

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 353 OF 2007

KULWINDER SINGH

APPELLANT (s)

VERSUS

MOHAN SINGH (DEAD) THR. LRS. & ANR.

RESPONDENT (s)

O R D E R

This appeal challenges the correctness and validity of the judgment dated 25.8.2006 passed by the High Court in the Letters Patent Appeal (LPA) which was preferred by the respondents herein challenging the judgment of the learned Single Judge of the High Court in RFA No. 1388 of 1997. The litigation between the parties originated by filing a suit for specific performance by the appellant herein which was decreed by the Trial Court. Against the said decree, respondents had preferred the First Appeal, which was dismissed by the learned Single Judge upholding the decree passed by the Trial Court. Since, at that time, intra Court appeal was permissible in the form of LPA, the aforesaid LPA was filed by the respondents which has been allowed by the High Court thereby reversing the judgments of the learned Single Judge as well as of the Trial Court and dismissing the suit for specific performance filed by the appellant.

Few facts which require to be mentioned at this stage are:

The respondents agreed to sell 2/3rd of the share in land measuring 5 kanals 17 marlas in a house, in kothi no. E.H. 183 situated at Civil Lines, Link Road, Jalandhar, vide an agreement dated 26.8.1989, and

consideration fixed for the aforesaid transaction entered into between the parties was of Rs.23,50,0000/. According to the contract, out of the said consideration, a sum of Rs. 4,00,000/- was paid to the respondents on the date of the agreement. Another sum of Rs. 1,00,000/- was paid on 16.09.1989. The agreement also mentions that the sale deed would be executed by 25th March, 1990 when the balance consideration would be paid by the appellant to the respondents. At the time of the registry of the said sale deed, since the defendant-respondents had to obtain income tax clearance certificate to enable them to execute the sale deed and this obligation was specifically stated in the agreement and as there was some delay in getting the said clearance, the last date of the registration of the sale deed was extended upto 31.07.1990. Thereafter, the date was further extended upto 1.10.1990 for the second time. The appellant got some apprehension that the respondents were ignoring the agreement of sale between the parties and were intending to dispose of the said property to some third party. A suit for permanent injunction was filed by the appellant on 11.08.1990. In the suit, the appellant also preferred application for an interim injunction under Order II Rule 2 of the Code of Civil Procedure, 1908, (hereinafter referred to as, 'CPC'). The interim injunction was initially granted and later vacated on 09.11.1990, on which date the appellant-plaintiff had sought permission to withdraw the application filed under Order II Rule 2 of CPC with the liberty to file suit for specific performance. This liberty was granted while dismissing the suit as withdrawn on 9.11.1990. Thereafter, within 10 days, suit for specific performance was filed by the appellant against the defendant-respondents on 20.11.1990. In the plaint, the appellant narrated the aforesaid facts and further stated that he was ready and willing to perform his part of the contract, but there

was a refusal to do so on the part of the respondents-defendants which gave cause of action to the appellant to file the said suit. The respondents in their written statements took number of pleas on the basis of which suit was contested in the first instance. It was stated that though the execution of the agreement was not denied, in the circumstances it was stated that at the time of the entering into the agreement, a sum of Rs. 1,00,000/- only was paid and not Rs.4,00,000/- as stated by the appellant. The respondents have also denied that the time to execute the sale deed was extended upto 1.10.1990. It was also pleaded by the respondents that the appellant was not ready and willing to perform his part of the contract and on this behalf it was specifically averred in the written statement that the appellant-plaintiff did not have sufficient money to pay the balance consideration. On the basis of the pleadings, the Trial Court framed as many as nine issues. Issue no. 2, which is vital for the disposal of this appeal, may be referred, which was to the following effect:-

"Whether the plaintiff has always been ready and willing to perform his part of the agreement."

It is clear from the above that specific issue was framed as to whether the plaintiff/appellant had always been ready and willing to perform his part of the agreement. As the suit has been filed by the appellant, the onus was on the appellant to prove the aforesaid issue.

The appellant led the evidence in support of the case by examining three witnesses. The defendants rebutted and examined two witnesses. The Trial Court decided the issue in favour of the appellant and decreed the suit. It was held that the appellant has in fact paid a sum of Rs.4,00,000 and not Rs.1,00,000 as contended by the respondents. It was also argued that the date of

execution of the sale deed was in fact extended upto 1.10.90. These findings have attained finality and, therefore, we have to proceed on the basis of the aforesaid facts.

As mentioned above, the core issue about the dispute between the parties is Issue no. 2. The Trial Court traced the events that occurred and have stated in brief, that the last date of performance was extended upto 1.10.1990; before that date, suit for permanent injunction was filed on 11.08.1990 seeking respondents herein not to sell the property in any manner to any third party and after withdrawing the suit on 9.11.1990, suit for specific performance was filed immediately thereafter that is on 20.11.1990. These facts, according to the Trial Court, are sufficient to show the readiness and willingness on the part of the appellant to perform his part of the agreement. The first Appellate Court while affirming the decree of the Trial Court agreed and gave the same reasoning. The High Court, however, while reversing the findings on the aforesaid issue stated that mere filing of the suit by the appellant was not sufficient to indicate his willingness and readiness to perform the contract. It was also necessary for him to produce cogent evidence to show that the appellant has sufficient money to pay the balance consideration, as pointed out above. Total consideration agreed to the sale of the said property was 23,50,0000/-. Even if, Rs.5,00,000 have been paid, the balance amount of sale deed is yet to be paid. It is a matter of record that no evidence was led by the appellant to show that he had sufficient balance in his bank account and money readily available and was at his disposal to pay the said consideration. On this basis the High Court has come to the conclusion that the plaintiff/appellant had not discharged the onus by leading any evidence to the effect that he had sufficient money.

Mr. Mahavir Singh, learned Senior Advocate, appearing for the appellant submitted that finding of facts was recorded by the Trial Court and upheld by the first Appellate Court on Issue No. 2 proving the readiness and willingness of the appellant and the High Court in exercise of its power in LPA should not have interfered on these findings. It was submitted that though the High Court even under LPA has a right to examine the facts as well as laws, but the power is severely restricted and the High Court is supposed to exercise the same under very limited circumstances i.e. only when it is shown that the findings of the Courts below are perverse and not based on any cogent material. In support of the submission, learned senior advocate referred to the judgments of this Court in "B.Venkatamuni v. C.J. Ayodhya Ram Singh & Ors", [(2006) 13 SCC 449] and "Gopal Swaroop v. Krishna Murari Mangal & Ors", [(2010) 14 SCC 266] which read as under:-

"11. In an intra-court appeal, the Division Bench undoubtedly may be entitled to reappraise both questions of fact and law, but the following dicta of this Court in Umabai v. Nilkanth Dhondiba Chavan could not have been ignored by it, whereupon the learned counsel for the respondents relied (SCC P.261 Para 52):

'52. It may be, as has been held in Asha Devi v. Dukhi Sao that the power of the appellate court in intra-court appeal is not exactly the same as contained in Section 100 of the Code of Civil Procedure but it is also well known that entertainment of a letters patent appeal is discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the learned Single Judge. Even as notice hereinbefore, a court of first appeal which is the final court of appeal on fact may have to exercise some amount of restraint.'

12. In the said decision, it was further noticed: (SCC p.261, Para 50)

"50. Yet in Manjunath Anandappa v. Tammanasa it was held:(SCC p.403, para 36)"

'36. It is now also well settled that a court of appeal should not ordinarily interfere with the discretion exercised by the courts below.'"

Gopal Swaroop's Case

"11. In a letters patent appeal arising out of an order passed by a Single Judge hearing a civil second appeal the Division Bench of the High Court would not re appreciate the evidence to record a finding of fact. That is because the Single Judge cannot himself do so in the light of the limitation placed upon the Court by Section 100 CPC. That may not, however, be true when the Single Judge passes an order in a first appeal filed before him. Even when the finding of fact recorded by the Single Judge may affirm the finding recorded by the trial court, there is no express bar to the examination of ant such finding by the Division Bench of the High Court hearing the letters patent appeal. Having said so, we must hasten to add that even in the absence of any legal bar to the examination of a finding of fact, a Letters Patent Bench will be slow in interfering with the concurrent finding of fact recorded by the trial court and the Single Judge in the first appeal. The Court may interfere where the finding is demonstrably erroneous, in that it is either irrational or perverse, being without any evidence. The jurisdiction exercised by the Court being discretionary ought to be exercised along judicial lines (See Asha Devi v. Dukhi Sao and B. Venkatamuni v. C.J. Ayodhya Ram Singh.)"

We do not find any substance in the aforesaid submission of the learned Senior Advocate for the appellant. As already pointed out above, a specific plea was raised by the respondents in their written statement disputing the

readiness and willingness on the part of the appellant to perform his part of the obligations under the agreement and it was more specifically pleaded that the appellant did not have sufficient fund to meet these obligations. It was a suit filed by the appellant for specific performance and, therefore, the burden of proving the aforesaid issue was clearly upon the appellant. Merely filing a suit would not prove that plaintiff was ready and willing to perform his part. If this is so, then such an issue would not arise at all and in all such cases suit would be filed by the plaintiff as pointed out above. Merely filing of the suit by the plaintiff/appellant was treated as his willingness and readiness by the Trial Court as well as by the first Appellate Court. This approach of the Trial Court and the first Appellate Court was manifestly erroneous and contrary to law. In order to show his willingness in support of Issue no. 2, it was incumbent upon the appellant to give satisfactory evidence of having sufficient money in order to pay the balance consideration. No such evidence was at all led. When the evidence was found to be perverse it was open to the High Court even in the LPA to interfere with the same.

We, thus, do not find any error in the judgment of the High Court and dismiss this appeal with costs.

.....J.
[A.K. SIKRI]

.....J.
[R.K. AGRAWAL]

NEW DELHI;
FEBRUARY 16, 2017

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 353/2007

KULWINDER SINGH

Appellant(s)

VERSUS

MOHAN SINGH (DEAD) THR. LRS. & ANR.

Respondent(s)

Date : 16/02/2017 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE R.K. AGRAWALFor Appellant(s) Mr. Mahavir Singh, Sr. Adv.
Mr. Rishi Malhotra, Adv.

Mr. Prem Malhotra, Adv.

For Respondent(s) Mr. Subhasish Bhowmick, Adv.

Mr. Neeraj Kumar Jain, Adv.

Mr. Siddharth Jain, Adv.

Mr. Sanjay Singh, Adv.

Mr. Ugra Shankar Prasad, AOR

Mr. Vineet Bhagat, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(LAYA RAWAT)

SR.P.A.

(Signed order is placed on the file)

(MALA KUMARI SHARMA)

COURT MASTER