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SLP(C)No. 11188 OF 2000
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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2352 OF 2002@@
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(Arising out of SLP(C) No. 11188 OF 2000)

Velayudhan Sathyadas .. Appellant

Vs.

Govindan Dakshyani .. Respondent

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Leave granted.

A suit was filed by the respondent for specific performance in respect of the property measuring about 21 cents which was agreed to be sold for Rs.3150 at the rate of 150 per cent under an agreement dated 9.8.1982.

The trial Court on the basis of the pleadings placed before it raised the following issues:

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1. Is the suit not maintainable?
2. Is the Karar set up in the plaint true?
3. Whether the defendant has received any amount as advance from the plaintiff?
4. Whether the plaintiff has got a cause of action against the defendant?
5. Whether the plaintiff is entitled to reliefs claimed in the plaint?
6. Reliefs and costs?

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The Trial Court answered the issues framed in favour of the plaintiff and decreed the suit. On first

appeal filed, the First Appellate court examined the matter and affirmed the decree passed by the Trial Court. On a second appeal, the High Court, while affirming the findings recorded by the courts below, found that it was a fit case in which discretion as provided under Section 20 of the Specific Relief Act (hereinafter referred to as 'the Act') ought to have been exercised and a decree only in terms of the Section 21(3) of the Act could have been made.

The grievance made in this appeal is that when no plea had been raised by either of the parties in terms of Section 20 of the Act and when the courts below had come to the conclusion that the agreement had been proved, the

decree granted by the courts below was justified and the High Court ought not to have interfered with the same on certain grounds which are not clearly spelt out to invoke Section 20 of the Act.

Learned counsel for the respondent submitted that when on the facts available on record it was possible to draw an inference, one way or the other, in terms of Section 20 of the Act, it was certainly open to the High Court to have reached such a conclusion and granted a limited relief as indicated above. Learned Counsel for

the respondent relief upon two decisions of this Court in Gaikwad Vs. Savjibhai Haribhai Patel and Ors. 2001(6) SCC 101 and A.C. Arulappan Vs. Ahalya Nain (Smt.) 2001 (6) SCC 600.

The High Court after explaining the legal position in relation to Section 20 of the Act stated as follows :

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"On an advertence to the materials referred to by the lower appellant Court in its judgment and the failure of the plaintiff to properly explain some of the circumstances surrounding the alleged transaction. I am of the view that this is a fit case where the discretion ought not to be exercised in favour of the plaintiff. I am satisfied that this is a case where the plaintiff should be given only a decree for recovery of the advance paid by him at the time of entering into the agreement for sale and some compensation in lieu of specific performance as provided by Section 21(2) of the Specific Relief Act. I think that a sum of Rs. 1000 would be the reasonable compensation in lieu of specific performance in terms of Section 21(2) of the Specific Relief Act in addition to the grant of a decree for return of the advance with interest at 10% per annum."

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It is clear that mere establishment of the facts that the agreement for sale had been entered into is not sufficient to grant a decree for specific performance and if the circumstances as indicated in Section 20 of the Act, exist in a particular suit, the court ought to certainly exercise its discretion in favour of the defendant and give lesser or limited relief to the plaintiff as indicated in Section 21 of the Act.

Therefore, in the present case while the High court referred to certain aspects rather vaguely without clearly setting out what those aspects are, the order of the High Court cannot be sustained.

We think the appropriate course the High Court should have adopted is to set aside the decree made by the Trial Court as affirmed by the First Appellate Court and remitted the matter to the Trial Court for fresh consideration insofar as this aspect of the matter is concerned. Now we follow that course by setting aside the decree made in second appeal modifying the decrees of the courts below and remit the matter to the Trial Court for fresh consideration only on this aspect of the matter. The findings recorded on all other issues shall remain undisturbed. The appeal shall stand dismissed partly as above.

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(Meenu Sethi)

Court Master

(Om Prakash)

Court Master

Signed order is placed on the file