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SC ON DELAY IN DECREETING SUIT FOR SPECIFIC PERFORMANCE

A. Introduction:

Supreme Court (“SC”), in *A.R. Madana Gopal* case,¹ held in 2021, that escalation of prices cannot be the only ground to deny specific performance. Any delay caused by court process cannot, as a matter of law, be used against the party who sued for specific performance.

B. Brief Facts:

1. A.R. Madana Gopal and his family (“Purchasers”) entered into four sale agreements with Ramnath Publications (“RP”) in 1991 for purchase of certain properties within four months (“Sale Agreements”). RP agreed to produce certificate of non-encumbrance and obtain income tax clearance certificate (“ITCC”), *i.e.*, permission to alienate such properties, before the registering the sale deeds.
2. RP applied to the Income Tax Authority (“ITA”) for ITCC. In 1991, the ITA ordered for compulsory acquisition wherein it would acquire the properties for public use.
3. RP challenged the ITA’s order before Madras HC (“HC”). HC granted interim injunction in 1993 directing parties to maintain *status quo* and not change the nature of the properties. The petition was finally disposed of in 1998.
4. During pendency before the HC, the parties, in 1994, entered into four Memorandum of Understandings (“MOUs”) recording that these were in addition to the Sale Agreements. It was agreed that the RP would retain the original title deeds until registration of sale deeds.
5. Further, certain amounts already paid by Purchasers were documented in MOUs along with promise to pay the balance amount at time of registration of sale deeds immediately after the disposal of the writ petitions in their favour.
6. In 2000, Purchasers filed separate suits for specific performance against RP for execution of the Sale Agreements.
7. The suits were heard together, and a decree was passed by HC in 2003, directing Purchasers to deposit the balance amount along with interest. Purchasers complied with the direction.
8. RP challenged the order in 2008 before Division Bench of HC. It set aside the Single Bench order on ground that Purchasers failed to deposit the balance amount immediately. Though the petition challenging the ITA’s order was disposed of in 1998, the suits for specific performance was instituted only in 2000. Hence, the Division Bench concluded from these factors that Purchasers were not ready to perform their part of Sale Agreements. Purchasers moved the SC.

¹*A.R. Madana Gopal and Ors. vs. Ramnath Publications Pvt. Ltd. and Ors.* (09.04.2021 - SC): MANU/SC/0256/2021.
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C. Contention of the Parties:

1. Purchasers contended that the Sale Agreements and MOUs must be read together and that most of the total consideration was already paid and placed reliance on a plethora of judgments.² Repeated requests from them for the execution of Sale Agreements were rejected by RP citing pendency of the challenge to the ITA's order. Purchasers sued for specific performance immediately after receiving information that the properties were not encumbered. Hence there was no delay.
2. RP contended and relied on the cases of *K.S.Vidyanadam*³ and *Saradamani Kandappan*⁴ that not only did Purchasers fail to send notices to execute Sale Agreements, but they also delayed suing for specific performance. Further, there has also been an escalation of prices of the properties.

D. Order and Reasoning of the SC:

SC upheld the appeal holding that RP was not entitled to any additional consideration on the following grounds:

- a. The mere fixation of time in a contract “*does not make the stipulation as to ‘time being of the essence’*”.⁵
- b. A suit for specific performance cannot be dismissed on the sole ground of delay or laches, especially when the delay, because of the court process, cannot, as matter of law, be put against a party approaching the court.
- c. “*Escalation of prices cannot be the sole ground to deny specific performance*”.⁶

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² *State of Bihar v. Tata Iron*, MANU/SC/0777/2019; *Anglo American Metallurgical Coal Pty Ltd. v. MMTCLtd*, 2020 SCC OnLine SC 1030 and *Khardab Co. Ltd. v. Raymon & Co. (India) Private Limited*, MANU/SC/0428/1962.

³ *K.S. Vidyanadam and Ors. v. Vairavan*, MANU/SC/0404/1997.

⁴ *Saradamani Kandappan and Ors. v. S. Rajalakshmi and Ors.*, MANU/SC/0717/2011.

⁵ Para 14 of the judgment.

⁶ *Supra*.