exercise of power under Order 41 Rule 1 CPC. Though strictly speaking, the judgment cannot be said to be in limine dismissal of the appeals, yet the manner of disposal of the First Appeals leaves much to be desired. When triable issues are involved, the appeals should not be summarily dismissed or disposed of in the manner done. The suit was for specific performance and the Trial Court recorded findings about adverse possession. That being so, according to learned counsel for the appellants, triable issues are involved. It was pointed out that the stand of the appellants was relatable to lack of readiness, alleged laches, limited novation.

7. A bare reading of the High Court's judgment shows that there was no serious effort to analyse the various points raised. It was submitted that there was notice terminating the agreement. It was categorically stated that plaintiffs were never ready and willing to fulfil their part of contract.

8. The nature of suit for specific performance of contract has been highlighted by this Court in several cases. In *Rajeshwari v. Puran Indoria* (2005 (7) SCC 60), it was inter-alia observed as under:

"5. Normally, a suit for specific performance of an agreement for sale of immovable property involves the question whether the plaintiff was ready and willing to perform his part of the contract in terms of Section 16 of the Specific Relief Act, whether it was a case for exercise of discretion by the court to decree specific performance in terms of Section 20 of the Specific Relief Act and whether there were laches on the part of the plaintiff in approaching the court to enforce specific performance of the contract. In some cases, a question of limitation may also arise in the context of Article 54 of the Limitation Act on the terms of the agreement for sale. Other questions like the genuineness of the agreement, abandoning of the right to specific performance, a novation and so on, may also arise in some cases. No doubt, a finding on the three primary aspects indicated earlier would depend upon the appreciation of the pleadings and the evidence in the case in the light of the surrounding circumstances.

6. The right to specific performance of an agreement for sale of immovable property, when filed, raises questions of substantial importance between the parties as to whether the plaintiff has satisfied the requirements of Section 16 of

the Specific Relief Act, whether it is a case in which specific performance of the contract is enforceable in terms of Section 10, whether in terms of Section 20 of the Act, the discretion to decree specific performance should be exercised by the court and in some cases, whether the suit was barred by limitation and even if not, whether the plaintiff has been guilty of negligence or laches disentitling him to a decree for specific performance. These questions, by and large, may not be questions of law of general importance. But they cannot also be considered to be pure questions of fact based on an appreciation of the evidence in the case. They are questions which have to be adjudicated upon, in the context of the relevant provisions of the Specific Relief Act and the Limitation Act (if the question of limitation is involved). Though an order in exercise of discretion may not involve a substantial question of law, the question whether a court could, in law, exercise a discretion at all for decreeing specific performance, could be a question of law that substantially affects the rights of parties in that suit."

8. The High Court has also given a finding regarding adverse possession in a suit for specific performance. Above being the position, there is total non-application of kind. The manner in which the appeals were dismissed cannot be said to be proper.

9. Above being the position, the impugned judgment deserves to be set aside. The matter is remitted to the High Court to consider the matter afresh. The appeals are accordingly disposed of. There shall be no order as to costs.