

Subhash Maini Vs. Nathi Ram and Another

Subhash Maini Vs. Nathi Ram and Another

SooperKanoon Citation : sooperkanoon.com/951827

Court : Allahabad

Decided On : Mar-19-2012

Judge : Rajes Kumar

Appeal No. : Second Appeal No. 274 of 2012

Appellant : Subhash Maini

Respondent : Nathi Ram and Another

Judgement :

In the present appeal, the appellant is challenging the order dated 19.01.2012 passed by Additional District and Sessions Judge, Kairana, Muzaffarnagar, by which Civil Appeal No.101 of 2011 filed by the appellant and appeal no.98 of 2011 filed by Kareshan have been dismissed and the order of the trial court dated 17.08.2011 has been affirmed.

Brief facts of the case are that the respondent nos.1 and 2 entered into an agreement to sell dated 21.07.2004 in respect of property in dispute. The respondent no.2 filed suit no.201 of 2004 for the cancellation of agreement to sell. The respondent no.1 filed suit no.35 of 2005 for specific performance. It appears that during the pendency of the aforesaid suits, the respondent no.2 has executed the sale deed of the property in dispute on 17.02.2006 in favour of the appellant. By impleadment application, the appellant has been impleaded as defendant no.2. Both the suits have been connected and decided by order dated 17.08.2011. The

suit no.35 of 2005 filed by respondent no.1 has been decreed and suit no.201 of 2004 filed by the respondent no.2 for the cancellation of agreement to sell has been dismissed. Against the order of the trial court, the appellant as well as Kareshan filed the appeals, which have been dismissed by the impugned order. Hence the present appeal.

Learned counsel for the appellant submitted that during the pendency of the appeals, both the respondent nos.1 and 2 colluded and the respondent no.2 filed the compromise application. The appellate authority has decided the appeals on the basis of the aforesaid compromise and also on merit. He submitted that under Section 16 (c) of Specific Relief Act, 1963 the specific performance of contract can not be entered in favour of the person if he fails to prove that he has performed or has always been ready and willing to perform essential terms of the contract, which are to be performed by him. Order VI Rule 3 provides the form of pleadings in Appendix "A". Appendix "A" Form No.47 is form for specific performance.

Learned counsel for the appellant submitted that in the case of Ram Singh and others Vs. Sughar Singh, reported in 2010 (6) AWC, 6331, the learned Single Judge of this Court has held that plaintiff has to plead and prove his readiness and willingness to perform his part of contract. Pleading only readiness is not a compliance of mandatory provisions of Section 16 (c). The willingness is necessary to be pleaded. In the absence of such pleading, the suit for specific performance can not be decreed.

He further submitted that the burden lies upon the plaintiff to prove his case and in the present case the plaintiff failed to prove his case. There is no pleading of willingness in the plaint.

I do not find any substance in the argument of learned counsel for the appellant.

Section 16 (c) of the Specific Relief Act, 1963 read as follows:

"16. Personal bars to relief:

(a)

(b)

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.”

Section 16 (c) of Specific Relief Act, 1963 came up for consideration before the Apex Court in the case of Syed Dastagir Vs. T.R. Gopalakrishnasetty, reported in JT 1995 (5) SC, 642. The Apex Court held as follows:“So whole gamut of issue raised is, how to construe a plea specially with reference to section 16(c) and what are the obligations which the plaintiff has to comply with reference to his plea and whether the plea of the plaintiff could not be construed to conform to the requirement of the aforesaid Section, or does this section require specific words to be pleaded that he has performed or has always been ready and is willing to perform his part of the contract. In construing a plea in any pleading, Courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, some times vague but still could be gathered what he wants to convey through only by reading the whole pleading, depends on the person drafting a plea. In India most of the pleas are drafted by counsels hence aforesaid difference of pleas which inevitably differ from one to other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. But to test, whether he has performed his obligations one has to see the pith and substance of a plea. Where a statute requires any fact to be pleaded then that has to be pleaded may be in any form. Same plea may be stated by different persons through different words then how could it be constricted to be only in any particular nomenclature or word. Unless statute specifically require for a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of “Readiness and willingness” has to be in spirit and substance and

not in letter and form. So to insist for mechanical production of the exact words of an statute is to insist for the form rather than essence. So absence of form cannot dissolve an essence if already pleaded.”

Apex Court in the case of Motilal Jain Vs. Smt. Ramdasi Devi and others, reported in JT 2000 (8) SC, 59 held as follows:

“That decision was relied upon by a three Judges Bench of this Court in Syed Dastagir's case (supra), wherein it was held that in construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to other; thus, to gather true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed, “Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) of The Specific Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract.” So the compliance of “readiness and willingness” has to be in spirit and substance and not in letter and form. It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfil his part of obligations under the contract which is subject-matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit of specific performance of contract for sale.”

Apex Court in the case of Mst. Sugani Vs. Rameshwar Das and another, reported in AIR, 2006 SC, 2172 while dealing with Section 16 (c) of the Specific Relief Act, 1963 held as follows:

“The basic principle behind Section 16 (c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that

his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.”

In the case of Azhar Sultana Vs. B.Ramamani and others, reported in 2009 (2) ARC, 370: 2009 (2) AWC 1546 (SC), it has been clearly laid down that Section 16 (c) of the Act postulates continuous readinesses and willingness on the part of the plaintiff and it is condition precedent for obtaining a decree of specific performance of a contract.

The Supreme Court in the case of Bal Krishna and another Vs. Bhagwan Das and others, reported in 2008 (2) ARC 893: 2008 (2) AWC 1760 (SC), reiterated that compliance of requirement of Section 16 (c) of the Act is mandatory and in its absence the suit of specific performance cannot succeed. It further lays down that the first requirement under Section 16 (c) of the Act is that the plaintiff must aver in the plaint his readinesses and willingness to perform his part of the obligation under the agreement and thereafter to prove those averments made in the plaint.

In Abdul Khader Rowther Vs. P.K.Sarabai and others, reported in AIR 1990 SC 682, their Lordships of the Supreme Court dealing with an identical situation concerning a suit for specific performance in relation to the nature of pleading and evidence held that where there are no pleadings in accordance with Forms 47 and 48 of Appendix A. C.P.C. that the plaintiff was willing to specifically perform his part, he was not entitled for equitable relief of a decree of specific performance.

In another case Uma Bai and another Vs. Nil Kanth Dhondiba Chavan and another, 2005 (2) ARC 129: 2005 (3) AWC 2948 (SC), the Supreme Court while considering the mandatory requirement under Section 16 (c) of the Act held that in terms of Forms 47 and 48 contained in Appendix A of the C.P.C. the plaintiff must plead that “he has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has notice” or “the plaintiff is still ready and willing to pay the purchase money of the said property to the defendant.”

In the case of Ouseph Varghese Vs. Josph Aley, reported in 1969 (2) SCC, 539, the Apex Court had observed as under:

“..... A suit for specific performance has to conform to the requirements prescribed in Forms 47 and 48 of the 1st Schedule in the Civil Procedure Code. In a suit for specific performance it is incumbent on the plaintiff not only to set out agreement on the basis of which he sues in all its details, he must go further and plead that he has applied to the defendant specifically to perform the agreement pleaded by him but the defendant has not done so. He must further plead that he has been and is still ready and willing to specifically perform his part of the agreement. Neither in the plaint nor at a subsequent stage of the suit the plaintiff has taken those pleas. As observed by this Court in Pt. Prem Rai Vs. D.L.F. Housing and Construction (Private Ltd.) Civil Appeal No.37/66, decided on 4.4.1968, AIR 1968 SC 1355, that it is wellsettled that in a suit for specific performance the plaintiff should allege that he is ready and willing to perform his part of the contract and in the absence of such an allegation the suit is not maintainable.”

In the present case readiness and willingness has been expressed in the plaint.

In para 5 of plaint, following has been pleaded:-

“LANGUAGE”.

The aforesaid averment clearly shows the readiness as well as willingness by the plaintiff to comply with the terms and contract of the agreement. The trial court has recorded the finding that in the agreement to sell 31.01.2005 was fixed for the execution of the sale deed. In para 6 of the plaint it is stated that on several occasions within the stipulated time, the plaintiff requested the defendant for the execution of the sale deed after payment of balance amount. Thereafter, through the Advocate by registered post a letter was sent on 11.01.2005 to the defendant no.1 for the execution of the sale deed. In the said notice, it was requested to come on the seat of Ashok Kumar, Judgment Writer on 31.01.2005 and to execute the sale deed after taking the balance amount. He reached along with balance amount on the seat of the said Judgment Writer on the said date but the defendant

did not come. The plaintiff thereafter registered his attendance in the office of Sub-registrar, Kairana. No contrary material has been placed by the defendant to controvert the aforesaid pleading. On the aforesaid pleading it has been held that there was readiness as well as willingness on the part of the plaintiff to comply the terms of agreement to sell. The plaintiff completely proved his case. The appellate authority by the impugned order has affirmed the order of the trial court.

The case of Ram Singh and others Vs. Sughar Singh (Supra) does not apply in the present case. In the said case pleading was -

“LANGUAGE”

On the aforesaid averments, it was held that there was no pleading of willingness. While in the present case pleading of willingness is there and reading of the plaint in totality also established the willingness to comply the terms of agreement.

On the facts and circumstances, I am of the view that no substantial question of law is involved in the present appeal.

The appeal fails and is accordingly, dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com