

1 SPL.C.S.No.951/2012
Govindapagari Rao & Ors. Vs. Sharad R. Khanapurkar

Received on : 24.07.2012
Registered on : 24.07.2012
Decided on : 17.04.2017
Duration : 4Ys.8Ms.24Ds.

IN THE COURT OF JOINT CIVIL JUDGE, SENIOR DIVISION,
PUNE, AT PUNE
[Presided over : By P. R. Ashturkar]

SPL.C.S.NO.951/2012
EXH.NO.57

- 1] **Mr. Govindapagari Madhav Rao**
Age – 36 years, Occ – Service & Agriculture,
R/at – Row House 4, Manjri Greens Phase I
Manjri, Pune – 412 307.
- 2] **Mr. Vijay Radheshyam Khandelwal**
Age – 41 years, Occ – Service & Agriculture,
R/at – Flat No. 604, Block 'O',
Magarpatta City, Pune 411 013.
- 3] **Mr. Mayur Vaniawala**
Age – 36 years, Occ – Service & Agriculture,
R/at – M-901, Grevillea, Magarpatta City,
Pune – 411 013.
- 4] **Mr. Vineet Saxena**
Age – 40 years, Occ – Service & Agriculture,
R/at – A-704, Daffodils, Magarpatta City,
Pune – 411 013.

.. Plaintiffs.

Versus

Mr. Sharad Ramchandra Khanapurkar
Age – 54 years, Occ – Business,
R/at – C-23, Shriram Heights,
MIT College Road, Rambaug Colony Road,
Paud Road, Kothrud, Pune – 411 038.

.. Defendant.

SUIT FOR RECOVERY OF
CONTRACTUAL AMOUNT
OF RS.12,32,000/-

APPEARANCES :-

Shri. K. V. Agarwal, advocate for plaintiffs.

Shri. R. G. Londhe, advocate for defendant.

J U D G M E N T
[Delivered on 17.04.2017]

This is a suit for recovery of contractual amount of Rs. 12,32,000/-.

2] Facts of the suit, in nut-shell, are as under,

The plaintiffs in the month of May, 2009 came across an advertisement on Internet regarding land for sale at village Dhavadi, Tal-Bhor, Dist-Pune. They contacted one Ashwin Kochar, whose phone number was given in the said advertisement. Shri. Kochar and Shri.Jitendra Phadke were working as agents of the defendant. Thereafter, plaintiffs and defendant through the said agent Shri. Kochar had discussions and they agreed upon sale of land situated in Bhor Taluka. At the time of discussion, the defendant assured that, he can sell developed agricultural land to the plaintiffs. It was mutually agreed between them that, the plaintiffs would purchase two acres land each @ Rs. 2,20,000/- per acre. The total consideration was decided to the tune of Rs. 17,60,000/-. Accordingly, they entered into an agreement of Memorandum of Understanding on 25.07.2009. It was notarized before advocate Achyut Gospurkar. At the time of agreement, each

plaintiff paid Rs.2,20,000/- and thus, in all Rs. 8,80,000/- were paid to the defendant by various cheques. The details of payment are as follows,

Plaintiff No.1 – Mr. Govindapagari Madhav Rao

Rs. 1,10,000/-	Cheque No. 484754, dated 25.07.2009, Corporation Bank Ltd. New Delhi Branch.
Rs. 1,10,000/-	Cheque No. 484755, dated 02.08.2009, Corporation Bank Ltd. New Delhi Branch.
Rs. 88,000/-	Cheque No. 379780 dated 15.01.2010 Indian Bank 'C' block Janakpuri, New Delhi.

Plaintiff No.2 – Mr. Vijay Radheshyam Khandelwal

Rs. 1,00,000/-	Cheque No. 372324 dated 25.07.2009 ICICI Bank Ltd. Shivajinagar, Pune Branch.
Rs. 1,20,000/-	Cheque No. 372325 dated 05.08.2009, ICICI Bank Ltd. Shivajinagar, Pune Branch.
Rs. 88,000/-	Cheque No. 954532 dated 18.01.2010, ICICI Bank Ltd. Shivajinagar, Pune Branch.

Plaintiff No.3 – Mr. Mayur Vaniawala

Rs. 2,20,000/-	Cheque No. 936558 dated 25.08.2009, ICICI Bank Ltd. Shivajinagar, Pune Branch.
Rs. 88,000/-	Cheque No. 10046 dated 18.01.2010, ICICI Bank Ltd. Shivajinagar, Pune Branch.

Plaintiff No.4 – Mr. Vineet Saxena

Rs. 1,00,000/-	Cheque No. 422276 dated 25.07.2009 HDFC Bank Ltd. Pune Branch.
Rs. 1,20,000/-	Cheque No. 422277 dated 05.08.2009 HDFC Bank Ltd. Shivajinagar, Pune Branch.

Rs. 88,000/-	Cheque No. 425430 dated 15.01.2010, HDFC Bank Ltd. Shivajinagar, Pune Branch.
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3] Different terms and conditions were incorporated in the Memorandum of Understanding and both the parties agreed to abide the same. After the execution of Memorandum of Understanding the plaintiffs again paid Rs. 88,000/- each to the defendant. Despite regular payments, all of a sudden, in the month of May,2010, the defendant approached to the plaintiffs and shown his inability to complete the transaction as per Memorandum of Understanding dated 25.07.2009. He stated that, he was unable to do the task as he was facing some problem in purchasing agricultural land from the farmers in the village Dhavadi. Due to the inability of the defendant, they discussed issue elaborately and three options were given to the defendant. The options were :-

- (a) To purchase other land nearby in the vicinity at a new cost.**
- (b) Shift to the project at Velhe at new cost &**
- (c) The defendant would refund entire amount accepted by him to the plaintiffs.**

At that time, it was decided between the parties that, the defendant would refund back the amount of Rs. 3,08,000/- to each plaintiff and the Memorandum of Understanding dated 25.07.2009 would stand canceled after the receipt of money. It is further submitted that, believing the words of the defendant, plaintiffs waited for the refund of the amount of Rs. 12,32,000/-. However, the defendant

did not stick to his own words and tried to delay the refund, by making some excuses. Thereafter, all of a sudden, the defendant sent termination notice dated 27.09.2010 to the plaintiffs no.1 and 4. Due to the issuance of notice by defendant, plaintiffs were constrained to sent notice through their advocate. Accordingly, notice dated 03.11.2010 was sent. The defendant received notice but failed to comply requirements. The plaintiffs also filed police complaint in Kothrud Police Station. The plaintiffs were always ready and willing to perform their part of contract. But, the defendant always avoided the same on one pretext or other. He failed to perform his part of contract. As the defendant is willful defaulter of the repayments, present suit came to be filed. It is lastly prayed that, suit be decreed in terms of prayer clause.

4] The defendant appeared and resisted the suit by filing written statement at Exh.16. At the outset, it is submitted that, the suit is frivolous, illegal and untenable in the eye of law. The execution of Memorandum of Understanding and receipt of payment is admitted. However, it is denied that, the defendant is liable for repayment of the amount. It is submitted that, the plaintiffs have conveniently avoided reference of clause 7 in the Memorandum of Understanding dated 25.07.2009. The plaintiffs were supposed to make payment to the defendant, as per the terms mentioned in clause 4(b) of Memorandum of Understanding, failing which, defendant was at liberty to terminate the agreement and forfeit the amount paid by the plaintiffs. The plaintiffs failed and neglected to obey the terms and conditions of the Memorandum of

Understanding and thus committed breach. They have no right to claim any relief from the defendant. The defendant never agreed or promised to refund the amount to the plaintiffs, and therefore, it is prayed that, the suit be dismissed with costs.

5] In view of pleadings of plaintiffs and defendant, my Learned Predecessor have framed issues at Exh.19 and I have recorded my findings thereon for the reasons given below,

Sr. No.	ISSUES	FINDINGS
1	Does plaintiff prove that, he is entitled to claim refund of Rs. 12,32,000/- from the defendant ?	.. In the negative.
2	Whether plaintiff is entitled for interest @18% p. a. ?	.. In the negative.
3	Does defendant prove that, plaintiff had committed breach of terms of MOU ?	.. In the affirmative.
4	Whether the defendant is entitled to terminate MOU and forfeit the amount paid ?	.. In the affirmative.
5	What order and decree ?	.. As per final order.

REASONS

6] Heard advocate for the defendant.

7] Advocate for the plaintiffs filed written argument. It is admitted that, the Memorandum of Understanding dated

25.07.2009 was executed between plaintiffs and defendant. Part payment of Rs. 3,08,000/- by each plaintiff to the defendant is admitted. Two exactly contrary submissions are coming from both parties, despite admission regarding execution of Memorandum of Understanding and payment. On the either hand, the plaintiffs are claiming refund of amount paid by them for failure of the defendant, to deliver the land as promised. On the other hand, the defendant has come up with the stand that, the plaintiffs utterly failed to abide the terms and conditions of the contract, and thus, he is not liable to pay anything to the plaintiffs. In this backdrop, now, it would be necessary to see as to whether plaintiffs have put forth sufficient evidence to substantiate their claim.

8] The plaintiffs and defendant have examined one witness each in support of their claim. The four identical documents styled as “Memorandum of Understanding” (Exh. 36 to 39) are duly proved. The plaintiffs have also relied and proved certain documents including notices, reply notice, bank statements, which are discussed at appropriate stage here-in-after.

AS TO ISSUE NO.1 :-

9] Plaintiff's witness Mayur Vaniawala deposed at Exh.23. His entire evidence is in consonance with the plaint. In the cross-examination, he admitted that, at the time of discussion, no specific location of the land was finalized. He also admitted that, as per clause no. 7 of the Memorandum of Understanding, the defendant

was having right to terminate the agreement and he has sent letter of termination to the plaintiffs. Thus, the evidence of plaintiff's witness is more or less in resemblance with admitted fact.

10] On this point, by way of written argument, it is submitted on behalf of plaintiffs that, they have paid about 60% amount of total consideration to the defendant. Despite acceptance of the huge amount, the defendant did nothing as promised and agreed, as per the said Memorandum of Understanding. Thus, the defendant being defaulter is now liable to repay the amount with interest.

11] Per contra, it is argued on behalf of defendant that, the suit is hit as per section 29 of the Contract Act, because agreement itself is ambiguous and not enforceable. There is no description, Survey Number, even four boundaries to identify any land as referred by the plaintiffs. In absence of any specific description, the agreement or terms therein can not be enforced. It is also argued that, the plaintiffs utterly failed to make payment as per the schedule mentioned in para 4(a) of the Memorandum of Understanding. Due to their failure, the defendant rightly terminated the contract. Even there is not a single term mentioned in the contract, as to what would be the consequences, in case of failure of the defendant to provide suitable land, and thus, the suit is untenable.

12] Looking to the argument, now, it is necessary to adjudicate the issue considering two different limbs of argument.

[i] As to maintainability of the suit considering provisions contemplated under section 29 of the Contract Act.

[ii] Terms and conditions of the agreement and its abidance by the parties.

13] While considering the maintainability, it is necessary to reproduce section 29 of the Contract Act. This section deals with the ambiguous contract and its consequences. It contemplates that,

“Agreements, the meaning of which is not certain or capable of being made certain, are void.”

In other words, if the terms of contract are vague and uncertain, the contract itself would be void and unenforcible. It would be at this stage, thus necessary to go through the document styled as **“Memorandum of Understanding”**. cursory perusal of the document would make explicitly clear that, the contents in the documents are very vague and general. The opening line of the document clearly shows that, on the day of execution of document, no any property as such was in existence. It is mentioned in the document that, the defendant had decided to purchase some agricultural land from the farmers of the village Dhavadi. He would develop the said agricultural land, so purchased. He would prepare road, facilitate sufficient water supply and light/electricity provision in the land. After or before development of such purchased land, it would be sold out to the prospective purchasers. It is further mentioned in the document that, the plaintiffs have

decided to purchase certain portion of the land from allegedly developed land. In para (d), it is mentioned that, the defendant will sell and plaintiffs will purchase **“developed agricultural land of village Dhavadi”**.

14] From perusal of every single line, it is crystal clear that, the document bears nothing except uncertainty, vagueness and general submissions. On the day of execution of document, neither plaintiffs nor defendant were certain as to what is on the stake. The defendant was planning to purchase some land, then to develop it and put it for sale. The plaintiffs were then planning to purchase such imaginary developed land from the defendant. The contents are nothing but figuring out certain things in the open sky. Neither party was certain about the land or its existence. The parties have eventually agreed to sell and purchase an illusory land, which was unidentified and not in existence till the date of execution of document. This must be the reason as to why the plaintiffs have not filed suit for specific performance. The plaintiffs are well aware that, they have gambled on the unidentified property. They have chosen to purchase risk by entering into an agreement with the defendant based upon uncertain and unidentified land. The entire agreement is thus squarely falls within the ambit of section 29 of the Contract Act. The contents of the agreement are not at all capable of rendering any certain meaning, and thus, the suit based on such agreement itself is void.

15] This takes me to the another limb of argument. The

defendant specifically submitted that, the plaintiffs themselves failed to abide the terms and conditions and especially payment clause mentioned in para 4(b) of the Memorandum of Understanding. If the contents of para 4(b) of the Memorandum of Understanding are considered, then, the payment clause shall be as follows,

Proposed Payment Schedule

Percentage	Date	Amount
20%	25 th September, 2009	Rs. 44,000/-
20%	25 th November, 2009	Rs. 44,000/-
20%	25 th January, 2010	Rs. 44,000/-
40%	25 th May, 2010	Rs. 88,000/-

If the aforesaid table is considered, then, the required payment and its dates are easily evident. Now, it would be necessary to consider the evidence adduced by the plaintiff in that behalf. At the cost of repetition, it is once again necessary to mention here that, the document and its contents are admitted to both the parties. However, the evidence of the plaintiff regarding payment schedule gives fatal blow to their own theory.

16] It can be seen that, after the previous payment of Rs. 2,20,000/-, the plaintiffs have paid Rs. 88,000/- each to the defendant on 15.01.2010 and 18.01.2010 respectively. The plaintiffs no.1 and 4 paid Rs. 88,000/- on 15.01.2010, whereas plaintiffs no.2 and 3 paid Rs. 88,000/- each on 18.01.2010. However, as per payment schedule, the payment should have been

made on 25.09.2009, 25.11.2009, 25.01.2010 and 25.05.2010. Needless to say, the payment schedule is not strictly followed by the plaintiffs themselves. The averment in the plaint or evidence to that effect is altogether silent. The plaintiffs could have easily explain or justify this fact. However, on this crucial aspect also, the plaintiffs opt to keep mum for the reasons best known to them. Thus, it is crystal clear that, the plaintiff themselves failed to make payment, as per the payment schedule and terms and conditions of the Memorandum of Understanding. They even failed to justify such default.

17] The things do not come to an end here and here only. The plaintiffs have utterly failed to justify the allegations made against defendant, regarding his incapability too. In the plaint, para 8, 9 and 10, the plaintiffs tried to put forth theory of incapability of the defendant. It is averred that, in the month of May 2010 (month of 'full and final payment' as per the payment schedule), the defendant approached to the plaintiffs and told them that, he was unable to complete the transaction. Thereafter, they sat down for talks and at that time, defendant gave them three different options. Thereafter, the defendant agreed to refund them an amount of Rs. 3,08,000/- each. Though, all the aforesaid facts are very generally averred in the plaint, the pleading is silent regarding date, time or place of such meeting between the parties. Nonetheless, the evidence to that effect is also very general and do not **contain any such transaction.**

18] The plaintiff's witness also very candidly admitted in cross-examination that, there is no written instrument/document in between plaintiffs and defendant regarding alleged three options mentioned in para 7 of the examination in chief. This is sufficient enough to conclude that, the theory of incapability of the defendant, three options given by the defendant and acceptance by the defendant to repay the amount, is nothing but an imaginary plot. Had any such meeting even took place, the plaintiffs would have certainly furnished details thereof mentioning approximate time, day, month and place of such meeting. Admittedly, nothing of such sort took place, and therefore, no specifications are either averred or proved with cogent evidence.

19] From the discussions of aforesaid para, it is now crystal clear that, the agreement itself is not enforceable being void. The plaintiffs themselves failed to strictly abide the payment schedule. Theory of meeting and proposal by the defendant to repay the amount is nothing but an imaginary plot. In such situation, the plaintiffs are not at all entitled for the claim of refund of Rs. 12,32,000/- from the defendant. Hence, I answer Issue No.1 in the negative.

AS TO ISSUE NO.2 :-

20] In view of finding given to Issue No.1, the plaintiffs are not entitled for any refund from the defendant. As such, there is no question of entitlement of interest on such amount by the plaintiff.

Therefore, I answer Issue No.2 in the negative.

AS TO ISSUE NO.3 :-

21] As per payment clause 4(b) of the Memorandum of Understanding, the plaintiffs were required to make payment strictly as per the payment schedule. The plaintiffs have utterly failed to do so. Thus, I hold that, defendant proved that, the plaintiffs had committed breach of terms of Memorandum of Understanding. Hence, I answer Issue no.3 in the affirmative.

AS TO ISSUE NO.4 :-

22] In view of contents in clause 7 of the Memorandum of Understanding, the defendant was entitled for termination of Memorandum of Understanding, in certain contingency. He was also entitled for forfeiture of the amount paid. The plaintiff's witness have also admitted this fact in the cross-examination. So also, the defendant has rightly issued termination notice to each plaintiff, but, they utterly failed to give reply despite due service. Once that is so, the defendant is entitled for termination of the Memorandum of Understanding and forfeiture of the amount.

23] While arguing on this point, the plaintiffs have shown their reliance on case law, Fateh Chand Vs. Balkishan Dass reported in AIR 1963, Supreme Court, 1405. However, if the facts of the case law relied SUPRA are seen, then, they are altogether different from

the case at hand. Even otherwise, the submission regarding reduced penalty is put forth by the plaintiffs for the first time during argument only. It is neither pleaded in the plaint nor any evidence to that effect is given by the plaintiff. It is not at all the case of the plaintiffs that, in case, the Court comes to the conclusion that, the plaintiffs have failed to abide the terms and conditions, then, in that case, the penalty or damage shall be restricted up to certain extent.

24] As already discussed for the first time, by way of argument, plaintiffs are trying to put forth such contentions of restricted damages or penalty. As the plaintiffs themselves failed to abide the conditions, the defendant, in terms of clause 7 of the Memorandum of Understanding is entitled for termination of Memorandum of Understanding and forfeiture of the amount paid. Therefore, I answer Issue No.4 in the affirmative.

25] In sequel, I pass the following order.

ORDER

1] Suit stands dismissed with costs.

2] Decree be drawn up accordingly.

[Dictated and pronounced in open Court]

Date – 17.04.2017.

[P. R. Ashturkar]
Jt. Civil Judge, S. D. Pune.

I affirms that, the contents of the P. D. F. file Judgment are same word for as per original Judgment.

Name of Steno	Sou. C. N. Jagtap
Court Name	P. R.Ashturkar Jt. Civil Judge, S. D. Pune.
Date	17.04.2017
Judgment signed by Presiding Officer on	08.05.2017
Judgment uploaded on	08.05.2017