

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA(OS) No.84/2006 & CM No.14365/2010

Sanjay Puri

....Appellant through  
Mr. Amit S.Chaddha,  
Sr. Adv. with Mr. Kunal  
& Ms. Roopa Dayal,  
Advs.

versus

Radhey Lal & Ors.

....Respondent through  
Mr. Vineet Malhotra &  
Mr. Sidhartha Das,  
Advs. for Respondents  
1A to C.

%

Date of Hearing : October 26, 2010

Date of Decision : December 24, 2010

CORAM:

\* HON'BLE MR. JUSTICE VIKRAMAJIT SEN  
HON'BLE MS. JUSTICE MUKTA GUPTA

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|--|-----|
| 1. Whether reporters of local papers may be allowed to see the Judgment? | No  |
| 2. To be referred to the Reporter or not?                                | Yes |
| 3. Whether the Judgment should be reported in the Digest?                | Yes |

VIKRAMAJIT SEN, J.

1. This Appeal is directed against the Judgment dated 21.8.2006 whereby the learned Single Judge rejected the Suit filed by the Appellant praying for the Specific Performance of a purported agreement entered into on 16.6.2003. This alleged agreement pertains to the sale of a Ground Floor Flat owned by the Defendant/Respondent.

2. The document, on which the Suit is founded, is handwritten, inexorably leading to the conclusion that it was drawn on the spur of the moment. It is reproduced below:-

①  
16th June 2003

RECEIPT

RECEIVED WITH thanks a sum  
of Rs 50,000/- (Rupees fifty thousand  
only) from Shri Suresh Kumar &  
late Shri P.R. Puri R/o 3167 C-III  
Vasant Kunj New Delhi - 110 067  
the taken advance towards sale of  
my Grand floor flat at F/7 Vasant  
Vihar New Delhi 110 067. The total  
consideration has been fixed for  
Rs 1,15,00,000/- (one crore & fifteen  
lacs only). The vacant physical  
possession shall be handed over some  
time in Oct 2003.

Witness  
~~Shri Suresh Kumar~~  
~~Shri P.R. Puri~~  
~~F/7 Vasant Vihar~~

Radhey Lal  
RADHEY LAL  
R/O F/7  
VASANT VIHAR  
NEW DELHI 110 067  
16th June 2003

RC NARAYAN  
CIVIL NO. 111  
110 559102

True copy

3. In the impugned Order, the learned Single Judge has arrived at the conclusion, after noticing Section 2(h) of the Indian Contract Act, 1872 and Section 54 of the Transfer of Property Act, 1882, that an enforceable contract had been arrived at by the parties. This appears to be predicated on the dialectic that in the said document the property was clearly delineated, the sale consideration was defined, and there was an undeniable acknowledgement of the factum of ₹ 50,000/- having been received *albeit* as a “Token Advance”. It was also noted by the learned Single Judge that the parties had agreed that vacant possession would be handed over by the Owner/Respondent to the Appellant in October, 2003. The learned Single Judge also found it salient that the Receipt does not contain a covenant to the effect that any formal Agreement to Sell would have to be executed.

4. There is no gainsaying that even a document styled as a ‘Receipt’, can operate and be enforceable as a contract. This view also finds articulation in ***Lalit Kumar Sabharwal -vs- Ved Prakash Vij***, 2003 (68) DRJ 670 and *Pellikan Estates Pvt. Ltd. -vs- Kamal Pal Singh*, 2004 VI AD Delhi 185. In fact, an Agreement to Sell can even be established by parol evidence. That an oral Agreement to Sell is enforceable admits of no cavil in view of the authoritative pronouncement in *Brij Mohan -vs-*

*Sugra Begum*, (1990) 3 SCR 413 wherein their Lordships enunciated the law in these terms:- “We have given our careful consideration to the arguments advanced by learned counsel for the parties and have thoroughly perused the record. We agree with the contention of the learned counsel for the appellants to the extent that there is no requirement of law that an agreement or contract of sale of immovable property should only be in writing. However, in a case where the plaintiffs come forward to seek a decree for specific performance of contract of sale of immovable property on the basis of an oral agreement alone, heavy burden lies on the plaintiffs to prove that there was consensus ad idem between the parties for a concluded oral agreement for sale of immovable property. Whether there was such a concluded oral contract or not would be a question of fact to be determined in the facts and circumstances of each individual case. It has to be established by the plaintiffs that vital and fundamental terms for sale of immovable property were concluded between the parties orally and a written agreement if any to be executed subsequently would only be a formal agreement incorporating such terms which had already been settled and concluded in the oral agreement.”

5. After a perusal of *Dobell -vs- Hutchinson*, (1835) 3 A and E 355, the learned Single Judge has, in the impugned Order,

expressed disagreement with the previous decision of a coordinate Bench in ***Lalit Kumar***. In the first place, judicial propriety mandates that the previous view of a coordinate Bench should be followed; if the Judge is unable to be persuaded to apply its dicta, he is duty-bound to refer the question to a larger Bench. Having carefully considered ***Lalit Kumar***, in our appreciation it does not state that a document, in the form of a 'Receipt', cannot ever conform to the character of a contract. *CIT Punjab Haryana -vs- Panipat Woollen and General Mills*, AIR 1976 SC 640, *High Way Farms -vs- Chintaran*, 85 (2000) DLT 355, *Mayawanti -vs- Kaushalya Devi*, (1990) 3 SCC 1 and *Nanak Builders and Investors Private Limited -vs- Vinod Kumar*, AIR 1991 Delhi 315 prescribe that it is the substance of the document which must determine its enforceability in law. ***Lalit Kumar*** only establishes that the document before the Court in that case did not adequately respond to the requirements of a contract. This is exactly the conclusion arrived at by another learned Single Judge in ***Vinod Saluja -vs-Sita Rani***, 61 (1996) DLT 790. We concur with the view taken by the learned Single Judge in ***Vinod Saluja*** that the absence of the signature of the Respondent/Owner on the Receipt can justifiably lead to the conclusion that a contract had not emerged. We reiterate that it is possible to enforce an oral contract. If that be so, a Receipt

bearing only the signature of the person receiving money could be an invaluable evidence that a contract had been arrived at. It is for this reason that Courts have found that if a document postulates the execution of an Agreement to Sell, then it would be open to hold that a contract had not fructified till such a document came to be created.

6. So far as the present case is concerned, it is arguable that the Respondent had never intended to enter into a binding contract for the sale of his property. The signature of one of the witnesses has been cancelled. This was for the reason that the witness never intended to substantiate or affirm the emergence of a contract. These are all pointers to the position that there is substantial weight in the contention of the Defendant that he was unduly influenced and even coerced by the Plaintiff into signing the Receipt. The Defendant has deposed that he was not in control of his mental faculties at the appropriate time. We cannot overlook the fact that he was 90 years old and at this advanced age was likely to succumb even to a comparatively mild pressure or inducement. At the said advanced age of 90 years, it is more than likely that he would not have been in a position to assess the repercussion of his action unless he had been given sufficient time for cogitating upon it. It is in evidence that the Owner was immediately taken to the Bank by

the Appellant and his associates with a view to depositing cash in his Bank Account. The learned Single Judge has noticed that the Deposit Slip has been filled up by different persons. The Defendant had repudiated the Agreement within a few days. All these circumstances create a suspicion in the mind. It is uncontrovertibly clear that the Owner did not have sufficient and adequate time to contemplate on his action and decision. We, therefore, are of the opinion that an enforceable contract had not come into being and reverse the finding of the learned Single Judge on Issue No.2, namely, "Whether the signature on document was obtained from the Defendant under duress, undue influence as pleaded in the Written Statement, if so, its effect".

7. For ease of reference, the observations of their Lordships on this conundrum in various pronouncements are digested hereafter. In ***K. Narendra -vs- Riviera Apartments (P) Ltd.***, (1999) 5 SCC 77, the Court observed thus:-

29. Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary and the court is not bound to grant such relief merely because it is lawful to do so; the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. Performance of the contract involving some hardship on the defendant

which he did not foresee while non-performance involving no such hardship on the plaintiff, is one of the circumstances in which the court may properly exercise discretion not to decree specific performance. The doctrine of comparative hardship has been thus statutorily recognized in India. However, mere inadequacy of consideration or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not constitute an unfair advantage to the plaintiff over the defendant or unforeseeable hardship on the defendant. The principle underlying Section 20 has been summed up by this Court in *Lourdu Mari David v. Louis Chinnaya Arogiaswamy*, (1996) 5 SCC 589 by stating that the decree for specific performance is in the discretion of the Court but the discretion should not be used arbitrarily; the discretion should be exercised on sound principles of law capable of correction by an appellate court.

30. *Chitty on Contracts* (27th Edn., 1994, Vol. 1., at p.1296) states:

Severe hardship may be a ground for refusing specific performance even though it results from circumstances which arise after the conclusion of the contract, which affect the person of the defendant rather than the subject-matter of the contract, and for which the plaintiff is in no way responsible.

8. In *Gobind Ram -vs- Gian Chand*, (2000) 7 SCC 548, the Court observed thus:-

7. It is the settled position of law that grant of a decree for specific performance of contract is not automatic



and is one of the discretions of the court and the court has to consider whether it will be fair, just and equitable. The court is guided by principle of justice, equity and good conscience.

9. In *A.C. Arulappan -vs- Ahalya Naik*, (2001) 6 SCC 600, the Court observed thus:-

7. The jurisdiction to decree specific relief is discretionary and the court can consider various circumstances to decide whether such relief is to be granted. Merely because it is lawful to grant specific relief, the court need not grant the order for specific relief; but this discretion shall not be exercised in an arbitrary or unreasonable manner. Certain circumstances have been mentioned in Section 20(2) of the Specific Relief Act, 1963 as to under what circumstances the court shall exercise such discretion. If under the terms of the contract the plaintiff gets an unfair advantage over the defendant, the court may not exercise its discretion in favour of the plaintiff. So also, specific relief may not be granted if the defendant would be put to undue hardship which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the court would desist from granting a decree to the plaintiff.

10. In *Bal Krishna -vs- Bhagwan Das*, (2008) 12 SCC 145, the Court opined thus:-

14. It is also settled by various decisions of this Court that by virtue of Section 20 of the Act, the relief for

specific performance lies in the discretion of the court and the court is not bound to grant such relief merely because it is lawful to do so. The exercise of the discretion to order specific performance would require the court to satisfy itself that the circumstances are such that it is equitable to grant decree for specific performance of the contract. While exercising the discretion, the court would take into consideration the circumstances of the case, the conduct of parties, and their respective interests under the contract. No specific performance of a contract, though it is not vitiated by fraud or misrepresentation, can be granted if it would give an unfair advantage to the plaintiff and where the performance of the contract would involve some hardship on the defendant, which he did not foresee. In other words, the court's discretion to grant specific performance is not exercised if the contract is not equal and fair, although the contract is not void.

11. Even in these circumstances, the learned Single Judge had declined to pass a decree for Specific Performance. The decisions in *Sardar Singh -vs- Krishna Devi*, (!994) 4 SCC 18 as well as **K. Narendra** and *Nirmala Anand -vs- Advent Corporation Pvt. Ltd.*, (2002) 5 SCC 481 were noted. These decisions emphasize the discretionary nature of the relief of Specific Performance. The learned Single Judge has kept in perspective the conduct of the Respondent/Owner in that he had endeavoured to return the "Token Advance" of ₹ 50,000/-

within ten days of the event. The learned Single Judge has further noted that since the so-called repudiation or cancellation, or as best put - refutation, had taken place within ten days, no damage by way of loss of profit because of escalation in prices would have resulted to the Plaintiff/Appellant. He accordingly directed the Plaintiff to revalidate the draft of ₹ 50,000/- sent to the Plaintiff as a return of the "Token Advance" along with ₹ 1,00,000/- as damages. Mindful of the decision in *N.P. Thirugnanam -vs- Dr. R. Jagan Mohan Rao*, 1995(5) SCC 115, the learned Single Judge has also found it relevant that the Plaintiff was dealing in real estate.

12. We have already expressed our disagreement with the learned Single Judge *vis-à-vis* the evolution of a binding and enforceable contract. There cannot, therefore, be any specific performance thereof. However, even if the decision of the learned Single Judge on Issue No.2 were to be upheld, it is commonplace that discretionary relief, such as Specific Performance of contracts, can always be declined for good and equitable reasons. In the circumstances of the case, we are in complete agreement with the learned Single Judge that it is in consonance with justice that damages should be awarded instead of compelling enforcement of the contract. Be that as it may, since we have come to the conclusion that an enforceable

contract had not come into being, we are unable to sustain the awarding of ₹ 1,00,000/- as damages. That finding is accordingly set aside.

13. Since Shri Radhey Lal had received a sum of ₹ 50,000/- as “Token Advance”, we direct his Legal Heirs to remit this amount along with interest at the rate of six per cent per annum from the date of payment within seven days. We are directing this refund on equitable grounds only and, therefore, if the sum is not accepted by the Appellant, or if the Respondents are harassed by further litigation, this direction for refund shall automatically be deemed to have been cancelled.

14. The Appeal is disposed of with these directions. CM No.14365/2010 also stands disposed of.

15. Parties to bear their respective costs.

( VIKRAMAJIT SEN )  
JUDGE

( MUKTA GUPTA )  
JUDGE

December 24, 2010  
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