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C.A.No. 2246 OF 1998
ITEM NO.101(PH)

COURT NO.9

SEC -XI

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 2246 OF 1998@@
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Ram Niwas Gupta Appellant(s)

VERSUS

Mumtaz Hasan & Ors. Respondent(s)

(With office report)

DATE : 16-1-2002: This matter was called on for hearing today.@@
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CORAM:

HON'BLE MR. JUSTICE D.P. MOHAPATRA
HON'BLE MR. JUSTICE P. VENKATARAMA REDDI

For Appellant(s): Mr. E.C. Agrawala, Adv.,
Mr. Mahesh Agarwal, Adv.,
Mr. Rishi Agarwal, Adv.,
Mr. Alok Kr. Agrawal, Adv.,
Mr. Ashwini Kumar, Adv.,
Mr. Vivek Yadav, Adv.

For Respondent(s): Mr. R.C. Srivastava, Sr. Adv.,
Mr. Gaurav Jain, Adv.,
Ms. Abha Jain, Adv.

UPON hearing counsel the Court made the following

O R D E R

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Mr. E.C. Agrawala, learned counsel appearing for the appellant made his submissions from 2.00 p.m. to 2.15 p.m. Thereafter Mr. R.C. Srivastava learned senior counsel for the respondent argued upto 2.25 p.m.

The appeal is allowed in the terms of the signed order. No costs.

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(R.K. Dhawan) (S. Malkani)
Court Master Courtt Master

(Signed order is placed on the file) ~

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2246 OF 1998

Ram Niwas Gupta ... Appellant

Vs.

O R D E R

The plaintiff in the suit for specific performance of the agreement of sale of immovable property filed this appeal assailing the judgment passed by the Allahabad High Court in F.A.No.486 of 1980 in which the High Court set aside the judgment of the trial court, decreed the suit in part and granted the alternative relief sought in the plaint for refund of the consideration paid and awarded a sum of Rs.5000/- with interest as damages to the plaintiff. The High Court declined to grant the plaintiff's prayer for specific performance of the agreement of sale.

The appellant filed the Suit No.123 of 1978 in the Court of Civil Judge, Saharanpur on 1.6.1978, seeking a decree of specific performance of the agreement of sale of the suit property or in the alternative for a decree for refund of the consideration money and damages of Rs.5000/- and other consequential reliefs.

The case of the plaintiff shortly stated is that he had entered into an agreement with the defendant on 10th of January, 1975 for sale of the suit property in his favour for a consideration of Rs.31,350/- with the stipulation inter alia that the defendant will take steps for obtaining permission for sale of the property under the Urban Land (Ceiling and Regulations) Act, 1978 and on obtaining such permission will intimate the plaintiff and after receipt of such intimation the plaintiff will take steps for payment of the balance consideration money and for execution of the sale deed within five months. The further case of the plaintiff was that though he was all along ready and willing to perform his part of the contract the defendant on the plea of pendency of proceeding before the Authority under the Act delayed execution of the document and subsequently declined to execute the sale deed.

The case of the defendant, shorn of unnecessary details, is that she obtained permission for sale of the suit property on 18th of December, 1975, thereafter she approached the plaintiff for execution of the sale deed which the plaintiff failed to comply and subsequently informed her that he was not interested in purchasing the property.

On the pleadings of the parties, the trial court framed six issues including,

(i) whether the plaintiff was ready and willing to perform his part of the contract since the date of contract and on the date of the suit? (ii) Whether the defendant committed breach of the agreement of sale in respect of the property in dispute?

The trial court answered these issues and other relevant issues in favour of the plaintiff and decreed the suit for specific performance of contract. In the appeal filed by the defendant, the High Court reversed the judgment of the trial court and declined relief of specific performance of contract solely on the ground of unexplained delay. The court took the view that there was no justification shown for the delay on the part of the plaintiff in filing the suit after such a long lapse of time and therefore the relief of specific performance of contract could be denied to him, though the suit was filed

within the period of limitation. However, the High Court, granted the alternative relief of refund of the consideration paid and for damages of Rs.5,000/-. Hence this appeal by the plaintiff.

It is not disputed before us that the question of delay is a relevant consideration in a suit for specific performance of a contract of sale of immovable property. The court is to consider the question while taking a decision on the point whether the relief of specific performance of the contract of sale should be granted to the plaintiff. In this connection we may notice the decision of this Court in K.S.Vidyanadam and & ors. vs. Vairavan, 1997 (3) SCC 1, and Motilal Jain vs. Ramdasi Devi (Smt.) and others, 2000 (6) SCC 420 in which this Court observed :

"The first ground which the High Court took note of is the delay in filing the suit. It may be apt to bear in mind the following aspects of delay which are relevant in a case of specific performance of contract for sale of immovable property :

(i) delay running beyond the period prescribed under the Limitation Act;

(ii) delay in cases where though the suit is within the period of limitation, yet;

(a) due to delay the third parties have acquired rights in the subject-matter of the suit;

(b) in the facts and circumstances of the case, delay may give rise to plea of waiver or otherwise it will be inequitable to grant a discretionary relief. Here none of the above-mentioned aspects applies. That apart factually also, the High Court proceeded on an incorrect assumption with regard to cause of action, Ext.2 was executed on 20-2-1977 and under it the sale deed was to be executed on or before 19-7-1977. The last notice was issued on 26-11-1978 and from that date the suit was filed only after nine months and not after more than a year as noted by the High Court. Therefore on the facts of this case the ground of delay cannot be invoked to deny relief to the plaintiff."

On perusal of the judgment of the trial court, it is clear that the court neither framed a specific issue on the question of delay nor discussed the question whether on the materials on record it can be held that delay defeats the relief of specific performance which was sought by the plaintiff. The High Court has also not discussed the question in the judgment. The High Court while deciding the first appeal should have considered the entire case, both on facts and the points of law. In the case in hand it was all the more necessary since the trial court had not dealt with the question and the High Court felt persuaded to accept the contention raised by the defendant on that score. Therefore the judgment of the High Court is vitiated on this count.

Then the question arises what is the relief which can appropriately be granted to the appellant in this appeal. It is our considered view that the High Court should frame an issue whether there has been unexplained delay on the part of the plaintiff in taking recourse to law in filing suit (though it is filed within the prescribed period of limitation) and whether on facts and in the circumstances

of the case such delay defeats the relief of specific performance of the contract for sale of the suit property and call for the finding of the trial court on the issue and on receipt of the same decide the first appeal afresh after giving opportunity of hearing to the parties. It goes without saying that the trial court will give opportunity to the parties to adduce further evidence in the case on the newly framed issue and record its finding on the question.

Accordingly the appeal is allowed, the judgment of the High Court which is under challenge is set aside and the matter is remanded to the High Court for disposal on the terms afore- stated. No costs.

.....J.
(D.P. MOHAPATRA)

.....J.
(P.VENKATARAMA REDDI)

New Delhi
January 16, 2002