



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 2448 - 2449 OF 2023

JASPAL SINGH

.... APPELLANT

VERSUS

ASHWANI KUMAR

.... RESPONDENT

J U D G M E N T

ALOK ARADHE, J.

1. These appeals which emanate from a judgment passed in Regular Second Appeal and an order passed in Review Petition by the High Court of Punjab & Haryana at Chandigarh (“High Court”) in RSA No. 3619 of 2012 (O&M) and RA-RS No. 87 of 2019 take exception to the judgment dated 08.02.2019 and order dated 10.07.2019 respectively, by which Regular Second Appeal filed by the respondent was allowed and the review petition filed by the appellant has been dismissed.

FACTS

2. The appellant (plaintiff) entered into an Agreement to Sell dated 22.06.2003 with the respondent (defendant) for purchase of land admeasuring 12 marlas, on which a

factory stood, situated at village Gowar/Gohwar, Tehsil Phillaur, District Jalandhar, Punjab (“the subject property”). The respondent, a co-owner of the subject property along with his brother, agreed to sell his half share for a consideration of Rs.12,50,000/-. An earnest money amount of Rs.9,00,000/- was paid by the appellant at the time of execution of the Agreement, which stipulated 22.06.2004 as the date for execution of the Sale Deed, further providing that if the Sale Deed could not be executed for any reason, the respondent would refund the earnest money.

- 3.** By a further Agreement dated 21.06.2004, the date for execution of the Sale Deed was extended by mutual consent to 22.07.2004. A third Agreement dated 21.07.2004 recorded the receipt by the respondent of a further sum of Rs.60,000/-, extended the date for execution of the Sale Deed to 22.01.2005 for payment of the balance consideration, and provided that all other terms of the first Agreement would continue to apply.
- 4.** The appellant appeared before the Sub-Registrar on 20.01.2005 and 24.01.2005 – the Sub-Registrar’s office having remained closed on 21.01.2005, and 22.01.2005 and

23.01.2005 being Saturday and Sunday respectively, but the respondent did not attend.

5. In 2006, the appellant instituted a suit for specific performance of the contract founded on the Agreement dated 22.06.2003 and its extensions dated 21.06.2004 and 21.07.2004, with an alternative prayer for recovery of Rs.19.20 lakh (Rs.9.60 lakh as earnest money and an equal sum as damages).
6. The respondent, in his written statement, denied execution of the Agreement and pleaded that true market value of the subject property exceeded Rs.50 lakh. He asserted that the documents were executed as collateral security for a separate arrangement to facilitate his travel abroad through a travel agent associated with the appellant, under which he had signed blank papers and issued a cheque as security for a Rs.15,50,000/- transaction, and that the appellant, in connivance with the deed-writer and marginal witnesses, converted these blank papers into an Agreement to Sell.

JUDGMENT OF THE TRIAL COURT

7. By judgment and decree dated 30.04.2010, the Trial Court held that the appellant had proved execution of the

Agreement to Sell and its extensions, that the respondent had accepted Rs.9 lakh as consideration, that the date for execution of the Sale Deed stood validly extended up to 22.01.2005 and that the appellant was ready and willing to perform his obligations. It nonetheless held that the Agreement did not provide for enforcement of the Sale Deed through the process of law in the event of default, but only for the refund of the earnest money, and accordingly declined specific performance, decreeing instead recovery of Rs.9 lakh with interest at 9% per annum till institution of the suit, and *pendente lite* and future interest at 6% per annum till realisation.

JUDGMENT OF THE FIRST APPELLATE COURT

8. In appeal, the First Appellate Court, by judgment and decree dated 01.05.2012, affirmed that the appellant had proved execution of the Agreement through the scribe and attesting witnesses, found the respondent's version regarding the VISA arrangement implausible for want of any handwriting or documentary evidence and in view of the respondent's admitted signatures on all three documents, held that the appellant had discharged the burden of

proving his readiness and willingness. On the question of specific performance, it held that the mere absence of an express clause enabling enforcement through court did not bar the relief; that the Agreement, read with its extensions, disclosed a continuing intention of the parties to complete the sale of immovable property; and that time was not of the essence. It accordingly set aside the decree of the Trial Court and decreed specific performance in favour of the appellant.

JUDGMENT OF THE HIGH COURT

9. Aggrieved, the respondent preferred a Second Appeal. During its pendency, the Sale Deed was executed on 29.04.2013 in favour of the appellant in execution of the decree of the First Appellate Court, and possession of the subject property was delivered to him.
10. By judgment dated 08.02.2019, the High Court affirmed the concurrent findings of the courts below on execution of the Agreement to Sell, payment of earnest money, and the appellant's readiness and willingness. It nevertheless held that the appellant had suppressed, in the plaint, a separate transaction under which he had received Rs.3,00,000/-

from the respondent; that although this receipt was denied in the replication, the appellant admitted in cross-examination that a cheque of Rs.2,00,000/- drawn on the respondent's account was encashed on 11.03.2004 towards a loan not pleaded in the plaint; and that the repeated extensions of the date for execution of the Sale Deed, coupled with the absence of any clause for specific performance, indicated that the transaction was not genuine. On this basis, the High Court set aside the decree of the First Appellate Court and restored that of the Trial Court.

11. The appellant's subsequent review petition was dismissed by order dated 10.07.2019, the High Court finding no ground for review. These appeals impugn both the judgment dated 08.02.2019 and the order dated 10.07.2019.

SUBMISSIONS

12. Shri R.K. Kapoor, learned counsel for the appellant submitted that the Second Appeal had become infructuous upon execution of the Sale Deed and delivery of possession in execution of the First Appellate Court's decree; that the High Court erred in holding that the Agreement contained

no clause for enforcement of the Sale Deed through court; and that the finding attributing the payment to a travel arrangement was perverse, there being no agreement between the parties for payment of Rs.15.50 lakh. It was accordingly urged that the impugned judgment and order be set aside. In support of the abovesaid submissions, the reliance has been placed on the decisions of this Court¹.

- 13.** Ms. Nina R. Nariman, learned counsel for the respondent submitted that the execution proceedings remain subject to the outcome of the appeal and the plea that the Second Appeal had become infructuous was misconceived; that the construction of a document is a question of law bearing on the rights of parties; and that specific performance, being discretionary and equitable, required the court to weigh the conduct of parties, including suppression of material facts, and to balance the equities. Reliance was placed on the circumstances that the Agreement was intended only as security for facilitating the respondent's travel abroad, the appellant's suppression of the receipt of Rs.2,00,000/-, the joint ownership of the subject property with the

¹ **M.L. Devender Singh & Ors. v. Syed Khaja**, (1973) 2 SCC 515; **P. D'Souza v. Shondrilo Naidu** (2004) 6 SCC 649; **P.S. Ranakrishna Reddy v. M.K. Bhagyalakshmi and Anr.** (2007) 10 SCC 231, and **Man Kaur (Dead) by LRs. v. Hartar Singh Sangha**, (2010) 10 SCC 512

respondent's brother, and the unreasonably long and twice-extended timeline for execution of the Sale Deed, in support of the submission that the grant of specific performance would be inequitable and warranted no interference in appeal².

ANALYSIS

- 14.** We have considered the rival submissions and perused the record. At the outset, it must be noticed that the High Court did not itself disturb the concurrent findings of fact recorded by the Trial Court and the First Appellate Court on execution of the Agreement to Sell dated 22.06.2003 and its two subsequent extensions, or on the appellant's readiness and willingness to perform his part of the contract and payment of earnest money. Two questions, therefore, arise for consideration: first, whether, upon the facts so found, the appellant was entitled to a decree of specific performance; and second, whether the High Court was, in

² *Inderchand Jain (Dead) through LRs. v. Motilal (Dead) through LRs*, (2009) 14 SCC 663 at Para 29; *Chander Bhan (D) through LRs. Sher Singh v. Mukhtiar Singh & Ors.*, (2024) 13 SCC 122 at Paras 19 and 20; *Pankajakshi (Dead) through LRs. & Ors. v. Chandrika & Ors.*, (2016) 6 SCC 157 at Paras 25-27 (Constitution Bench); *Kirodi (Since Deceased) through LRs. v. Ram Parkash & Ors.*, (2019) 11 SCC 317 at Para 9; *Satyender & Ors. v. Saroj & Ors.*, (2022) 17 SCC 154 at Paras 15, 16; *Kannan (Dead) through LRs. & Ors. v. V.S. Pandurangam (Dead) through LRs. & Ors.*, (2007) 15 SCC 157 at Paras 7, 8; *Pankaj Bhargava & Anr. v. Mohinder Nath & Anr.*, (1991) 1 SCC 556 at Paras 9-12; *Chandrabhan (Deceased) through LRs. & Ors. v. Saraswati & Ors.*, 2022 SCC OnLine SC 1273 at Para 33; *Zarina Siddiqui v. A. Ramalingam*, (2015) 1 SCC 705 at Para 33; *T. Ravi & Anr. v. B. Chinna Narasimha & Ors. and Jayakantham & Ors. v. Abaykumar*, (2017) 5 SCC 178 at Para 7

any event, justified in law in disturbing the decree of the First Appellate Court on the other grounds assigned by it. We briefly address the governing framework of a second appeal which is well-settled before turning, in sequence, to each of these questions.

A. THE SCOPE OF INTERFERENCE WITH CONCURRENT FINDINGS OF FACT IN A SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE

15. It is trite law that First Appellate Court is the final court of fact and the High Court, in a Second Appeal cannot interfere with findings of fact merely because it would have arrived at a different conclusion on the appreciation of the same evidence; interference is permissible only where the findings are recorded without evidence, or by ignoring material evidence, or are otherwise vitiated by perversity. This test finds its origin in a decision of this Court rendered in 1962³ and was reaffirmed later⁴. Subsequently, the aforesaid principles have been reiterated in recent years to

³ **Sir Chunilal v. Mehta & Sons, Ltd. v. Century Spinning & Manufacturing Co. Ltd.;** AIR 1962 SC 1314

⁴ **Kondiba Dagadu Kadam v. Savitribai Sopan Gujar & Ors.;** (1999) 3 SCC 722

state that a finding of fact will not be disturbed unless it is vitiated for want of perversity⁵.

B. THE BAR OF SPECIFIC PERFORMANCE FOUNDED ON THE EARNEST MONEY CLAUSE

16. The decisive ground on which the High Court declined the decree for specific performance was the absence, in the Agreement to Sell, of an express clause providing for specific performance. The relevant clause reads thus:

“Both the parties would remain abide to get the sale deed executed on the date stipulated above and in case the sale deed could not be executed due to certain reason then first party would be bound to return the earnest money to the second party.”

17. The High Court construed this clause as conferring upon the respondent an option to walk away from the bargain upon refund of the earnest money, holding that the absence of an express stipulation enabling the appellant to enforce the Agreement through court rendered the remedy of specific performance unavailable to him. In our opinion, such a construction cannot be sustained, either on the plain terms of the clause or on the settled position of law.

⁵ **Jaichand (Dead) Through LRs. & Ors. v. Sahnulal & Anr., 2024 SCC OnLine SC 3864** and **Russi Fisheries P. Ltd. & Anr. v. Bhavna Seth & Ors., 2026 SCC OnLine SC 555**

- 18.** Section 23 of the Specific Relief Act, 1963, (the 1963 Act) which re-enacts in more explicit terms, the principle earlier contained in Section 20 of the Specific Relief Act, 1877, provides that a contract otherwise proper to be specifically enforced may be so enforced notwithstanding that a sum is named in it as payable in the event of breach, unless the court is satisfied, having regard to the terms of the contract and the attending circumstances, that the sum was named only to give the defaulting party an option of paying money in lieu of performance and not merely to secure performance.
- 19.** We may refer to the principles stated in Sir Edward Fry's "Treatise on the Specific Performance of Contracts"⁶ which have been held to be in consonance with the principles in Section 20 of the Specific Relief Act, 1877 and Section 23 of the 1963 Act which read as under:

“S. 141. The question always is, What is the contract? Is it that one certain act shall be done, with a sum annexed, whether by way of penalty or damages, to secure the performance of this very act? or is it that one of two things shall be done at the election of the party who has to perform the contract, namely, the performance of the act or the

⁶ Fry A Treatise on the Specific Performance of Contracts, Sixth Edition; Page Nos. 65 and 66

payment of the sum of money? If the former, the fact of the penal or other like sum being annexed will not prevent the Court's enforcing performance of the very act, and thus carrying into execution the intention of the parties:⁷ if the latter, the contract is satisfied by the payment of a sum of money, and there is no ground for proceeding against the party having the election to compel the performance of the other alternative.

S. 142 From what has been said it will be gathered that contracts of the kind now under discussion are divisible into three classes :-

- (i) Where the sum mentioned is strictly a penalty – a sum named by way of securing the performance of the contract, as the penalty in a bond;
- (ii) Where the sum named is to be paid as liquidated damages for a breach of the contract;
- (iii) 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.

Where the stipulated payment comes under either of the two first-mentioned heads, the Court will enforce the contract, if in other respects it can and ought to be enforced, just in the same way as a contract not to do a particular act, with a penalty added to secure its performance or a sum named as liquidated damages, may be specifically

⁷ **Howard v. Hopkins, 2 Atk. 371; French v. Macale, 2 Dr. & War. 269; Roper v. Bartholomew, 21 Pri. 797.**

enforced by means of an injunction against breaking it. On the other hand, where the contract comes under the third head, it is satisfied by the payment of the money, and there is no ground for the Court to compel the specific performance of the other alternative of the contract⁸. It will be convenient to consider the three classes of cases separately.”

- 20.** The said principles have been referred to with approval by this Court⁹ wherein this Court held that Section 23 of the 1963 Act contains a comprehensive statement of the principles governing construction of such clauses and if mere naming of a sum of damages or penalty were by itself sufficient to defeat the claim for specific performance of a contract for transfer of immovable property, the provision would be rendered wholly meaningless. It was reiterated that the mere naming of an amount which may sound in damages is not, by itself, sufficient to defeat a claim for specific performance unless it is clear on the facts that the sum was named in lieu of performance, and that a party in breach cannot resist specific performance merely on the

⁸ “There are.” Said Lord Bramwell, in *Legh v. Lillie*, 6 H. & N. 165, 171; 30 L. J. Ex. 25, 28, “three classes of covenants; first, covenants not to do particular acts, with a penalty for doing them, which are within the 8 & 9 Will. III. c. 11; secondly, covenants not to do an act, with liquidated damages to be paid if the act is done, which are not within the statute; and thirdly, covenants that acts shall not be done unless subject to a certain payment.”

⁹ M.L. Devender Singh & Ors. (supra)

ground that the agreement contains no express stipulation for that relief¹⁰.

- 21.** Tested on this touchstone, the clause in question does no more than provide that, in case the Sale Deed could not be executed for any reason, the respondent would be bound to refund the earnest money. There is neither any language of election, nor any stipulation entitling the respondent to discharge the bargain, at his option, by payment of any sum in lieu of executing the Sale Deed. The clause records no more than bare consequence flowing from non-execution of the Sale Deed; the stipulation for refund operates as a deterrent reinforcing the obligation to perform, and not as a substitute for it. It protects the purchaser's minimum entitlement in the event of default, without in any manner curtailing his right to insist upon performance. To hold otherwise would place a premium on the conduct of a respondent who received a substantial part of the consideration for immovable property and twice extended the time for execution of the Sale Deed – a construction that would defeat, rather than serve, the object of Section 23 of the 1963 Act. This, in our view, is the central infirmity in

¹⁰ **Kamal Kant Jain v. Surinder Singh (Dead) Through LRs.; (2019) 11 SCC 432**

the impugned judgment on the question of specific performance. Having answered this question, we turn next to whether the High Court was, in any event, justified in disturbing the concurrent findings of fact recorded by the Trial Court and the First Appellate Court.

C. THE HIGH COURT'S TRANSGRESSION OF THE LIMITS OF SECOND APPEAL

- 22.** It bears emphasis, at the very outset, that even the High Court did not disturb the concurrent findings of fact recorded by the Trial Court and the First Appellate Court on execution of the Agreement to Sell dated 22.06.2003 and its extensions dated 21.06.2004 and 21.07.2004, or on the appellant's readiness and willingness to perform his part of the contract. These findings, arrived at concurrently and affirmed by the High Court itself, must therefore be taken as conclusively established. Notwithstanding this affirmance, the High Court proceeded to rest its ultimate conclusion on a fresh appraisal of surrounding circumstances and inferences that ran counter to, and were unsupported by, the very findings it professed not to disturb. In our opinion, the High Court transgressed the limits of its jurisdiction

under Section 100 of the Code of Civil Procedure (CPC) discussed in Part A above, for the following reasons:

(i) Reappreciation of the Fraud Defence Despite Concurrent Findings to the Contrary

- 23.** The defence set up to the suit was, in substance, a plea of fraud, that the respondent's signatures were obtained on blank papers under the guise of a wholly different transaction relating to travel documentation, and that the Agreement to Sell was a fabrication superimposed upon those signatures. The Trial Court and the First Appellate Court, upon meticulous examination of the evidence of the scribe, the marginal witnesses, the stamp vendor and the lambardar, concurrently found that the Agreement and its extensions were executed by the respondent with full knowledge of their contents. It is significant that the respondent, who executed the documents in English, examined no handwriting or document expert to demonstrate that the body of the Agreement was superimposed upon signatures obtained on blank paper, nor did he explain how his signatures came to appear on three separate documents executed over a period exceeding three years. His admission of these signatures amounts, in

law, to an admission of the facts contained in the documents¹¹. The respondent, therefore, signally failed to establish the defence taken in the written statement. Despite this, and despite not upsetting this finding in terms, the High Court permitted the very suspicion underlying the discarded defence to colour its assessment of the transaction – an aspect it ought not to have revisited.

- 24.** In this connection, the High Court placed considerable emphasis on the appellant's suppression, in the plaint, of a separate transaction under which a cheque of Rs.2,00,000/- drawn on the respondent's account had been encashed on 11.03.2004, treating this omission as lending credence to the respondent's case that the Agreement was executed only as security for the travel arrangement. We are unable to accept this reasoning. While the respondent had, in his written statement, pleaded that cheques were issued to the appellant by himself and by his friends towards the alleged Rs.15,50,000/- travel transaction, he adduced no material connecting this particular cheque, either in point of quantum or of time, to the specific terms of that transaction as pleaded, namely an advance of Rs.3 lakhs, a further

¹¹ *Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt*, AIR 1966 SC 1697

Rs.3.50 lakhs by cheque, and the balance of Rs.9 lakhs upon approval of his visa. The appellant, for his part, explained the amount in cross-examination as a loan, an explanation that remained unrebutted on the record. Suppression of a collateral financial dealing between parties who admittedly had continuing dealings with one another may reflect on the completeness of the plaint and go to the credibility of the appellant on that peripheral matter, but it does not, without more, establish that the Agreement to Sell, itself proved through the unimpeached testimony of the scribe and the attesting witnesses, was a fabrication superimposed on blank signatures. An omission bearing on a collateral transaction cannot be permitted to do the work of positive proof of fraud that the respondent himself failed to discharge, particularly where the cheque relied upon was not shown to correspond to the structured terms of the very arrangement he had pleaded, and the High Court erred in allowing this circumstance to colour its view of the genuineness of the Agreement.

(ii) Suspicion Cast on the Genuineness of the Transaction Merely Because the Subject Matter was an Undivided Share

25. Nor could the mere fact that the subject matter of the Agreement was an undivided half share in a jointly owned property support an inference that the transaction was not genuine. A co-owner's undivided share in immovable property is a valid and marketable subject matter of transfer, and an Agreement to Sell such a share cannot be viewed with suspicion merely because the vendor's co-sharer brother was not made a signatory. It is well settled that a transfer of an undivided share is a legally recognised and enforceable transaction in its own right, the only consequence being that the transferee's remedy for actual enjoyment of the property lies in a suit for partition, and a consequence bearing upon the mode of enjoyment following the decree; has no bearing whatsoever on the genuineness or enforceability of the underlying Agreement to Sell¹². The High Court, in treating the joint ownership of the subject property as a circumstance casting doubt on the genuineness of the transaction, therefore fell into error, and assigned no cogent reason of its own for departing from this settled position.

¹² **Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh & Ors.**; AIR 1953 SC 487; **M.V.S. Manikayala Rao v. M. Narasimhaswami & Ors.**; AIR 1966 SC 470; and **Ramdas v. Sitabai & Ors.**; (2009) 7 SCC 444; AIR 2009 SC 2735

(iii) Mischaracterisation of the Extended Timeline as Indicative of a Sham Transaction

- 26.** Equally unsustainable is the interference that the time gap between the Agreement and the stipulated date for execution of Sale Deed, and the two extensions granted, indicated that the transaction was not genuine. In any event, the delay was not unreasonable: the date originally fixed as 22.06.2004 was extended, with the consent of parties, only to 22.01.2005 – a total period of barely seven months from the original date. There was, moreover, no material on record to substantiate the respondent's plea that the parties had entered into a separate transaction relating to his travel to the USA. Extensions of time granted by consent, without more, are wholly consistent with the genuineness of the transaction cannot, by themselves, found an interference to the contrary.

(iv) Absence of Any Finding of Perversity

- 27.** Finally, and most fundamentally, the High Court, in the face of these concurrent and well-reasoned findings, travelled well outside the confines of its jurisdiction under Section 100 of the CPC. It displaced the findings of the Trial Court and the First Appellate Court on the genuineness of the

transaction without adverting to the evidence on which those findings rested and without recording any finding of perversity – an exercise impermissible in law, for the reasons discussed in Part A above. The findings on execution of the Agreement, on the appellant's readiness and willingness, and on the falsity of the respondent's defence were pure findings of fact, unassailable in second appeal, and the High Court erred in reopening them without so much as characterising them as perverse.

CONCLUSION

- 28.** For the reasons recorded above, both as to the true construction of the earnest money clause and as to the limits of the High Court's jurisdiction under Section 100 of the CPC, we are of the considered opinion that the High Court erred in disturbing the judgment and decree of the First Appellate Court. The findings recorded by the Trial Court and the First Appellate Court that (i) the Agreement to Sell dated 22.06.2003 and its extensions dated 21.06.2004 and 21.07.2004 were validly executed by the respondent; (ii) the appellant was ready and willing to perform his part of the contract; and (iii) the defence of fraud setup by the

respondent was not established, stands restored. The clause requiring refund of earnest money in the event the Sale Deed could not be executed does not, on its true construction, operate as a bar to a decree for specific performance, nor does it furnish a ground on which such a relief can be declined.

- 29.** The judgment dated 08.02.2019 passed in RSA No. 3619 of 2012 (O&M) and Order dated 10.07.2019 passed in RA-RS No.87 of 2019 passed by the High Court are quashed and set aside. The judgment and decree dated 01.05.2012 passed by the First Appellate Court in C.A. No.0100204 of 2010 is restored.
- 30.** The appeals are accordingly allowed. There shall be no order as to costs.
- 31.** Pending application(s), if any, shall stand disposed of.

.....J.
[K.V. VISWANATHAN]

.....J.
[ALOK ARADHE]

**NEW DELHI;
JULY 14, 2026**