

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF DECEMBER 2019

BEFORE

THE HON'BLE Dr. JUSTICE H.B.PRABHAKARA SASTRY

R.F.A.No.1459 OF 2014

BETWEEN:

Sri M.S.Balaji Prasad,
S/o A.R.Srinivasan,
Aged about 49 years,
R/at No.25,
3rd 'C' Main Road,
Sriramnagar,
Near Geleyara Balaga Bus Stop,
Mahalakshmipuram,
Bangalore-560 086. .. Appellant

(BY Sri Varadarajan M.S., Advocate)

AND:

Sri Narasimha Murthy,
S/o Late Narasimhaiah,
Aged about 59 years,
R/at No.227,
Madeshwaranagar,
Vishwaneedam,
Bangalore-560 091. .. Respondent

(By Sri Shankar G., Advocate for
C/R)

This Regular First Appeal is filed under Order 41 Rule 1 read with Section 96 of CPC, against the judgment and decree dated 30.6.2014, passed in O.S.No.8641/2007, on the file of XVIII Addl.City Civil Judge, Bangalore, decreeing the suit for specific performance.

This Regular First Appeal having been heard and reserved for judgment on 11.12.2019, this day the Court delivered the following:

JUDGMENT

This is the defendant's appeal. The present respondent as a plaintiff had instituted a suit against the present appellant arraigning him as defendant in O.S.No.8641/2007, in the Court of the learned XVIII Addl.City Civil Judge, at Bengaluru City (CCH-10), (hereinafter for brevity referred to as 'trial Court'), for the relief of specific performance of contract.

2. The summary of the case of the plaintiff in the trial Court was that the plaintiff had entered into a registered Sale Agreement on 27.1.2007 with the defendant agreeing to purchase the suit schedule

property which is an immovable property bearing house list No.285 (New No.8), at Geleyara Balaga, 3rd 'C' Main Road, 1st Block, Jarakabandekaval Village, Bengaluru Mahanagara Palike Ward No.13, measuring 30' x 30'.

The sale consideration agreed under the agreement was for a sum of ₹6,50,000/-. The defendant had received a sum of ₹3 lakhs in cash and a sum of ₹2 lakhs in the form of cheque. Further, the defendant received another sum of ₹1 lakh on 4.2.2007 and balance amount of ₹50,000/- on 28.2.2007. Thus, the entire sale consideration was paid to the defendant by the plaintiff. Even after receiving the entire sale consideration, the defendant refused to perform his part of the contract which made the plaintiff to issue a legal notice dated 4.6.2007 to him. The defendant got instituted a suit in O.S.No.8106/2007 through one M.S.Mohankumar and Kusuma against himself and the plaintiff for partition

and declaration. Hence, the plaintiff filed the suit for specific performance of contract.

3. In response to the summons, the defendant appeared through his counsel and filed written statement, wherein he has stated that, himself and the plaintiff were friends. He sustained loss in the business and approached the plaintiff for financial assistance. The plaintiff financed money in the form of loan and obtained signature on various documents and got executed an agreement as a security for money advanced. The defendant stated that he has received in total only a sum of ₹3,50,000/-, but, the contention that under the alleged Agreement of Sale, a sum of ₹3 lakhs in the form of cash was given, was not true. The defendant also stated that he has not agreed to sell the suit schedule property, but, he has signed the document only as a security to the loan availed by him. As such, he is ready

to repay the loan amount of ₹3,50,000/- along with bank interest, provided the plaintiff cancels the alleged Sale Agreement and returns the original documents obtained at the time of advancing the loan. He also stated that the suit property is a joint family property, as such, his brother and sister have filed a suit in O.S.No.8106/2007 for partition, in which, the plaintiff is also a party.

4. Based on the pleadings of the parties, the trial Court framed the following issues :

1. *Whether the plaintiff proves that the defendant has agreed to sell the suit schedule property to the plaintiff on 27.1.2007 for a sale consideration of Rs.6,50,000/-?*
2. *Whether the plaintiff further proves that he has paid the entire sale consideration of Rs.6,50,000/- to the defendant?*
3. *Whether the plaintiff proves that he is ready and willing to perform his part of contract?*

4. *Whether the defendant proves that he has executed the document only for the purpose of loan transaction for having received Rs.3,50,000/- from the plaintiff?*
5. *Whether the plaintiff is entitled for the specific performance of contract under Section 20 of Specific Relief Act?*
6. *What order or Decree?*

The plaintiff in order to prove his case, got himself examined as PW-1 and examined one Sri K.C.Narasimhaiah as PW-2 and got marked documents at Exs.P-1 to P-6. The defendant got himself examined as DW-1 and no documents as exhibits were marked from his side.

The trial Court after hearing both side, while answering issue Nos.1, 2, 3 and 5 in the affirmative and issue No.4 in the negative, by its judgment and decree dated 30.6.2014, decreed the suit of the plaintiff with cost, directing the defendant to execute a registered

Sale Deed, conveying the suit schedule property in favour of the plaintiff and to deliver the physical possession of the suit schedule property to the plaintiff.

It is against the said judgment and decree, the defendant has preferred this appeal.

5. Lower Court records were called for and the same are placed before this Court.

6. Heard the arguments of the learned counsel from both side and perused the materials placed before this Court, including the memorandum of appeal and the impugned judgment.

7. For the sake of convenience, the parties would be referred to as per their ranks before the trial Court.

8. In the light of the above, the points that arise for my consideration are :

- (1) *Whether the plaintiff has proved that the defendant has agreed to sell the suit schedule property to him on 27.1.2007 for a sale consideration of ₹6,50,000/-?*
- (2) *Whether the plaintiff has proved that he had paid the entire sale consideration of ₹6,50,000/- to the defendant?*
- (3) *Whether the plaintiff has proved that he was ready and willing to perform his part of the contract?*
- (4) *Whether the defendant has proved that he has executed the document at Ex.P-1 only as a security for the loan transaction of a loan amount of ₹3,50,000/- borrowed from the plaintiff?*
- (5) *Whether the plaintiff is entitled for the relief of specific performance of the contract under Section 20 of the Specific Relief Act?*
- (6) *Whether the judgment and decree under appeal deserves any interference at the hands of this Court?*

9. The plaintiff as PW-1 in his examination-in-chief filed in the form of affidavit evidence has reiterated the contentions taken up by him in his plaint. To support his contention that the defendant had agreed to sell the suit schedule property to him for a consideration of ₹6,50,000/- under a registered Agreement of Sale, he has produced registered Deed of Agreement to Sell dated 27.1.2007 at Ex.P-1. To show that he also caused a legal notice upon the defendant calling upon him to execute the registered Sale Deed, PW-1 has produced a copy of the legal notice dated 4.6.2007 at Ex.P-2, its postal acknowledgement to evidence the service of the said notice upon the defendant at Ex.P-3, Certificate of Posting to the same effect is at Ex.P-4 and the postal receipt at Ex.P-5.

10. The plaintiff got examined one Sri K.C.Narasimhaiah, son of Channaiah, as PW-2, which

witness in his examination-in-chief filed in the form of affidavit evidence has stated that he was one of the witness to the registered Sale Agreement at Ex.P-1 dated 27.1.2007, wherein the defendant agreed to sell the suit schedule property to the plaintiff for a total consideration of ₹6,50,000/-. The witness has also stated that defendant received a cash of ₹3 lakhs and received another sum of ₹2 lakhs in the form of cheque. Six months period was fixed for the completion of the sale transaction, within which period, the plaintiff had to pay the balance amount of ₹1,50,000/-. The witness has also stated that he was informed by the defendant that he was in financial difficulties and therefore, he is selling his property to the plaintiff to meet his financial requirement.

11. The defendant got himself examined as DW-1, who in his examination-in-chief filed in the form of

affidavit evidence has reiterated the contentions taken up by him in his written statement. As observed above, no documents were marked as exhibits from his side.

12. Learned counsel for the appellant in his argument submitted that payment of a cash of ₹3 lakhs from the plaintiff to the defendant is not admitted by the defendant and that Sale Agreement at Ex.P-1 cannot be taken as out and out Sale Agreement, but, it has come under the circumstances narrated in the written statement. The learned counsel for the appellant also submitted that had the plaintiff paid the entire sale consideration, he could have insisted for execution of the Sale Deed immediately instead of entering into an Agreement of Sale as per Ex.P-1. This circumstance would go to show that the defendant was not ready to sell his property.

13. Learned counsel for the respondent in his argument submitted that law does not mandate that the moment the entire sale consideration is paid, on the very same day, the Sale Deed is required to be executed. In the instant case, the balance amount was paid in two installments, as such, the Sale Agreement as per Ex.P-1 was entered into.

14. It is not in dispute that the parties to the litigation were knowing each other since prior to the alleged date of transaction. PW-1 in his cross-examination has reiterated the same stating that defendant was known to him since five to six years prior to the date of his cross-examination, which was on 29.5.2010. As such, the alleged Agreement of Sale at Ex.P-1 falls within the said period of acquaintance between the parties. The defendant has not denied of he executing the Agreement of Sale at Ex.P-1, however,

his contention is that since he was in financial distress and was in need of financial assistance in the form of loan, he was conditioned to sign the said document by the plaintiff before he could get the loan from him. As such, he has executed the Agreement of Sale. A suggestion to the said effect was made in the cross-examination of PW-1, which the witness has not admitted as true.

It was also suggested to PW-1 in his cross-examination that it is only ₹2 lakhs that was paid to the defendant under the said agreement and a sum of ₹3 lakhs shown in the said agreement has not been paid to the defendant in cash, but, the same was promised to be paid to him within a month thereafter. However, the witness has not admitted the said suggestion as true. It was also suggested to PW-1 that after the said agreement, due to financial constraint, the defendant

requested for the payment of the said amount of ₹3 lakhs, it is in that regard, a sum of ₹1 lakh and another sum of ₹50,000/- were paid to him by the plaintiff. However, PW-1 has not admitted those suggestions also as true. Barring the same, regarding execution of the Sale Agreement at Ex.P-1 and receipt of the sale consideration shown therein by the defendant, has not been further denied in the cross-examination of PW-1.

15. In the cross-examination of PW-2, nothing much could be elicited regarding the execution of Ex.P-1 and the receipt of the consideration amount shown therein. Though PW-2 in his cross-examination has stated that he does not know as to what is written in Ex.P-1, however, he has given the description of the said document and the nature of transaction that was entered into through the said document and shown that

Ex.P-1 was entered into in respect of house of the defendant at Geleyara Balaga. He reiterated in his cross-examination that it was in his presence, the defendant received money.

16. DW-1 in his cross-examination has admitted that Ex.P-1 is the registered Sale Agreement and Exs.P-1(a), P-1(b), P-1(c) and P-1(d), are his signatures in the said document. He has also admitted as true that in his written statement, he has acknowledged the receipt of ₹1 lakh from the plaintiff on 4.2.2007 and another sum of ₹50,000/- from the plaintiff on 28.2.2007. He has also admitted his signature in Ex.P-1 to that effect at Ex.P-1(g) and P-1(h). He has identified the endorsement made with respect to those signatures. This evidence of DW-1 about he executing the Agreement to Sell at Ex.P-1 and acknowledging the endorsement at Ex.P-1(e) and P-1(f), would falsify his

own contention that he has not received a cash of ₹3 lakhs under the Agreement at Ex.P-1 and that he has received only a sum of ₹3,50,000/-. It is for the reason that, had the defendant not received a cash of ₹3 lakhs under Ex.P-1, but, has received only a sum of ₹2 lakhs in the form of cheque and a sum of ₹1 lakh in cash on 4.2.2007 and another sum of ₹50,000/- in cash on 28.2.2007, he would not have mentioned in the shara at Ex.P-1(f) that the balance amount of ₹50,000/- was received by him and that there was no balance under the Sale Agreement as on 28.2.2007. The said endorsement acknowledged by none else than the defendant as DW-1 would falsify his case that he has not received a cash of ₹3 lakhs under the said agreement. Had he not received the said sum of ₹3 lakhs in cash under Ex.P-1, then, he would not have mentioned that after receipt of ₹50,000/- from plaintiff as per Ex.P-1(f) on 28.2.2007, stating that there was no balance remaining as due

amount under the agreement. Such an endorsement specifically mentioning that there was no balance amount under the agreement would clearly go to show that the defendant has received the entire sale consideration as mentioned in Ex.P-1. This apart, the evidence of PW-2 also further corroborates that it was in his presence, a sum of ₹3 lakhs was paid to the defendant in cash as on the date of the agreement, which was on 27.1.2007. Therefore, the first contention of the appellant/defendant that payment of cash of ₹3 lakhs by the plaintiff to the defendant is not proved, is not acceptable.

17. The second point of argument of learned counsel for the appellant/defendant is that the agreement at Ex.P-1 cannot be taken as out and out Sale Agreement, but, the agreement has come under the circumstances narrated in the written statement.

Per contra, learned counsel for the respondent/plaintiff in his argument submitted that defendant is an educated person and a Graduate in Bachelor of Engineering and he was also involved in doing the business. As such, he cannot contend that he would have succumbed to any alleged pressure or that it is unbelievable that the document was executed only as a security.

18. As already observed above, the defendant in his written statement has taken a contention that he had invested a huge amount of ₹36 lakhs in the business and he had also borrowed huge amount to arrange for capital for his business which was shattered into pieces and the creditors were pounced upon him to repay the loan which he had taken from them. Thus, in order to come out from grave situation, he had no other go, but, to raise money on the immovable property. In that

connection, he met the plaintiff, who after hearing his difficulty, agreed to financially help him, provided the defendant executing a document in the nature of Agreement of Sale in respect of one of the property and a Sale Deed in respect of another property. Thus, he wanted the property as a security. The defendant reposing faith and confidence in the plaintiff, had executed the documents.

The said contention of the defendant which is in the form of his pleading in the written statement gets no corroboration, except his self-serving testimony as DW-1. Had really the defendant had invested huge amount of ₹36 lakhs in the business and incurred loss and that the borrowers were pestering him, demanding the repayment of the loan, then, the defendant was expected to have sufficient documentary proof also to prove the same in the form of Books of Accounts and

Balance Sheet of his business and also the loan documents executed, if any, in favour of lenders of money to him. The defendant has not chosen to produce any of those documents which he is expected to have with him as a businessman and an industrialist, except stating in his oral evidence that he had incurred huge loss and was compelled to borrow money.

19. Assuming for a moment that the defendant had incurred huge loss and was in need of money to repay to some of the creditors, still, if the plaintiff, as a lender, was insisting some immovable property as a security, then, at the maximum, the defendant should have executed a Deed of Mortgage with respect to the suit schedule property and not necessarily an Agreement of Sale. A Deed of Mortgage would have been a proper form of document for him in the alleged circumstances of the case. Even he could have hypothecated the plant

and machineries of his business/industry, which he claims to have run by him. But, without taking any steps in that regard, he simply yielding to the alleged demand of the plaintiff and executing a registered Agreement of Sale as per Ex.P-1 is not believable in the circumstances of the case. Further, the evidence of PW-2 also would go to show that the defendant has executed the Agreement at Ex.P-1, which Agreement was with respect to the house of the defendant at Geleyara Balaga.

20. Added to the above, the reason for the sale of the property as shown in the Agreement at Ex.P-1 is for the domestic expenses and other contingencies. The defendant being a Bachelor of Engineering Graduate and running an industry though assumed to have agreed to execute an Agreement of Sale, still, he could have mentioned the reason in the agreement as to repay the

loan amount to various creditors, which is his explanation in the written statement. Even that also the defendant has not done. Therefore, the second argument of the learned counsel for the appellant that Ex.P-1 was not intended to be an agreement of sale, but, it was only a document executed as a security to the loan, is also not acceptable.

21. The third point of argument of learned counsel for the appellant is that the plaintiff could have got the Sale Deed itself executed on 27.1.2007 instead of entering into an Agreement for Sale. The said argument is also not acceptable for the reason that, even according to the Agreement at Ex.P-1, which is dated 27.1.2007, the entire sale consideration was not paid on the very same day of the agreement. It is only a portion of the amount amounting to ₹5 lakhs was paid to the defendant and the balance of ₹1,50,000/- was paid

in two installments at ₹1 lakh and ₹50,000/- on 4.2.2007 and 28.2.2007 respectively. Therefore, insisting for execution of Sale Deed on 27.1.2007 itself when only a partial sale consideration was paid by the plaintiff to the defendant is not possible and generally no prudent seller would execute an absolute Sale Deed by receiving a part of the sale consideration. As such, the said argument of the learned counsel for the appellant on the said point is also not acceptable.

22. The appellant did not challenge about the alleged readiness and willingness of the plaintiff to perform his part of the contract. The proven fact that the plaintiff who was under an obligation to pay the sale consideration under Ex.P-1 since had paid the entire sale consideration as on 28.2.2007, there remained nothing for him to perform anything more under the contract. On the other hand, he has requested the defendant to

execute the Sale Deed in his favour even by sending a legal notice in that regard on 4.6.2007 which is at Ex.P-2. The postal acknowledgment card, certificate of posting and the postal receipt at Exs.P-3, P-4 and P-5, would go to show that the said legal notice was served upon the defendant. In spite of the same, the defendant did not chose to respond to the said notice and did not even reply to it. On the other hand, in his written statement, he came up with a contention that the suit schedule property was a joint family property and that a suit for partition in O.S.No.8106/2007 has been instituted by his brother and sister claiming their share in the suit schedule property. However, except taking such a contention, the defendant could not able to establish the said contention. For that matter, he did not even produce the copies of the plaint in the said O.S.No.8106/2007 and got it marked as an exhibit. On the other hand, the plaintiff, in the cross-examination of

DW-1, as well the argument of learned counsel for the respondent, could able to show that the copies of the Writ Petition in Writ Petition No.15805/2011, which was filed by the sister of the defendant, wherein the defendant was a respondent, was served upon the plaintiff's counsel who was also a respondent in the said petition by none else than the present defendant himself. Thus, the argument of learned counsel for the respondent that the appellant has not approached this Court with clean hand, cannot be ruled out.

23. The last point to be considered is whether the plaintiff is entitled for the relief of specific performance. On this point, learned counsel for the appellant submitted that the suit schedule property is the only property of the appellant/defendant, as such, greater hardship would be caused to him if the decree for specific performance is confirmed. He further submitted

that this Court can order for refund of the amount received by the defendant with some additional amount in the form of compensation in lieu of specific performance. In his support, learned counsel relied upon a judgment of Co-ordinate Bench of this Court in ***Smt.Ranganayakamma –vs- N.Govinda Narayan,*** reported in ***AIR 1982 Karnataka 264,*** and a judgment of Hon'ble Apex Court in ***Jayakantham and others –vs- Abaykumar,*** reported in ***[2017 (1) Kar.L.R. 697 (SC)].***

24. In ***Smt.Ranganayakamma's*** case (*supra*), a Division Bench of this Court was pleased to observe in Para-12 of its judgment as below :

" It is a well established doctrine that the Court will not enforce specific performance of a contract, the result of which would be to impose great hardship on either of the parties to it. 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 however, should be exercised on reasonable principles capable of correction by a Court of appeal. When the Section states that "the jurisdiction to decree specific performance is discretionary" to it only means that the mere existence of a legal right is not sufficient to attract the remedy. An agreement may be valid in law and there may not be sufficient grounds for its cancellation; yet, upon a fair and just consideration of the attendant circumstances, the Court may abstain from its enforcement."

25. In **Jayakantham's** case (*supra*), with respect to Section 20 of the Specific Relief Act, 1963, (hereinafter for brevity referred to as 'Specific Relief Act'), after considering the facts before it, the Hon'ble Apex Court at Para-12 of its judgment was pleased to observe as below :

" A decree for the payment of compensation in lieu of specific performance would meet the

ends of justice. As we have noted earlier the father of the respondent paid an amount of rupees sixty thousand to the appellants in June 1999 of the total agreed consideration of Rs.1.60 lakhs. The appellants have voluntarily offered to pay an amount of rupees ten lakhs, as just compensation in lieu of specific performance. In our view, the ends of justice would be met by directing the appellants to pay to the respondent an amount of rupees fifteen lakhs in lieu of specific performance."

26. Learned counsel for the appellant also submitted that the sale consideration being a very meagre amount and there is escalation in the value of the property, the order for specific performance is not warranted in the circumstances of the case.

Learned counsel for the respondent in his argument submitting that escalation of price is not a ground to deny the specific performance of Agreement to Sell, relied upon a judgment of Hon'ble Apex Court in

Narinderjit Singh –vs- North Star Estate Promoters

Limited, reported in AIR 2012 SC 2035. In the said case, while discussing the scope of Section 20 of Specific Relief Act, the Hon'ble Apex Court was pleased to hold that, as the question of price is not a ground to deny specific performance of Agreement to Sell, more so, when seller/defendant had neither pleaded hardship nor produced any evidence to show that it will be inequitable to order specific performance of agreement.

27. Learned counsel for the respondent submitting that discretion of the Court under Section 20 of Specific Relief Act cannot be of sympathetic consideration, relied upon a judgment of Hon'ble Apex Court in ***K.Prakash –vs- B.R.Sampath Kumar, reported in 2014 AIR SCW 5795.*** In the said case, while dealing with Section 20 of the Specific Relief Act, Their Lordships were pleased to observe that though the grant of specific performance under Section 20 of the Specific Relief Act is

discretionary and not arbitrary, but, the Appellate Court should not exercise discretion against the grant of specific performance on extraneous considerations or sympathetic considerations when once the trial Court has exercised the discretion.

28. Learned counsel for the respondent during the course of his argument also submitting that after considering the circumstances of the case, if the Court comes to a conclusion that to keep the appellant/defendant also in safe place, the respondent/plaintiff may be asked to pay a small additional amount in addition to the total consideration which has already been paid by him, relied upon a judgment of Hon'ble Apex Court in ***Zarina Siddiqui -vs- A.Ramalingam alias R.Amarnathan, reported in AIR 2015 SC 580***, in his support.

In the said case, the Hon'ble Apex Court while discussing the scope of Section 20 of Specific Relief Act, observed that relief of specific performance is a discretionary relief. The conduct of the parties is relevant consideration for granting or refusing specific performance. It observed that, in the case before it, the defendant had made a false statement denying execution of the agreement and had withheld the evidence, as such, was not entitled to exercise discretion in his favour and refuse performance. However, the Court observed that considering the fact that the suit was remaining pending in different Courts and there was phenomenal increase in price during the period of pendency, the plaintiff though found entitled to decree for specific performance, the decree granted on a condition to pay ₹15 lakhs in addition to the amount already paid.

29. In the instant case, though the appellant/defendant contends that the alleged consideration for the suit schedule property was inadequate and meager, but, except making a suggestion to PW-1 in his cross-examination that the market value of the property in the surrounding area was at ₹7,000/- to ₹8,000/- per sq.ft., has not placed any other material to show that he was not satisfied with the consideration amount agreed under Ex.P-1.

Explanation-1 to Section 20 of the Specific Relief Act, states that mere inadequacy of consideration or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of Clause-(a) or hardship within the meaning of Clause-(b). As such, a mere contention in the argument that the consideration was inadequate cannot be a ground to deny the relief of specific performance to the

plaintiff, provided he is entitled for the said relief otherwise.

30. However, during the course of argument when an attempt to settle the matter between the parties was made, on the enquiry by the Court, both the parties uniformly submitted that the market value of the suit schedule property as on the date of alleged agreement was between ₹3,000/- and ₹3,500/- per sq.ft. The same was also recorded in the order sheet dated 11.12.2019. Thus, even according to the parties, the prevailing market rate of the suit schedule property was very much higher than the agreed sale value under Ex.P-1. The appellant/defendant contends that the suit schedule property is his only property required for his residence, as such, he prays for retention of the property by him, however, he has shown his inclination to compensate the respondent/decreed holder by paying an additional sum which is in addition to the refund of the sale

consideration of ₹6,50,000/-. It is on the said point, the appellant has also relied upon the judgment in ***Jayakantham's case (supra)***.

31. Though the respondent denies that the suit schedule property is the only property available for the appellant for his residence, but, there are no material to show that the appellant/defendant has any other property for his residence. In that circumstances of the case, I am of the view that justice would prevail if the respondent/decreed holder is suitably compensated by directing the appellant/defendant to pay to the respondent/plaintiff a reasonable amount which would not subject him to any hardship or injustice. In ***Jayakantham's case (supra)***, in return of the agreed consideration of ₹1,60,000/-, the Hon'ble Apex Court has directed the appellants to pay the respondent an amount of ₹15 lakhs in lieu of specific performance

which is about 9.37 times more than the sale consideration.

32. Applying the same ratio and also considering the fact that if the respondent is required to purchase similar property, he has to pay a huge amount, the Court is of the view that the appellant be directed to pay the respondent an amount of 9.3 times more than what the amount received by him. The same would serve the ends of justice and would not cause hardship to either of the parties. The appellant/defendant would retain the property for himself, at the same time, the respondent/plaintiff/decree holder would also be not put to any hardship. Accordingly, the defendant who has received a sum of ₹6,50,000/- under Ex.P-1 would be required to pay a sum of ₹60,45,000/- to the respondent/plaintiff herein within a period of sixty days from today. Upon the expiry of period of two months,

the amount shall carry interest at the rate of 9% p.a. till payment or realisation.

33. Accordingly, I proceed to pass the following order :

ORDER

The Appeal is ***allowed in part***. The judgment and decree dated 30.06.2014, passed by the learned XVIII Addl.City Civil Judge, Bengaluru City (CCH-10), in O.S.No.8641/2007, is modified to the extent that the suit of the plaintiff for the relief of specific performance is rejected, however, he is entitled for refund of the amount of ₹6,50,000/- paid by him to the defendant as a sale consideration together with additional amount of ₹53,95,000/-, thus, in total amounting to ₹60,45,000/-. The defendant to pay the said amount to the respondent within a period of sixty days from today. Upon the expiry of period of two months, the entire amount shall

carry interest at the rate of 9% p.a. till payment or realisation.

Draw modified decree accordingly.

The Registry is directed to transmit a copy of this judgment along with lower Court records to the lower Court without delay.

In view of disposal of the appeal, IA.No.1/2014 does not survive for consideration.

**Sd/-
JUDGE**

bk/