

SMT DEOKABAI

v.

UTTAM

JULY 27, 1993

[MADAN MOHAN PUNCHHI AND YOGESHWAR DAYAL, JJ.]

Specific Relief Act, 1963 : Agreement to sell immovable property—Terms of agreement providing execution of sale deed after obtaining permission of Competent Authority and seller getting suitable alternative accommodation—Difficulty in getting alternative accommodation—Effect of—Doctrine of Frustration—Whether applicable—Whether seller obliged to part with the property by effecting the sale.

Interpretation of Deeds & Documents—Terms of a document—To be read as a whole—Taking out a term in isolation—Giving it a meaning torn from the context could lead to wrong interpretation.

In January, 1979, the appellant entered into an agreement with the respondent for sale of a portion of her house, the important terms of the agreement being that the appellant would get the necessary permission of the sale from the Competent Authority and after that when she would get another suitable house, she would get the sale deed registered in the name of the respondent. The appellant accordingly obtained permission from the Competent Authority in May, 1979. On 9.7.1979, respondent sent a notice to the appellant requiring her to get the sale deed registered in his favour on the same day and to remain present in the Office of the Registrar for the said purpose. Since the appellant failed to do so, the respondent filed a suit for specific performance. The alternative claim of the respondent was for return of the earnest money of Rs.5000 with interest. The Trial Court held that the respondent was entitled to the relief of specific performance.

On appeal, a Single Judge of the High Court negatived the claim for specific performance but decreed the suit for the refund of Rs.5000 along with interest @ 8% per annum. On further appeal, a Division Bench of the High Court decreed the suit for specific performance. However, it affirmed the view of the Single Judge that the term in the agreement regarding the appellant getting another suitable house was not a condition precedent to

A the execution of the sale. Aggrieved by the said judgment, the appellant preferred the present appeal, which is confined to the interpretation of the said term in the agreement.

B On behalf of the respondent, it was contended that whatever be the alleged cause of frustration, a contract could not be discharged under the doctrine of frustration when a contract became onerous merely because of the difficulty to perform the same was onerous.

Allowing the appeal, this Court

C HELD : 1. It is well settled that the terms of a document have to be read as a whole. Taking out a term in isolation and giving it a meaning torn from the context may tend to lead to a wrong interpretation causing injustice. [413-A]

D 2. In the instant case it is clear that the parties had appreciated and recognised the appellant's need to have another suitable house and that there could arise a difficulty on that score in transferring the house if a suitable house could not be available within a reasonable time. Such an important term, specifically included had a positive safeguarding meaning. [413-E-F]

E 3. No frustration as such is involved when the parties are put to observe what they were required to under the contract. Viewed in this context, close to the heels of the permission granted by the Competent Authority the respondent could not have unabashedly hounded the appellant to execute the sale deed, knowing fully well her need to obtain another suitable accommodation, ignoring her difficulty on that account. Such conduct of the respondent was highly objectionable and unreasonable, disentitling him to seek relief of specific performance for sale of the house in question. The respondent in the situation, could not straightway ask the appellant in to specifically perform the contract unless he initially had put the appellant to notice to seek and get another suitable accommodation within a reasonable time within which it could reasonably be available. G Such a notice obviously could be given only after the grant of permission by the Competent Authority to sell the house, because in the event of non-grant of permission the search for another suitable accommodation would have become unnecessary. [419-F-H; 415-A]

H 4. In the facts and circumstances, the two terms afore-referred to

bore a important contingencies, i.e., the appellant getting a suitable accommodation before she could be asked to specifically perform the contract of sale and in case of a genuine difficulty arising, to opt for returning the earnest money with interest. Thus, the appellant cannot be obliged to part with her property by effecting a Sale in favour of the respondent. [415-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4249 of 1986.

From the Judgment and Order dated 29.7.1986 of the Bombay High Court in L.P.A. No. 169 of 1983.

Rajeev B. Masodkar and R.P. Wadhwani for the Appellant.

S.B. Wad, Ms. J.S. Wad and Manoj Wad for the Respondent.

The Judgment of the Court was delivered by

PUNCHHI, J. This appeal is directed against the judgment and decree dated July 29, 1986 passed by a Division Bench of the Nagpur Bench of the Bombay High Court in Latters Patent Appeal No. 69 of 1983 arising in First Appeal No. 125 of 1982.

The appellant herein Deokabai is an aged widow residing in a portion of a house with her daughter and grand children. On 18.1.79 she entered into an agreement to sell that portion of the house in her possession with Uttam, the respondent. The total sale consideration was fixed at Rs. 48,000 out of which Rs.5,000 was paid to her as earnest money. The agreement for sale was reduced to writing. It contained an important term to the following effect (as translated by us, the original being in Hindi):-

"Before registration of the sale deed of this house in your name, permission of the competent authority, Nagpur, is necessary. Therefore, I shall immediately take steps to obtain the permission. After the date of getting the permission from the competent authority, when I would get another suitable house then I would get the sale deed of this house registered in your name."

In appears that on 19.1.79, the day following the day of the execution of the agreement, she entered into another agreement for sale pertaining to the other portion of the house with one Jayanti Lal Shah and later

- A executed a sale deed, registered in his favour. So far as the present agreement for sale was concerned, she, took the step of applying for necessary permission to the Competent Authority, Nagpur on March 3, 1979. The requisite permission for selling the house was granted to her in the month of May, 1979. On 9.7.79, a notice was sent by the respondent to the appellant requiring her to get the sale deed executed and registered in his favour on 9.7.1979 and to remain present in the office of Registrar at 11 a.m. Since the appellant failed to turn up at the appointed time and place and the respondent allegedly had taken all steps necessary towards completion of the sale deed, like purchase of stamp papers and buying of drafts of money, he filed a suit for specific performance on July 26, 1979.
- C The respondent firstly prayed for a decree for specific performance and possession of the property in dispute, but in the alternative claimed return of the earnest money of Rs.5,000 with interest in case specific performance was not allowed

- D Before the trial court, the important point which rose for consideration was whether the term afore-translated of obtaining a suitable house was a condition on the fulfilment which lay the contingency of parting the property by way of sale. The trial court took the view that the respondent was entitled to relief of specific performance. First Appeal No. 125 of 1982 preferred by the appellant before the High Court was allowed by a learned Single Judge on October 26, 1983 dismissing the claim for specific performance, but decreeing the suit alternatively for the refund of Rs. 5,000 along with interest at the rate of 8% per annum. Being aggrieved, the respondent filed Letters patent Appeal before a Division Bench of the High Court which resulted in decreeing the suit for specific performance. The ground on which the learned Single Judge has allowed the First Appeal of the appellant were essentially compassionate, such as the appellant being a widow, her 45 years old son having died in the recent past and her living with her daughter and grand children in the house in question which was her sole property. The learned Single Judge did not agree with the appellant that the afore-extracted term of the contract bore a contingency. The Letters Patent Bench upset the judgment and decree of the learned Single Judge based as it was on compassionate and not on legal grounds, but otherwise affirmed the view of the learned Single Judge that the term afore-referred to did not contain any condition requiring fulfilment before which the appellant was required to execute the sale. The appeal before us is confined to the interpretation of the said term.

It is well settled that the terms of a document, like the present one, have to be read as a whole. The document as translated, though wrongly at certain places, figures at pages 45 to 47 of the paper book. Taking out a term in isolation and giving it a meaning torn from the context may tend to lead to a wrong interpretation causing injustice. The term afore-extracted is followed by a term which may lend some colour to the construction. That is (is translated by us from Hindi):-

"The entire cost of registration of the sale deed of this house shall be borne by you. In case there is any complication or difficulty in getting the sale deed of this house registered in your name or in case it becomes legally impossible for me to get the sale deed of this house registered in your name, then I shall pay back to you this amount of Rs. 5,000 with interest thereon. I shall not put forth any excuse for the same."

Three situations are conceived of in this term, which may obviate the sale. One is that there could be any complication in getting the sale deed of the house registered in the name of the vendee. The other is that there could be a *difficulty* in getting the sale deed of the house registered in the name of vendee. The third one conceived is that it could become legally impossible to get the sale deed registered. The *difficulty* in getting the sale deed of the house registered was *ex facie* clear as the appellant was asked to execute the sale deed at a time when she had not obtained another suitable accommodation, the respondent overlooking her need to get another suitable house for accommodating her and her family members. Such an important term, specifically included, was not mere roughage to swell the the document. It had a positive safeguarding meaning. These were not empty words. The conduct of the respondent in these circumstances becomes material to be examined before his is accepted.

It is worthwhile to recount that permission to sell the house was granted to the appellant in the month of May, 1979. Within a few weeks, hurriedly the appellant was served with a notice dated 9.7.79 requiring her to execute the sale deed totally overlooking her need to get need to get another house, on failing to put her to notice that she was required to search for and get a suitable house within a reasonable time. Such course could be suggested to her by the respondent, showing his concern and willingness. Strangely rather, she was required to come to the office of

- A Registrar ten days later, i.e. on 19.7.79 to execute the sale deed. Since the respondent had not required of the appellant to search for a house, she rightly in her reply dated 9.7.79 did not feel obliged on her own to seek time from of the respondent to obtain another suitable house. She rightly ventured otherwise to resist the claim of the respondent for specific performance. A suit then was filed by the respondent on 26.7.79. So all the event took place in a hurried manner from May to July, 1979. In this situation, the appellant cannot be attributed any conduct of neglect in not searching for another suitable house within a reasonable time. At the same time it cannot be lost sight of that Nagpur being a populous town, where admittedly rent control legislation was operative, accommodation could not easily be had by purchase or lease on the mere asking and it normally was expected to take some time, which the parties to the agreement necessarily must have been conscious of. It is in this context the two terms afore-referred to were required to be read together and interpreted for they carried a suitable meaning in so far as the transfer of the house by way of sale was concerned. It is more than clear that the parties had appreciated and recognised the appellant's need to have another suitable house and that there could arise a *difficulty* on that score in transferring the housing if a suitable house could not become available within a reasonable time. In that situation, it was stipulated that the sum of Rs.5,000 paid as earnest money would be returned with interest.

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- Mr. J.S. Wad, learned counsel appearing for the respondent, relying on Paragraph 455 of the Fourth Edition of Halsbury's *Laws of England*, Vol. 9, contended that whatever the alleged cause of frustration, a contract is not discharged under this doctrine when contract becoming is onerous merely because of the difficulty to perform is onerous. We can hardly see the applicability of this principle to the present set of facts. Here no frustration as such is involved when the parties are put to observe what they were required to under the contract. Viewed in the context, close to the heels of the permission granted in May, 1979, how could the respondent unabashedly hound the appellant to execute the sale deed, knowing fully well her need to obtain another suitable accommodation ignoring her difficulty on that account. Such conduct of the respondent, as it appears to us, in the peculiar facts and circumstances of this case, was highly objectionable and unreasonable, disentitling him to seek relief of specific performance for sale of the house in question. The respondent, in the situation, could not straightway ask the appellant to specifically perform

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the contract unless he initially had put the appellant to notice to seek and get another suitable accommodation within a reasonable time within which if could reasonably be available in the town of Nagpur. Such a notice obviously could be given only after the grant of permission to sell by the Competent Authority, Nagpur, because in the event of non-grant of permission the search for another suitable accommodation would have become unnecessary. Thus we are of the view that in the facts and circumstances, the two afore-referred to bore important contingencies, i.e. the appellant getting a suitable accommodation before she could be asked to specifically perform the contract of sale and in case of a genuine difficulty arising to opt for returning the earnest money with interest. She cannot, in the present set of facts, be obliged to part with her property by effecting a sale. A B C

Resultantly, this appeal is allowed. The judgment and decree of the Letters Bench is set aside and that of the learned Single Judge restored, keeping decreed the suit of the respondent alternatively to the grant of refund of Rs.5,000 with interest at the rate of 8% calculable from 18.1.79 till payment or recovery. In the circumstances, there shall be no order as to costs. D

G.N.

Appeal allowed.