

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 8050-8051 OF 2022

V.S. Ramakrishnan ...Appellant(s)

Versus

P.M. Muhammed Ali ...Respondent(s)

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 21.02.2022 passed by the High Court of Kerala at Ernakulam in Regular First Appeal Nos. 686/2010 and 766/2010, by which, the High Court has dismissed RFA No. 766/2010 preferred by the appellant herein – original plaintiff and has partly allowed RFA No. 686/2010 preferred by the original defendant with respect to the proportionate cost, the original plaintiff has preferred the present appeals.

2. That the respondent herein – original defendant entered into an agreement to sell with the appellant – original plaintiff on 13.07.2005 for a consideration of Rs. 52,500/- per cent with respect to the property ad-measuring 9 acres 47.41 cents in Re-Survey No. 35/2/1 of Karukutty Village. Under the said agreement to sell a sum of Rs. 1 crore was paid by the appellant to the defendant towards earnest money of which Rs. 65 lakhs were paid in cash and Rs. 35 lakhs were in the form of post-dated cheque dated 25.08.2005. As per the terms of the agreement to sell the last date fixed for payment of the balance sale consideration was 12.01.2006. The post-dated cheque of Rs. 35 lakhs deposited by the defendant came to be dishonoured/returned for the reasons “payment stopped by attachment order”. At this stage, it is required to be noted that there was a raid conducted by the Income Tax Department and the bank account of which the post-dated cheque of Rs. 35 lakhs, was drawn came to be attached by the IT Department. The cheque was returned by the bank vide return memo dated 31.08.2005. The defendant through his advocate served a notice upon the plaintiff

drawing the attention of the plaintiff with respect to the return/dishonour of the post-dated cheque vide notice dated 02.09.2005. According to the plaintiff immediately the same was replied on 20.09.2005 and offered to pay the amount of Rs. 35 lakhs in cash which according to the plaintiff the defendant refused to accept the same. The defendant was also called upon to accept Rs. 35 lakhs in cash and the plaintiff was prepared to handover cash. That thereafter vide notice dated 23.09.2005 the defendant terminated the agreement to sell/contract and forfeited Rs. 10 lakhs and called upon the plaintiff to take back an amount of Rs. 55 lakhs. That thereafter vide notice dated 18.10.2005 the plaintiff replied to the termination notice dated 23.09.2005 and called upon the defendant to accept the balance sale consideration within the agreed period i.e., on or before 12.01.2006. That thereafter the plaintiff served a legal notice dated 03.01.2006 and called upon the defendant to execute the sale deed after accepting balance sale consideration. The defendant was called upon to inform the plaintiff the date on which he has to pay the balance sale consideration and to execute the sale deed. As

the defendant failed to act as per the legal notice dated 03.01.2006. The appellant – original plaintiff instituted a suit before the learned Trial Court for specific performance of agreement to sell dated 13.07.2005. The defendant filed the written statement repudiating the contract. The learned Trial Court framed the following issues: -

- “1. Whether the plaintiff is entitled to a decree of specific performance as sought for?
2. Whether the plaintiff is entitled to return of advance paid and if so its quantum?
3. Reliefs and costs.”

2.1 It was the case on behalf of the defendant that as there was a default on the part of the plaintiff, not acting as per the terms and conditions of the agreement to sell as the balance amount of Rs. 35 lakhs was not paid as the post-dated cheque dated 25.08.2005 was returned and therefore, the defendant was justified in terminating the contract. The defendant also denied receipt of the reply to the notice dated 23.09.2005. Both, plaintiff as well as the defendant led the evidence both, documentary as well as oral. The plaintiff also produced on record the income tax returns for the relevant periods. The plaintiff also produced on record the statements of bank accounts (A-

12) of himself as well as of related persons. That thereafter the learned Trial Court dismissed the suit qua the relief sought for specific performance of agreement to sell dated 13.07.2005 by observing that the plaintiff was never in possession of the balance consideration of about Rs. 3 crores and 9 lakhs and therefore, it can be said that there was no readiness and willingness on the part of the plaintiff. However, the learned Trial Court granted a partial decree of return of the advance i.e., Rs. 65 lakhs with interest of 6% per annum from 13.07.2005 till realization and also his proportionate cost of the suit.

2.2 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Trial Court refusing to pass the decree of specific performance of the agreement to sell dated 13.07.2005, the plaintiff preferred RFA No. 766/2010 before the High Court. The defendant also filed RFA No. 686/2010 challenging the order of cost imposed by the learned Trial Court. By the impugned common judgment and order the High Court has dismissed the appeal preferred by the appellant – original plaintiff and has allowed the appeal preferred by the defendant by

observing that as the post-dated cheque of Rs. 35 lakhs which was paid towards part sale consideration was returned therefore full payment towards part sale consideration was not made and therefore there was no concluded contract between the parties for sale of the suit property. By observing so, thereafter the High Court has observed once there was no concluded contract between the parties for sale of the suit property, the question whether there was readiness and willingness on the part of the plaintiff to pay the balance sale consideration does not arise for consideration.

2.3 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court the plaintiff has preferred the present appeals.

3. We have heard Shri V. Chitambaresh learned Senior Advocate appearing on behalf of the appellant and Shri Joseph Kodianthara learned Senior Advocate appearing on behalf of the defendant. We have also gone through and considered the findings recorded by the learned Trial Court as well as the High Court.

4. The High Court has non-suited the appellant – original plaintiff on the ground that as the post-dated cheque of Rs. 35 lakhs was returned which was towards part sale consideration and tendering the worthless post-dated cheque cannot be said to be tendering the payment and therefore, there was no concluded contract between the parties. By observing so, the High Court has refused to go into the aspect of the readiness and willingness on the part of the plaintiff. However, it is required to be noted that at the time when the post-dated cheque of Rs. 35 lakhs was tendered the same cannot be said to be worthless cheque. The post-dated cheque of Rs. 35 lakhs returned by the bank was with an endorsement i.e., “payment stopped by attachment order” as there was a raid conducted by the IT Department and the bank account was attached and therefore, the post-dated cheque was returned. At this stage, it is required to be noted that the cheque was not returned for the reasons of insufficient funds in the bank account. Therefore, the observation made by the High Court that the post-dated cheque was worthless cheque and tendering such worthless cheque cannot be said to be

a payment towards part sale consideration cannot be accepted. We do not approve such observations/reasoning given by the High Court.

- 4.1 Now the findings and the reasoning given by the learned Trial Court refusing to pass a decree for specific performance is concerned it appears that though there was no specific issue framed by the learned Trial Court on readiness and willingness on the part of the plaintiff, the Trial Court has given the findings on the same and has non-suited the plaintiff by observing that the plaintiff was not having sufficient funds to make the full balance consideration on or before 12.01.2006. Such a finding could not have been given by the learned Trial Court without putting the plaintiff to notice and without framing a specific issue on the readiness and willingness on the part of the plaintiff. There must be a specific issue framed on readiness and willingness on the part of the plaintiff in a suit for specific performance and before giving any specific finding, the parties must be put to notice. The object and purpose of framing the issue is so that the parties to the suit can lead the specific evidence on the

same. On the aforesaid ground the judgment and order passed by the learned Trial Court dismissing the suit and refusing to pass the decree for specific performance of the agreement to sell confirmed by the High Court deserves to be quashed and set aside and the matter is to be remanded to the learned Trial Court to frame the specific issue with respect to the readiness and willingness on the part of the plaintiff. On remand the parties be permitted to lead the evidence on the readiness and willingness on the part of the plaintiff to perform his part of the contract, more particularly, whether the plaintiff was ready and willing to pay the full consideration and whether the plaintiff was having sufficient funds and/or could have managed the balance sale consideration.

5. In view of the above and for the reasons stated above the present appeals succeed in part. The impugned common judgment and order passed by the High Court and the judgment and decree passed by the learned Trial Court dismissing the suit preferred by the plaintiff for specific performance of the agreement to sell are hereby quashed and set aside. The matter is remitted back to the learned

Trial Court to decide and dispose of the suit afresh in accordance with law and on merits. The learned Trial Court is directed to frame the specific issue on the readiness and willingness on the part of the plaintiff to perform his part of the contract and thereafter, the parties may be permitted to lead the evidence on readiness and willingness on the part of the plaintiff to perform his part of the contract and thereafter, the learned Trial Court to decide and dispose of the suit on merits and on the basis of the evidence that may be led. The aforesaid exercise be completed by the learned Trial Court on remand within a period of twelve months from the date of receipt of the present order. Both, these appeals are accordingly allowed to the aforesaid extent. In the facts and circumstance of the case there shall be no order as to costs.

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

NEW DELHI;
NOVEMBER 09, 2022

.....J.
[M.M. SUNDRESH]