A SMT. CHAND RANI (DEAD) BY L.RS.

v.

SMT. KAMAL RANI (DEAD) BY L.RS.

DECEMBER 18, 1992

B [L.M. SHARMA, C.J., S.R. PANDIAN, S. MOHAN, B.P. JEEVAN REDDY, AND S.P. BHARUCHA, JJ.]

Indian Contract Act, 1872—Section 55—Agreement to sale of immovable property—Whether time was the essence of contract—Whether purchaser C *was ready and willing to perform contract.*

On 26.8.71, an agreement for sale was entered into between the parties. The agreement was entered into through the husband of the appellant. Under the terms of the agreement, the respondent agreed to sell D **her house and property comprising of a free-hold plot measuring 311 sq. yards with a double-storeyed residential building constructed thereon along with fittings and fixtures for a sum of Rs. 1,78,000 in favour of the appellant. On the date of execution a sum of Rs. 30,000 was paid by way of earnest money.**

E **It was agreed upon between the parties that a further sum of Rs. 98,000 was payable within 10 days of the execution of the ageement and the balance of Rs. 50,000 was to be paid at the time of registration of sale deed; that the respondent-vendor would redeem the property by paying off a loan of Rs. 25,000 out of a sum of Rs. 30,000 paid at the time of** F **execution, as the property was mortgaged with the Life Insurance Corporation of India; that the vendor was also to obtain the income-tax clearance certificate; that the sale deed was to be executed on or before 31.10.71; that the vendor would hand over documents pertaining to the property in the suit together with vacant possession of the first floor by 30.9.71 and possession of the front portion at the time of registration of** G **the sale deed; and that the amount of Rs. 30,000 would stand forfeited in favour of the vendor should the vendee fail to pay the sale consideration and get the sale deed registered within the agreed time.**

Though the respondent was called upon to complete the sale H **through various letters and notices, there was no response.**

Respondent by letter dated 15.9.71 informed the appellant that since the appellant failed to pay the sum of Rs. 98,000 within 10 days from the date of the agreement, namely, by 6.9.71, the agreement stood annulled and the sum of Rs. 30,000 stood forfeited. A

The appellant in reply asked the respondent to execute the sale deed offering to pay the remaining consideration at the time of the execution of the sale deed. B

Since the respondent failed to comply with the demand, the appellant filed a suit claiming specific performance of the agreement or in the alternative, damages of Rs. 1,50,000 including the refund of Rs. 30,000. C

The respondent-defendant took the stand that the payment of Rs. 98,000 within 10 days from the date of the execution of the agreement was the essence of the contract; that as the said amount was not paid the respondent was entitled to treat the contract as having become null and void; that the appellant never tendered a sum of Rs. 98,000 but wanted possession of the ground floor before payment of Rs. 98,000; that such demand was contrary to the terms of the agreement; and that under these circumstances, the suit was misconceived and liable to be dismissed. D

The Trial Court decreed the suit holding that on a reading of the suit agreement payment of Rs. 98,000 by 6.9.71 was not the essence of the contract; and that the appellants were always ready and willing to perform their part of the contract and it was the respondent who was trying to resile from the terms of the contract. E

The Division Bench of the High Court in appeal held that the non-payment of Rs. 98,000 by the plaintiffs appellants on or before 6.9.71 would entitle the defendant-respondent to treat it as a breach of contract and the insistence of the appellants to obtain the income-tax clearance certificate and redemption of the property before the payment of Rs. 98,000 was unjustified. Setting aside the decree for specific performance, the High Court held that the appellants were entitled to the refund of the sum of Rs. 30,000. F G

Challenging the High Court's judgment, special leave to appeal was preferred to this Court by the plaintiffs.

This Court, while granting special leave, ordered that as the position H

A of law so decided in an earlier decision of this Court deserved reconsideration by this Court; this appeal be placed before the learned C.J. for directions that it be heard by a larger Bench.

During the pendency of the civil appeal, both the appellant, and respondent died and their legal representatives were brought on record.

B

The appellants urged that in the case of an agreement for sale of immovable property time was never regarded as the essence of the contract; that it would be an essence of the contract only when it was specifically stipulated or it clearly emerged by way of implication, which was not the case here; that the word "only" occurring under clause(1) of the suit C agreement would qualify only the amount and not the time for payment; and that the appellants at all material times, were ready and willing to perform their part of the contract.

The respondents submitted that having regard to the terms of the D contract it was clear that there was an obligation to pay a sum of Rs. 98,000 within 10 days from the date of the execution of the contract; that failure to do so would render the contract vitiated; that obligations on the part of the respondent to clear off the mortgage as well as to obtain the income-tax clearance certificate would arise only after the payment of Rs. 98,000 and in the absence of such a payment, the appellant had no right E to insist upon the obligations being performed; that the parties did intend to make time the essence of the contract; that as had been rightly held by the Division Bench that where a counter term stipulated which was not supported by the suit contract, the suit contract would stand vitiated; and that no case was made out for interference of this Court.

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On the questions, whether time was the essence of the contract and whether the first plaintiff was ready and willing to perform the contract, dismissing the appeal, this Court,

HELD: 1.1. In the case of sale of immovable property there is no G presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the Court may infer that it is to be performed within a reasonable time if the conditions are:

1. from the express terms of the contract;

H 2. from the nature of the property; and

3. from the surrounding circumstances, for example: the object of making the contract. [811-F,G] A

1.2. Though as a general proposition of law time is not the essence of the contract, in the case of a sale of immovable property yet the parties intended to make time as the essence under clause(1) of the suit agreement. [814-B] B

1.3. As rightly pointed out in the judgment under appeal, the word "only" has been used twice over -

(1) to qualify the amount of Rs. 98,000 and C

(2) to qualify the period of 10 days. [813-F]

Therefore, having qualified the amount there was no further need to qualify the same unless it be the intention to the parties to make time as the essence of the contract. [813-G] D

1.4. The analysis of evidence would also point out that the plaintiff was not willing to pay this amount unless vacant delivery of possession of one room on the ground floor was given. The plaintiff was insisting upon delivery of possession as a condition precedent for making the payment. The income-tax certificate was necessary only for completion of sale. The obligations on the part of the defendant could not be insisted upon for payment of Rs. 98,000. [813-H, 814-A] E

1.5. Where, therefore, the plaintiff was put on notice as to the stand of the defendant with regard to payment of Rs. 98,000 which again was reiterated in the notice dated 16.9.73, nothing would have been easier for the plaintiff than to pay the said sum. Therefore, even as late as 24.9.71 the plaintiff was never willing to make the payment of Rs. 98,000. There was no readiness and willingness. [814-E] F

Gomathinayagam Pillai and Ors. v. *Pallaniswami Nadar,* [1967] 1 SCR 227; *Hind Construction Contractors* v. *The State of Maharashtra,* [1979] 2 SCR 1147; *Jamshed Khodaram Irani* v. *Burjorji Dhunjibhai,* AIR 1915 Privy Council 83; *Govind Prasad Chaturvedi* v. *Hari Dutt Shastri and Another,* [1977] 2 SCC 539 and *Smt. Indira Kaur and others* v. *Shri Sheolal Kapoor,* AIR 1988 SC 1074, referred to G H

A *Nathulal* v. *Phoolchand,* **[1970] 2 SCR 854, distinguished.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3377 of 1979.

From the Judgment and Order dated 26.10.79 of the Delhi High
B Court in R.F.A. (O.S.) 15 of 1975.

Shanti Bhushan and K.R. Nagaraja for the Appellants.

B.A. Masodkar, S.K. Aneja and K.L. Taneja for the Respondents.

C The Judgment of the Court was delivered by

MOHAN, J. This appeal by special leave is preferred against the judgment of the High Court of Delhi at New Delhi passed in R.F.A. (O.S.) No. 15 of 1975 dated 26.10.79, reversing the decree for specific performance passed by the learned Single Judge in O.S. No. 463 of 1971.
D

The short facts leading to this appeal are as under:

On 26.8.71, an agreement for sale was entered into between Kamal Rani and Chand Rani. This agreement was entered into through the husband of Chand Rani, Niranjan Nath. Under the terms of the agreement,
E Kamal Rani agreed to sell her house and property comprising of a free-hold plot bearing No. 30 Block 'K', Green Park, New Delhi (Village Kharera) measuring 311 sq. yards with a double-storeyed residential building constructed thereon along with fittings and fixtures for a sum of Rs. 1,78,000 in favour of Chand Rani. On the date of execution a sum of Rs.
F 30,000 was paid by way of earnest money. The agreement stipulated that a further sum of Rs. 98,000 was payable within 10 days of the execution of the agreement. The balance of Rs. 50,000 was to be paid at the time of registration of sale deed. It was agreed between the parties that Kamal Rani, the vendor would redeem the property by paying off a loan of Rs. 25,000 out of a sum of Rs. 30,000 paid at the time of execution. The
G property was mortgaged with the Life Insurance Corporation of India. The vendor was also to obtain the income-tax clearance certificate. The sale deed was to be executed on or before 31.10.71.

At the time of this agreement the first floor of the house had been let out to tenants. It was stipulated in the agreement that the vendor would
H hand over documents pertaining to the property in the suit together with

vacant possession of the first floor by 30.9.71 and possession of the front portion at the time of registration of the sale deed. It was further agreed that the amount of Rs. 30,000 would stand forfeited in favour of the vendor should the vendee fail to pay the sale consideration and get the sale deed registered within the agreed time.

Based on this agreement Chand Rani and her husband filed O.S. No. 463 of 1971 for specific performance. It was alleged that though the defendant (Kamal Rani) was called upon to complete the sale through various letters and notices, they evoked no response. She failed to perform her part of the contract. Since the plaintiff had failed to pay the sum of Rs. 98.000 within ten days from the date of the agreement, namely, by 6.9.71, the agreement stood annulled and the sum of Rs. 30,000 stood forfeited. To this effect the defendant addressed a letter on 15.9.71. In reply to the said letter the plaintiff wrote to the defendant calling upon her to execute the sale deed offering to pay the remaining consideration at the time of the execution of the sale deed. Since the defendant failed to comply with this demand the suit came to be filed claiming specific performance of the agreement or in the alternative, damages in the sum of Rs. 1,50,000 including the refund of Rs. 30,000.

In defence, the execution of the suit agreement was admitted. Likewise, the receipt of the sum of Rs. 30,000. However, this stand was taken that the payment of Rs. 98,000 within 10 days from the date of the execution of the agreement was the essence of the contract. Inasmuch as the said amount was not paid the defendant was entitled to treat the contract as having become null and void. No doubt, the defendant was to redeem the suit property and to deliver the documents by 30.9.71. However, this had to be done only on payment of Rs. 98,000 within 10 days of the execution of the agreement. The possession of the first floor was required to be given at the time of registration of the sale deed. In fact, the first floor had been got vacant from the tenants by 20.9.71. The front portion of the house was already in her possession and delivery thereof could easily be made at the relevant time. The plaintiff never tendered a sum of Rs. 98,000. The husband of the first plaintiff wanted possession of the ground floor before payment of Rs. 98,000. This demand was contrary to the terms of the agreement. Therefore, the defendant was not willing to accede to the demand. Under these circumstances, the suit is misconceived and is liable to be dismissed. The sum of Rs. 30,000 stood rightly forfeited against her.

A Two important points came up for consideration to the trial court.

(1) Whether time was the essense of the contract?

(2) Whether the plaintiffs were ready and willing to perform their part of the contract?

B

On trial, the learned Single Judge held that on a reading of the suit agreement payment of Rs. 98,000 by 6.9.71 was not the essence of the contract. He further concluded that the plaintiffs were always ready and willing to perform their part of the contract and it was the defendant who C was trying to resile from the terms of the contract. In view of this, he decreed the suit.

Aggrieved by the same, the matter was taken up in appeal under R.F.A. (O.S) No. 15/75. The Division Bench of the High Court on an elaborate consideration of the oral and documentary evidence held that the D non-payment of Rs. 98,000 by the plaintiffs on or before 6.9.71 would entitle the defendant to treat it as a breach of contract. The insistence of the plaintiffs to obtain the income-tax clearance certificate and redemption of the property before the payment of Rs. 98,000 was unjustified. Such an insistence could only be regarded as trying to vary the terms of the agreement. On the whole, the transaction failed primarily on account of E non-payment of Rs. 98,000 by 6th of September, 1971. If on this account it was treated as a breach it was understandable and could not be said to be unjustified. In the result, the decree for specific performance was set aside. The plaintiffs were held entitled to the refund of the sum of Rs. 30,000. To this effect, a decree was granted in their favour. Challenging the same, special leave to appeal was preferred. This Court while granting special F leave ordered as under:

> "We grant leave in the light of the observations brought to our notice in an earlier decision of this Court referred to by the High Court. Nevertheless, we feel the position of law so decided deserves reconsideration by this Court. And G therefore we direct that this appeal be placed before the learned C.J. for directions that it be heard by a larger Bench. Stay appln. allowed to be withdrawn."

It is under these circumstances, the present civil appeal comes before H us.

Pending civil appeal, both the appellant, Chand Rani (plaintiff) and respondent, Kamal Rani (defendant) died. Their legal representatives have been brought on record. The parties will be referred to as plaintiff and defendant throughout this judgment.

Mr. Shanti Bhushan, learned counsel would urge the same two points.

The Division Bench of the High Court erred in its construction of clause (1) of the suit agreement. In the case of an agreement for sale of immovable property time is never regarded as the essence of the contract. It would be an essence of the contract only when it is specifically stipulated or it clearly emerges by way of implication. That is not the case here. The word "only" occurring under clause (1) of the suit agreement would qualify only the amount and not the time for payment. In support of this argument the learned counsel relied on *Gomathinayagam Pillai and Ors.* v. *Pallaniswami Nadar*, [1967] 1 SCR 227, *Hind Construction Contractors* v. *The State of Maharashtra*, [1979] 2 SCR 1147 and *Jamshed Khodaram Irani* v. *Burjorji Dhunjibhai*, AIR 1915 Privy Council 83.

As regards the readiness and willingness, it is clear from the various documents that the plaintiffs, at all material times, were ready and willing to perform their part of the contract. Repeated notices were issued supported by telegrams, calling upon the defendant to complete the sale. Even latterly, notice was issued through advocate that the plaintiff never refused to make the payment and was ready to make the payment. Again, by 24th September, 1977, this stand was reasserted through advocate's notice. Delivery of possession was insisted upon because that was a part of the agreement that such possession must be handed over by 30th of September, 1971. The suit agreement must be read as a whole and the sequence of events ought to have been ascertained properly and as laid down in *Nathulal* v. *Phoolchand*, [1970] 2 SCR 854.

Mr. B.S. Masodkar, learned counsel for the defendant, in opposition, would urge that as a general proposition of law, in the case of sale of immovable property time is not the essence of the contract. To this, there cannot be any demur. However, in this case having regard to the terms of the contract it is clear that there was an obligation to pay a sum of Rs. 98,000 within 10 days from the date of the execution of the contract. Failure to do so would render the contract vitiated. From this point of view the authorities cited above will have no relevance.

A No doubt, there were obligations on the part of the defendant to clear off the mortgage as well as to obtain the income-tax clearance certificate. Those obligations will arise only after the payment of Rs. 98,000. In the absence of such a payment the plaintiff had no right to insist upon these obligations being performed. In other words, in this case the parties did intend to make time the essence of the contract. Though the learned B Single Judge did not agree with this argument, the Division Bench correctly appreciated the matter in the proper perspective and has come to the right conclusion. In this view, there is no scope for application of the ratio in the ruling in *Nathulal's* case (supra). The question of judging the sequence of events does not arise.

C From the materials available in this case it is clear that the plaintiff was never ready and willing. No doubt, on 10.9.71, a notice was issued to the defendant that the first plaintiff had ready money with her for the purchase of property. It was also followed by a telegram. However, that was replied to calling upon the plaintiff to pay a sum of Rs. 98,000 which should have been paid on or before 26.8.71. This stand was reiterated by D reply notice dated 16.9.73. Strangely, the plaintiff would insist upon the vacant possession of the first floor by 30th of September, 1971. Only on such deliver of possession and payment of taxes the plaintiff was prepared to part with the consideration of Rs. 98,000. Therefore, it would be clear from the notice of the plaintiff dated 24.9.71 excepting mere assertion of readiness and willingness, it was not followed by conduct. The idea of the E plaintiff seems to be to obtain delivery of possession. As has been rightly held by the Division Bench that where a counter term stipulated which was not supported by the suit contract, certainly the suit contract will stand vitiated. Thus it is submitted that no case is made out for interference.

F Having regard to the above submissions only two points require to be consisdered by us.

(1) Whether time is the essence of the contract?

(2) Whether the first plaintiff was ready and willing to perform the G contract?

It is a well-accepted principle that in the case of sale of immovable property, time is never regarded as the essence of the contract. In fact, there is a presumption against time being the essence of the contract. This principle is not in any way different from that obtainable in England. Under H the law of equity which governs the rights of the parties in the case of

specific performance of contract to sell real estate, law looks not at the letter but at the substance of the agreement. It has to be ascertained whether under the terms of the contract the parties named a specific time within which completion was to take place, really and in substance it was intended that it should be completed within a reasonable time. An intention to make time the essence of the contract must be expressed in unequivocal language.

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We will now refer to the decisions of this Court. In *Gomathinayagam Pillai's* case (supra) it was held at pages 231 to 233:

> "Section 55 of the Contract Act which deals with the consequences of failure to perform an executory contract at or before the stipulated time provides by the first paragraph:
>
> "When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee if the intention of the parties was that time should be of the essence of the contract."
>
> It is not merely because of specification of time at or before which the thing to be done under the contract is promised to be done and default in compliance therewith, that the other party may avoid the contract. Such an option arises only if it is intended by the parties that time is of the essence of the contract. Intention to make time of the essence, if expressed in writing, must be in language which is unmistakable : it may also be inferred from the nature of the property agreed to be sold, conduct of the parties and the surrounding circumstances at or before the contract. Specific performance of a contract will ordinarily be granted, notwithstanding default in carrying out the contract within the specified period, if having regard to the express stipulations of the parties, nature of the property and the surrounding circumstances, it is not inequitable to grant the relief. If the contract relates to sale of immov-

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able property, it would normally be presumed that time was not of the essence of the contract. Mere incorporation in the written agreement of a clause imposing penalty in case of default does not by itself evidence an intention to make time of the essence. In *Jamshed Khodaram Irani* v. *Burjorji Dhunjibhai* (I.L.R. 40 Bom. 289) the Judicial Committee of the Privy Council observed that the principle underlying s. 55 of the Contract Act did not differ from those which obtained under the law of England as regards contracts for sale of land. The Judicial Committee observed:

"Under that law equity, which governs the rights of the parties in cases of specific performance of contracts to sell real estate, looks not at the letter but at the substance of the agreement in order to ascertain whether the parties, notwithstanding that they named a specific time within which completion was to take place, really and in substance intended more than that it should take place within a reasonable time.... Their Lordships are of opinion that this is the doctrine which the section of Indian Statute adopts and embodies in reference to sales of land. It may be stated concisely in the language used by Lord Cairns in *Tilley* v. *Thomas* (1867) L.R. 3 Ch. 61:

"The construction is, and must be, in equity the same as in a Court of law. A Court of equity will indeed relieve against, and enforce, specific performance, notwithstanding a failure to keep the dates assigned by the contract, either for completion, or for the steps towards completion, if it can do justice between the parties, and if (as Lord Justice Turner said in *Roberts* v. *Berry* (1853) 3 De G.M. & G. 284, there is nothing in the 'express stipulations between the parties, the nature of the property, or the surrounding circumstances' which would make it inquitable to interfere with and modify the legal right. This is what is meant, and all that is meant, when it is said that in equity time is not of the essence of the contract. Of the three grounds.... mentioned by Lord Justice Turner 'ex-

press stipulation' requires no comment. The 'nature of the property' is illustrated by the case of reversions, mines, or trades. The 'surrounding circumstances' must depend on the facts of each particular case."

Their Lordships will add to the statement just quoted these observations. The special jurisdiction of equity to disregard the letter of the contract in ascertaining what the parties to the contract are to be taken as having really and in substance intended as regards the time of its performance may be excluded by any plainly expressed stipulation. But to have this effect the language of the stipulation must show that the intention was to make the rights of the parties depend on the observance of the time limits prescribed in a fashion which is unmistakable. The language will have this effect if it plainly excludes the notion that these time limits were of merely secondary importance in the bargain, and that to disregard them would be to disregard nothing that lay as its foundation. "*Prima facie,* equity treats the importance of such time limits as being subordinate to the main purpose notwithstanding that from the point of view of a Court of Law the contract has not been literally performed by the plaintiff as regards the time limit specified."

In *Govind Prasad Chaturvede* v. *Hari Dutt Shastri and Another*, [1977] 2 SCC 539 following the above ruling it was held at pages 543-544:

"*It is settled law that the fixation of the period within which the contract has to be performed does not make the stipulation as to time the essence of the contract.* When a contract relates to sale of immovable property it will normally be presumed that the time is not the essence of the contract. (Vide *Gomathinayagam Pillai* v. *Pallaniswami Nadar,* [1967] 1 SCR 227, 233. It may also be mentioned that the language used in the agreement is not such as to indicate in unmistakable terms that the time if of the essence of the contract. The intention to treat time as the essence of the contract may be evidenced by cir-

A cumstances which are sufficiently strong to displace the normal presumption that in a contract of sale of land stipulation as to time is not the essence of the contract."

(Emphasis supplied)

B In *Hind Construction Contractor's* case (supra) quoting Halsbury's *Laws of England*, this Court observed at pages 1154-55 as under:

"In the latest 4th edn. of Halsbury's *Laws of England* in regard to building and engineering contracts the statement of law is to be found in Vol. 4, Para 1179, which runs thus:–

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"1179. Where time is of the essence of the contract. The expression time is of the essence means that a breach of the condition as to the time for performance will entitle the innocent party to consider the breach as a repudiation D of the contract. Exceptionally, the completion of the work by a specified date may be a condition precedent to the contractor's right to claim payment. The parties may expressly provide that time is of the essence of the contract and where there is power to determine the contract on a failure to complete by the specified date, the stipulation E as to time will be fundamental.

Other provisions of the contract may, on the construction of the contract, exclude an inference that the completion of the works by a particular date is fundamental, time is not of the F *essence where a sum is payable for each week that the work remains incomplete after the date fixed, nor where the parties contemplate a postponement of completion.*

Where time has not been made of the essence of the contract or, by reason of waiver, the time fixed has ceased G *to be applicable, the employer may by notice fix a reasonable time for the completion of the work and dismiss the contractor on a failure to complete by the date so fixed.*"

(Emphasis supplied)

H It will be clear from the aforesaid statement of law that

> even where the parties have expressly provided that time of the essence of the contract such a stipulation will have to be read along with other provisions of the contract and such other provisions may, on construction of the contract, exclude the inference that the completion of the work by a particular date was intended to be fundamental, for instance, if the contract were to include causes providing for extension of time in certain contingencies or for payment of fine or penalty for every day or week the work undertaken remains unfinished on the expiry of the time provided in the contract such clauses would be construed as rendering ineffective the express provision relating to the time being of the essence of contract. The emphasis portion of the aforesaid statement of law is based on *Lamprell* v. *Billericay Union* (1849) 3 Exch 283 at 308, *Webb* v. *Hughes* (1870) L.R. 10 Eq 281 and *Charles Rickards Ltd.* v. *Oppenheim* (1950) 1 KB 616."

In *Smt. Indira Kaur and others* v. *Shri Sheo Lal Kapoor*, AIR 1988 SC 1074 in paragraph 6 it was held as under:

> "The law is well-settled that in transactions of sale of immovable properties, time is not the essence of the Contract."

For this proposition reliance was placed on *Govind Prasad Chaturvedi's* case (supra) quoted above.

From an analysis of the above case law it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the Court may infer that it is to be performed in a reasonable time if the conditions are:

1. from the express terms of the contract;

2. from the nature of the property; and

3. from the surrounding circumstances, for example: the object of making the contract.

In the above legal background, we will now look at the terms of the

A suit contract dated 26th of August, 1971. The agreement reads as under:

"Now, therefore this agreement to sell witnesseth and the parties hereto have agreed as follows:–

1. That in pursuance of the said agreement, the 1st B party has received a sum of Rs.30,000 (Rupees thirty thousand only) from the second party as earnest money the receipt whereof the 1st party hereby separately acknowledges. Rs. 98,000 (Rupees ninety eight thousand only) will be paid by the second party to the 1st party C within a period of ten days only and the balance of Rs. 50,000 (Rupees fifty thousand only) at the time of registration of the sale deed before the Sub-Registrar, New Delhi.

2. That the 1st party has completed the house with all fixtures and fittings and it has been agreed to between the D parties that the 1st party shall take necessary steps for immediate redemption of the said property from the said mortgagee and shall inform the second party in writing about the completion of the said redemption.

E 3. That the 1st party shall apply immediately for the permission to sell to the income-tax authorities and after getting the permission to sell by getting an Income-tax Clearance Certificate in respect of the said property the sale deed of the same shall be executed by the 1st party in favour of the second party or her nominee/nominees on F or before 31.10.1971.

4. That in case 1st party fails to execute and get the sale deed registered within the period stipulated in para 3 above, the 2nd party shall have the right to get this G agreement enforced by specific performance through the court of law.

5. That if the second party fails to pay the balance sale consideration and get the sale deed executed and registered within the specific period mentioned in para 3 H above, the earnest money of Rs. 30,000 (rupees thirty

thousand only) shall stand forfeited to the 1st party and this agreement deemed null and void.

6. That the 1st party shall pay all taxes, rates municipal taxes upto the date of registration of the sale deed and that the previous deeds and other documents pertaining to the said plot No. 30, block 'K' sanctioned place and completion certificate from the Municipal Corporation, Delhi in respect of the super-structure built on the said plot shall be handed over along with the vacant possession of first floor by 30.9.71 and the front portion of the property by the first party to the second party at the time of registration of the sale deed."

Then comes the question as to the payment of Rs. 98,000. The question is as to what is the meaning of the words "within a period of 10 days only"? Does it apply to the amount or the time limit of 10 days from 26th of August, 1971. The trial court was of the view that the word "only" was meant to stress and qualify the amount of Rs. 98,000 and cannot be read to mean as if payment within 10 days was the essence of the contract. On this aspect, the appellate court takes the contrary view and holds that the amount of Rs. 98,000 ought to have been paid on or before 6th of September, 1971. Failure to do so would constitute a breach committed by the defendant. We are of the considered view that the Division Bench is right in its conclusion. As rightly pointed out in the judgment under appeal, the word "only" has been used twice over.

(1) to qualify the amount of Rs. 98,000 and

(2) to qualify the period of 10 days.

Therefore, having qualified the amount there was no further need to qualify the same unless it be the intention of the parties to make time as the essence of the contract.

The analysis of evidence would also point out that the plaintiff was not willing to pay this amount unless vacant delivery of possession of one room on the ground floor was given. In cross-examination it was deposed that since income-tax clearance certificate had not been obtained the sum of Rs. 98,000 was not paid. Unless the property was redeemed the payment

would not be made. If this was the attitude it is clear that the plaintiff was insisting upon delivery of possession as a condition precedent for making this payment. The income-tax certificate was necessary only for completion of sale. We are unable to see how these obligations on the part of the defendant could be insisted upon for payment of Rs. 98,000. Therefore, we conclude that though as a general proposition of law time is not the essence of the contract in the case of a sale of immovable property yet the parties intended to make time as the essence under clause (1) of the suit agreement. From this point of view, we are unable to see how the case in *Nathulal* (supra) could have any application to the facts of this case.

The next question is whether the plaintiff was ready and willing? The notices which were exchanged between the parties have to be looked into in determining readiness and willingness. On 10.9.71 the plaintiff would say through the registered notice that ready money was available for purchase of the property which was followed up by a telegram. The stand is taken by the defendant that within 10 days from 26.8.71, the sum of Rs. 98,000 was not paid; hence, the sum of Rs. 30,000 stood forfeited. The redemption of the mortgage would be done and the income-tax clearance also would be obtained after the purchase of stamp paper. Where, therefore, the plaintiff was put on notice as to the stand of the defendant with regard to payment of Rs.98,000 which again was reiterated in the notice dated 16.9.73, nothing would have been easier for the plaintiff than to pay the said sum. Instead of adopting that course what is stated in the notice dated 24.9.71 by the plaintiff is as follows:

> "5. That as per agreement, your clientess has to pay all taxes, rates, municipal taxes upto the date of registration and that the previous and other documents pertaining to the said plot No. 30, block 'K', sanctioned plan and completion certificates from Municipal Corporation of Delhi in respect of the superstructure built on the said plot shall be handed over alongwith the vacant possession of first floor by 30.9.1971.
>
> You know that 30.9.1971 is fast approaching and your clientess is still to comply with these requirements besides mentioned in para No. 2 and 3 of the agreement.
>
> I, therefore, call upon you to advise your clientess to

comply with the requirements will before 30.9.71 or latest by 30.9.71 and obtain the further part consideration of Rs. 98,000 from my clientess. A

Therefore, even as late as 24.9.71 the plaintiff was never willing to make the payment of Rs. 98,000. In this connection, we have already seen the oral evidence. It shows there was no readiness and willingness We are in agreement with the conclusion of the Division Bench. B

In view of the foregoing discussion, civil appeal is dismissed with costs. C

V.P.R. . Appeal dismissed.