

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4827 OF 2017

(Arising out SLP (C) No. 26881 of 2010)

MANOHARAKUMARI

Appellant(s)

VERSUS

ANITHA & ANR

Respondent(s)

O R D E R

- 1) Leave granted.
- 2) The only question which arises for our consideration is whether delay can be the sole ground for rejection of a plea of specific performance of contract entered into between the parties.
- 3) The facts of the case, in brief, are narrated hereunder:-
  - i) The Plaintiff and the 1<sup>st</sup> defendant entered into an agreement of sale dated 30.06.1994 by and under which the defendants agreed to sell the suit property for a sum of Rs.16,75,000/- and on the date of agreement, a sum of Rs.3,20,000/- was paid by the plaintiff to the defendants.
  - ii) The defendant Nos. 2 and 3 are minor daughters of the 1<sup>st</sup> defendant and as per the terms of the aforesaid agreement, the execution of the sale deed is to be executed by the defendants in favour of the plaintiff after getting the permission of the competent Court insofar as the share of the minor defendants 2 and 3 are concerned.

iii) The husband of the 1<sup>st</sup> defendant, Jayaraman, is no more. He was the absolute owner of the suit property and died intestate on 03.08.1991. On his death, the defendants succeeded to the suit property, being the Class I heirs as contemplated under the Hindu Succession Act.

iv) The 1<sup>st</sup> defendant, as per the recitals in the sale agreement, has filed an application for permission in the Court to sell the property. On enquiry, it was found that the plaintiff was not impleaded as a party and the fact about the existence of sale agreement was not mentioned and when the application filed by the plaintiff to implead herself in H.M.G.O.P. No. 433 of 1994 was pending, the 1<sup>st</sup> defendant has not pressed the application and allowed the application to be dismissed. Even though the 1<sup>st</sup> defendant has filed her objections in the impleading application filed by the plaintiff, she did not deny the existence of sale agreement.

v) The plaintiff was always ready and willing to fulfill her part of the contract. The 1<sup>st</sup> defendant was adopting the delay tactics. Since the plaintiff was always ready and willing to perform her part of the contract, she has issued a notice to the defendants calling upon them to meet her so that the balance consideration be paid for completing the sale transaction.

vi) Since the defendants did not come forward, the plaintiff filed a suit before the Addl. District and

Sessions Judge, Coimbatore for the relief of specific performance directing the defendants to execute the sale deed in respect of the suit property.

vii) During the pendency of the suit, the 1<sup>st</sup> defendant died and defendant Nos. 2 and 3 have been impleaded. Defendant Nos. 2 and 3 filed a separate written statement contending the suit is not maintainable as per law and on facts and moreover at the time of institution of the suit, they were minors. Though they admit the relationship, they contend that they are not parties to the sale agreement and the execution of sale agreement is void.

viii) The Trial Court, after framing six issues, held that the plaintiff is not entitled for the relief of specific performance and dismissed the suit with costs.

ix) Being aggrieved, the plaintiff filed Appeal before the High Court of Judicature at Madras.

x) The Division Bench of the High Court even though found every issue in favour of the plaintiff, on equitable grounds, denied her the relief of specific performance and directed refund of the advance amount with 7.5 per cent interest from the date of plaint till the date of realization.

xi) Being aggrieved, the appellant preferred this appeal, by way of special leave.

4) We have heard Mrs. V. Mohana, the learned senior counsel appearing for the appellant and Mrs. N. Shoba,

learned counsel appearing for the respondents.

5) Learned senior counsel appearing for the appellant contended that delay *per se* is no ground to deny the relief of specific performance of contract when it has been conclusively found that it is the defendant (respondent) who has breached the contract and the appellant acted promptly and has always been ready and willing to perform her part of the contract and the High Court has committed a grave error in not taking into account the law laid down by this Court and that the impugned order is perverse, cryptic and passed without proper appreciation of law and is thus liable to be set aside. She further contended that even though the High Court found every issue in favour of the appellant, held that execution of document has been proved and the appellant was ready and willing to perform her part of the contract, yet denied her the relief of specific performance.

6) Per contra, learned counsel for the respondents supported the order of the Trial Court as well as of the High Court and contended that both the Courts after proper analysis of material available on record rightly rejected the case of the appellant.

7) We have gone through the material available on record including the sale agreement entered into between the parties, plaint and the written statements and the judgments of both the Trial Court as well as of the High

Court and the grounds taken in the Special Leave Petition.

8) After carefully perusing the records of the case and having regard to the fact that the appellant acted promptly has always been ready and willing to perform her part of the contract, we are of the considered opinion that the delay *per se* cannot be a sole ground for refusal to grant a decree of specific performance of the contract.

9) In our view, the High Court was not justified in dismissing the suit even though it found every issue in favour of the appellant and held that execution of the documents has been proved. Once the High Court had come to a definite conclusion that the appellant had made out her case, it should have directed specific performance of the agreement instead ordering refund of the advance amount with interest.

10) Hence, we find that the reasoning given by the High Court cannot be accepted or held sustainable in the eyes of law and the same is set aside and we pass decree in favour of the appellant.

11) Accordingly, the appeal is allowed in the afore-stated terms.

..... J.  
(PINAKI CHANDRA GHOSE)

..... J.  
(ROHINTON FALI NARIMAN)

New Delhi;  
March 31, 2017.

ITEM NO.32

COURT NO.6

SECTION XII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 26881/2010

(Arising out of impugned final judgment and order dated 24/03/2010 in AS No. 773/2005 passed by the High Court Of Madras)

MANOHARAKUMARI

Petitioner(s)

VERSUS

ANITHA &amp; ANR

Respondent(s)

(with interim relief and office report)

Date : 31/03/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE  
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner(s) Mrs. V. Mohana, Sr. Adv.  
Mr. B. Ragunath, Adv.  
Mr. Vijay Kumar, AOR  
Ms. N.C. Kavitha, Adv.

For Respondent(s) Mrs. N. Shoba, AOR  
Mr. Sri Ram J. Thalapathy, Adv.  
Mr. V. Adhimoolam, Adv.  
Mr. Shilp Vinod, Adv.

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

Leave granted.

The appeal is allowed in terms of the signed order.

(R. NATARAJAN)  
Court Master

(SNEH LATA SHARMA)  
Court Master

(signed order is placed on the file)