

(2019) 12 PAT CK 0238

Patna High Court

Case No: First Appeal No. 104 Of 2013

Devendra Prasad
Jaiswal

APPELLANT

Vs

Arvind Kumar Jaiswal

RESPONDENT

Date of Decision: Dec. 19, 2019

Acts Referred:

Code Of Civil Procedure, 1908 " Section 2(9), 33, Order 20 Rule 4(2), Order 20 Rule 5, Order 7 Rule 7#Specific Relief Act, 1963 " Section 18, 20#Transfer Of Property Act, 1882 " Section 55

Citation: (2019) 12 PAT CK 0238

Hon'ble Judges: Aditya Kumar Trivedi, J

Bench: Single Bench

Advocate: J.S. Arora, Veena Kumari Jaiswal, Manojeshwar Prasad Sinha, Rajendra Kishore Prasad, Ratan Kumar Sinha, Suresh Chandra Pd. Sinha

Final Decision: Allowed

Judgement

The defendant- appellant being aggrieved by the judgment dated 15.12.2012 and decree dated 5.1.2013 passed by the Subordinate Judge VI, Vaishali

at Hajipur in Title Suit No. 123/2002, whereby and whereunder the learned lower court has decreed the suit with cost, challenged the same under the

present appeal.

The plaintiff- respondent has filed the instant suit with the following reliefs:

(a) After considering the facts and circumstances of the case decree be passed in favour of the plaintiff against the defendant in terms of unregistered

agreement to sale dated 12.11.2001.

(b) Defendant be directed to execute sale deed within the specified period after accepting the remaining consideration amount of Rs.5 lacs, at the cost

of the plaintiff followed with delivery of possession.

(c) If the defendant fails to honour the direction of the court within the stipulated time by accepting the remaining consideration amount then in that

circumstance, the plaintiff be allowed to deposit the remaining consideration amount in the Government Ex- chequor and then sale deed be executed at

the end of the court followed with delivery of possession.

(d) Cost of the suit.

Status of the parties are duly recognized as they stood before the lower court and for that come with a pleading that the land so detailed under

Schedule I of the plaint bearing old CSP No. 2393, CS Khata No. 388 corresponding to new Khesra No. 4130, new Khata No. 582, area 4 decimals

(18 dhurs) lying at Mahnar Bazar, Ward No.4 belongs to having dilapidated building, shop belongs to Devendra Prasad Jaiswal & Barun &

(defendant) having his absolute title as well as possession which he got on partition having affected in his family in the year 1984 and his possession

continued as was occupying since before as a tenant. As, the defendant became in need of money in order to purchase a land for his permanent

residence at Patna, so, he spread his inclination to sell the aforesaid land. After coming to know about the same, the plaintiff shown his eagerness to

purchase the property and for that, negotiation was finalized in presence of respectable person of the locality.

It has further been pleaded that finally it was agreed amongst the parties over consideration money appertaining to Rs.5,61,000/- and it was also

agreed amongst the parties that Rs.61,000/- as an earnest money be paid by the plaintiff in token of settlement of negotiation and the rest amount

appertaining to Rs.5 lacs will have to be paid by the plaintiff by 15.12.2001. Then thereafter, the defendant will execute the sale deed at the cost of the

purchaser (plaintiff).

It has further been pleaded that it was also agreed amongst the parties that even after receipt of full consideration money, if the seller (defendant) fails

to execute the sale deed then, in that circumstance, the purchaser (plaintiff) will be entitled to take legal action against the defendant (seller) and got

the sale deed executed through legal process as well as, will be also entitled for cost of the suit.

Then it has been pleaded that in terms of negotiation, the plaintiff handed over Rs.61,000/- as an earnest money to the defendant on 12.11.2001 which

was accepted by him; subsequently thereof the defendant executed unregistered Mahadnama in duplicate (carbon process), whereupon he put his

signature, signature of the plaintiff alongwith one Alok Kumar, as a witness was taken thereupon. Thereafter a copy was handed over to the plaintiff

while another copy was retained by the defendant.

It has further been pleaded that just after 12.11.2001 (date of execution of unregistered Mahadnama), the plaintiff engaged in managing, collecting

money and before 15.12.2001 i.e. on 10.12.2001, the plaintiff had gone to the place of the defendant alongwith few persons carrying Rs.5 lacs and

offered him by saying that kindly accept the amount and execute the sale deed after coming to Mahnar Registry Office, whereupon the defendant

disclosed to them that as he is going outside, so he is not in a position to accept money and keep it at his house as, it would not be safe for him. He had

further instructed them to come on 15.12.2001 at morning hour. Then it has been asserted that the plaintiff alongwith some person having cash

appertaining to Rs.5 lacs had gone to the place of defendant, at Patna, but the defendant declined to accept the money and for that advanced different

story. Then he said that now he changed his view whereunder he is not going to sell the property. Therefore, he will not accept the money. He

(plaintiff) had also stated that kindly accept Rs.61,000/- the earnest money having been paid by him and returned back the copy of the agreement

whereupon, he (the plaintiff) did not agree.

Then it has been asserted that the plaintiff in terms of the agreement dated 12.11.2001 came in readiness with cash appertaining to Rs.5 lacs, is willing

to perform his part in order to get the sale deed executed in his favour but it is the defendant who, on account of denial to accept the money, execute

the sale deed, frustrated the terms of agreement.

Then it has been averred that on account of closure of Hajipur Civil Court from 16.12.2001 to 19.12.2001, on 20.12.2001 the plaintiff got Advocate

notice served upon the defendant under registered cover requesting him to accept the balance amount of Rs.5 lacs and execute sale deed, otherwise

civil as well as criminal action would be taken against him in order to protect legal right of the plaintiff but the defendant failed to respond. Again, on

7.1.2002 second Advocate notice was served with similar request which was replied on 22.1.2002 by Sri Surendra Kumar, Advocate on behalf of the

defendant, whereunder negotiation, acceptance of Rs.61,000/- as an earnest money, execution of unregistered document have been accepted but it

has wrongly, illegally been described that the agreement got frustrated in the background of failure of the plaintiff to pay the amount within the

stipulated period and in the aforesaid background, his planning to purchase a house at Patna has also got frustrated. It has also been incorporated in

the said notice that whenever the plaintiff so desires, may receive back Rs.61,000/- so paid as an earnest money at his end. After receipt of the reply,

another notice was sent on 31.1.2002 controverting the allegation whatsoever been levelled at the end of the defendant and further, he was again

requested to accept the remaining amount, that means to say, Rs.5 lacs and got sale deed executed in favour of the plaintiff which has again been

controverted at the end of the defendant by serving Advocate reply notice dated 7.2.2002. In the aforesaid notice, a new theme has also been

introduced that it was not agreed amongst the parties to pay cash rather, through Bank draft. It has also been averred that before filing of the plaint,

on 23.2.2002 the plaintiff again approached the defendant personally and requested him to accept the remaining consideration amount to the tune of

Rs.5 lacs and got sale deed executed otherwise, seeing no other option he will have to file a title suit. On account of refusal at the end of the

defendant, after disclosing the cause of action, paying the court fee, the suit has been filed with the reliefs stated hereinabove.

The defendant- appellant appeared and filed a written statement wherein, apart from raising ornamental objection, there happens to be an admission

with regard to proper identification of the land under para-1, 2. In para-3 it has been incorporated that having in urgent need of money in order to

purchase a constructed house at Patna belonging to Sri R.K.Choudhary known as *Ã¢â¬ÅAnpurna KutirÃ¢â¬Å, located at Mohanpur, New Punaichak,*

which was to be purchased jointly with Raghunath Saran Choudhary (D.W.6) at a cost of Rs.25 lacs and to facilitate the same, defendant wanted to

sell the property in question whereupon, negotiation with the plaintiff was materialized on a consideration amount of Rs.5,61,000/- out of which,

Rs.61,000/- has been accepted by him as an earnest money and in token thereof, an unregistered agreement was ascribed on a piece of paper dated

12.11.2001 having signature of the plaintiff, defendant alongwith Alok Kumar, friend of the plaintiff. It has further been disclosed that the plaintiff

accepted the terms of agreement so incorporated in the deed dated 12.11.2001 whereunder the remaining consideration amount of Rs.5 lacs was to be

paid at Patna on or before 15.12.2001 in the background of the fact that the same condition was also introduced with regard to purchase of

Ã¢â¬ÅAnpurna KutirÃ¢â¬Å. Then it has been submitted that the negotiation was finalized at Patna at the residence of the defendant, in presence of the

family members of the defendant alongwith one Alok Kumar, a friend of the plaintiff, whose presence is also over the Deed of Agreement dated

12.11.2001, whereunder there happens to be specific condition put over payment to be made on or before 15.12.2001 with a further condition that in

case of failure at the end of the plaintiff, the agreement will come to an end as, the same condition was also operating relating to *Ã¢â¬ÅAnpurna*

KutirÃ¢â,¬â,,¢. It has further been pleaded that as agreed the payment was to be made only by Bank draft although the same was not incorporated. It was

agreed amongst the parties, orally that Rs.5 lacs in cash would be accepted on or before 15.12.2001. It has further been stated that the defendant had

received Rs.61,000/- on 12.11.2001, agreement to sale was ascribed on the same day having signature of both the parties, witnessed by Alok Kumar,

the friend of the plaintiff. Again there happens to be stress at the end of the defendant that it was orally agreed that the remaining Rs.5 lacs shall be

paid only through Bank draft and not in cash. However, an explanation has been on that very score to the effect that no seller would like to transact

without clearance of Income Tax and since it involved such huge amount, there was no question of cash transfer. Then it has been stated that the

plaintiff failed to comply the terms whereupon, the defendant also failed to perform his part relating to purchase of Ã¢â,¬ËœAnpurna KutirÃ¢â,¬â,,¢ and in the

aforesaid background, the negotiation in between the defendant with R.K.Choudhary came to an end.

Now coming to the other aspect averred in the plaint, the same has been vehemently denied. The defendant denied presence of the plaintiff at his

residence either on 10.12.2001 or on 15.12.2001 with a balance amount of Rs.5 lacs. It has been pleaded that the plaintiff neither approached on

10.12.2001 nor on 15.12.2001 rather, contacted the defendant on telephone on 18.12.2001 and requested to accept the amount in cash which the

defendant refused in the background of the fact that the plaintiff had defaulted to make payment on or before 15.12.2001, the condition precedent so

enumerated in the Deed of Agreement dated 12.11.2001. In likewise manner, the averment of para-9 of the plaint has also been denied. The

Defendant vehemently controverted the averments having so made therein regarding carrying pf Rs.5 lacs in cash in a briefcase by the plaintiff

alongwith others to his house. Further more, it has also been incorporated that there happens to be no denial at the end of the defendant with regard to

sell the property before 15.12.2001 which the plaintiff himself failed to obey/ perform. On the other hand, the plaintiff requested on telephone on

18.12.2001 to accept the amount in cash as, the plaintiff was not in a position to pay through Bank draft. Then it has been said that as the

consideration amount could not be paid through Bank draft on account thereof, terms of agreement has been violated and non-payment has resulted in

breakage to purchase a constructed house 'Anpurna Kutir' by the defendant. In likewise manner, para-10 of the plaint has also been denied. It

has further been disclosed that there happens to be no violation of terms and conditions at the end of the defendant, rather it happens to be plaintiff

who has violated the terms of the agreement. Then, consolidating the answer relating to para-11, 12 of the plaint, it has been submitted that as the

plaintiff himself failed to make payment through Bank draft within the stipulated time i.e. by 15.12.2001, on account thereof, no cause was accrued in

favour of the plaintiff, whereupon legal notice so served upon at the end of the plaintiff happens to be illegal. The answer having at the end of the

defendant clearly explains the same and if properly taken into consideration, the plaintiff has got no case to plead.

Then it has been submitted that on account of non- payment through Bank draft on or before 15.12.2001, deprived of the defendant to purchase

'Anpurna Kutir' as, negotiation on that very score in between defendant as well as R.K.Choudhary was effective on or before 15.12.2001 only.

So, on account of failure at the end of the plaintiff, caused serious humiliation to the defendant. Then it has been submitted that on account of failure

on the part of the plaintiff to perform his part on or before 15.12.2001 disentitles him to seek any remedy under the present litigation whereupon, the

suit is fit to be dismissed with cost.

After going through respective pleadings learned lower court had framed the following issues:

1. Is the suit as framed maintainable?
2. Has the plaintiff got any valid cause of action and right to sue?

3. Is the suit barred bylaw of limitation, estoppel, waiver and acquiescence?
4. Whether the plaintiff was ready to perform his part of contract?
5. Whether the payment of remaining consideration money was to be paid within 15.12.2001?
6. Whether the remaining consideration money was to be paid in cash or through bank draft?
7. Whether the defendant was ready to perform his part of contract in pursuance of his written agreement dated 12.11.2001?
8. Is the plaintiff entitled to a decree for a specific performance Act with respect to the disputed properties of not?
9. Is the plaintiff entitled to get any other relief or reliefs?

and decided Issue Nos. 4, 5, 6 and 7 in favour of the plaintiff against the defendant, whereupon Issue Nos.8 and 9 has been answered in favour of the

plaintiff and Issue nos. 1, 2 and 3 have also been answered in favour of the plaintiff ultimately decreed the suit. Hence, this appeal.

Learned counsel for the appellant- defendant while assailing the judgment impugned has raised many fold arguments. The first and foremost is failure

of the learned lower court in properly appreciating the facts of the case, the merit of the case, the legal issues so involved and without discussing the

same in consonance with the evidence so adduced on behalf of the respective parties, in casual manner recorded his finding, in arbitrary manner

whereupon, happens to be cryptic, perverse. By such activity, the learned lower court also failed to follow the mandate as prescribed under section 33

as well as Order XX(4)(2), 5 of the C.P.C.

Then it has been submitted that the learned lower court had completely failed to appreciate the basic principle whereupon, specific performance of

contract could survive and that is, readiness as well as willingness. It has also been submitted that the willingness is inter dependent over the

readiness. Therefore, while deciding a suit under the Specific Performance of Contract Act, the court has to perceive whether the plaintiff happens to

be in readiness or not. Readiness is not a theoretical term, rather readiness means eagerness of the plaintiff to perform his obligation. Readiness did

not require that the remaining cash should be always ready-made available with the plaintiff, rather readiness means he is in such position that he

could disburse the amount at any moment which could be perceived by his conduct. In order to justify the same, learned counsel also referred to the

case of N.P.Thirugnanam (Dead) by Lrs. vs. Dr. R.Jagan Mohan Rao & ors., reported in (1995)5 SCC 11,5 in the case of Ram Awadh (Dead) by

Lrs. & ors. vs. Achhaibar Dubey & Anr., reported in (2000)2 SCC 428, in the case of Padhakumari & ors. vs. Dasayyan & ors., reported in (2015)8

SCC 695, in the case of Pehmada Prabhakar & ors. vs. Youngmen's Vysya Association & ors., reported in (2015)5 SCC 355, in the case of B.

Vijaya Bharathi vs. P. Savitri & ors., reported in 2018(11) SCC 761, in the case of Raj Kumar Singh vs. Madhuri Kumari @ Madhubala & ors.,

reported in 2015(1) PLJR 543, in the case of Most. Mini Sinha vs. Smt. Reena Devi, reported in AIR 2018 Patna 172, in the case of Union of India &

ors. vs. Vasavi Cooperative Housing Society Ltd. & ors., reported in (2014)2 SCC 269, in the case of Smt. Chand Rani (dead) by Lrs. vs. Smt.

Kamal Rani (dead) by Lrs., reported in AIR 1993 SC 1742, in the case of Zarina Siddiqui vs. A. Ramalingam @ R. Amarnathan, reported in (2015)1

SCC 705, in the case of J.P.Buildings & anr., vs. A. Ranabas Rao & anr., reported in (2011)1 SCC 429, in the case of Ravi Setia vs. Madan Lal &

ors., reported in AIR 2019 SC 4791.

Relying upon the principle so laid down by the Apex Court as referred to hereinabove, it has been submitted at the end of learned counsel for the

appellant that the evidence of the plaintiff (P.W.14) has got primacy in consonance with the pleading whatsoever been at his end and the admitted

case is that the plaintiff was not in possession of the money nor he could be in position to arrange the same. Even in pleading, he admitted that just

after finalization of the agreement on 12.11.2001, he actively involved in procurement of the money and the same fact he also deposed during his

examination-in-chief. He was cross-examined on that very score and at para-69 he had admitted that he was possessing less than 3 lacs and the

remaining amount was procured by him from different persons out of whom some were named and some not and in likewise manner the amount. Had

there been proper collection of the money from a genuine person then, in that circumstance, there should have been proper disclosure of the name of

the person from whom certain amount was borrowed and the accurate figure of the money having from him. It has also been submitted that those

persons have not come forward in the witness box to substantiate and having failed on that very score, gives a clear cut impression that being deficient

of money plaintiff- respondent was not at all in readiness. In its continuity it has also been submitted that though, the plaintiff-respondent rapidly filed

the suit but till pronouncement of the judgment as well as preparation of the decree not even a single chit of paper has been filed at the end of the

plaintiff- respondent to substantiate his plea of readiness. As such, irrespective of the fact that the plaintiff- respondent failed to substantiate the plea

of readiness, learned lower court on its illusion has construed that there was readiness at the end of the plaintiff-respondent. As the plaintiff-

respondent failed to substantiate his readiness on account thereof, he automatically failed on the plea of willingness.

Then it has been submitted that in accordance with Section 20 of the Specific Relief Act, there happens to be some sort of ambiguity as, the law

suggests that there would not be application of; time is essence of contract so far immovable property are concerned and that laid the matter to be

decided by the Constitution Bench in the case of Smt. Chand Rani (dead) by Lrs. vs. Smt. Kamal Rani (dead) by Lrs., reported in AIR 1993 SC 174,2

whereunder it has been held that the time may not be essence of the contract so far immovable property is concerned under the banner of Specific

Relief Act but its inference is to be gathered from the surrounding circumstances. Putting emphasis over the surrounding circumstances, it has been

submitted that right from the pleading there happens to be specific disclosure at the end of the plaintiff-respondent that after execution of the Deed of

Agreement to Sale on 12.11.2001, he rushed for arranging money as, the same was to be paid on or before 15.12.2001. So, the plaintiff- respondent

himself admitted that 15.12.2001 was the date fixed for performance of part of contract and so, could be considered to be duly influenced; "time is

the essence of contract".

Now, coming over part of the plaintiff, as pleaded as well as deposed during course of evidence at his end that after arranging money he had gone to

the place of the defendant- appellant on 10.12.2001 as well as on 15.12.2001 with the money having in a briefcase, is nothing but a humble as, the

plaintiff failed to state that he had opened the briefcase full of cash and slipped towards defendant rather, whatever evidence has been at his end, he

took money, kept it in a briefcase, gone to the place of the defendant and said that accept the money which is in the briefcase. In the aforesaid

background it has been submitted that had there been money alongwith the plaintiff-respondent, then in that circumstance on the first day of filing of

the suit itself, there should have been a prayer at the end of the plaintiff to allow him to deposit the money, there should have been an evidence at his

end that he filed a petition before the court for allowing to deposit the balance consideration amount. Those incidents are relevant more particularly in

the background of the fact that right from the inception of the suit there happens to be specific disclosure at his end that after execution of the Deed

of Agreement of Sale he gone in arranging money and during cross-examination manner under which he spoke over collection of money speaks a lot

and casts mark of interrogation over his readiness.

Then it has been submitted that mere registration of a deed after decree should not be a measuring scale to identify the readiness as well as

willingness of the plaintiff-respondent nor such a scale has been prescribed by the Apex Court. The settled principle is that till the judgment is

pronounced the conduct of the plaintiff is to be seen over his readiness as well as willingness.

It has also been submitted that from the evidence, though not specifically pleaded, it is apparent that the defendant consists of a joint Hindu family and

the defendant has not been identified as Karta of that joint family. Not being a Karta, he was not at all competent enough to enter into an agreement

for sale and so, as his competency happens to be deficient one on account thereof, during the course of adjudication of the dispute relating thereto,

propriety of the defendant in consonance with the document having been executed by him are to be legally scrutinized which has properly been

explained in the case of Most. Mini Sinha vs. Smt. Reena Devi, reported in AIR 2018 Patna 17 2 and the same has been affirmed by the Apex Court

on account of dismissal of the appeal. Then it has been submitted that the plaintiff would not be allowed to take advantage of inconsistent plea of

defence over weakness of defence. Even in an ex-parte proceeding failure of the plaintiff to substantiate its case would not allow him to have decree

in his favour as held by the Apex Court in the case of Zarina Siddiqui vs. A. Ramalingam @ R. Amarnathan, reported in (2015)1 SCC 705. So,

irrespective of the fact that the deed of agreement is silent with regard to mode of payment of the remaining amount ever considering, having been

introduced during the course of reply to the Advocate notice, averred in the written statement, stated during course of evidence, for a moment

brushing aside would not give any benefit to the plaintiff- respondent because of the that he utterly failed to prove/ substantiate his readiness much less

his presence on 10.12.2001 as well as 15.12.2001 at the place of the defendant- appellant and so, the weakness of the defence case or inconsistency

would not be of any use to the plaintiff- respondent.

Then it has been submitted that though the defendant- appellant examined D.W.5 on this score whose evidence is found comparatively of lower

magnitude but that has got relevancy as, there happens to be an admission at the end of the plaintiff- respondent that a news was floated in the area

that as the defendant- appellant has to purchase a house at Patna on account thereof, he was to sell the land under dispute over which, he approached,

negotiated and got finalized the deal at Rs.5,61,000/-. Two days after finalization of the deed, earnest money appertaining to Rs.61,000/- was paid

followed with execution of deed of agreement of sale. On account of non-payment of remaining balance amount by the plaintiff-respondent ultimately

frustrated the deed which the defendant- appellant finalized with D.W.5 and then in that circumstance, the consequence thereof did not permit the

plaintiff-respondent to seek relief as claimed.

Then it has been submitted that although alternative relief has not been sought for but the same could be granted in terms of Order VII Rule 7 of the

C.P.C. which is also permissible in the eye of law as observed by the Apex Court in the case of Union of India & ors. vs. Vasavi Cooperative

Housing Society Ltd. & ors., reported in (2014) 2 SCC 269 .So, it has been pleaded that the judgment and decree passed by the learned lower court

did not fulfill any of the legal criteria whereupon, did not justify its prevalence. As such, is fit to be set aside.

Learned counsel for the respondent- plaintiff while supporting the judgment and decree impugned has submitted that after perusal of the same, it is

crystal clear that the learned lower court has meticulously examined, scrutinized, analyzed, considered the materials available on the record as per his

capability, capacity, and so, needs no interference. Further elaborating, it has been submitted that though the judgment impugned is deficient on the

score of discussing, detailing the evidence of each of the witness so adduced on behalf of the respective parties but it depicts proper appreciation more

particularly, with regard to ingredients relating to specific performance of contract and, the conclusion so arrived at is so sound and well reasoned that

it duly justify the perfect approach of the learned lower court. Now, coming to the main track, it has been submitted that there happens to be no denial

with regard to the land under dispute belonging to the appellant-defendant. Though there happens to be pleading beyond terms of the agreement but

from the evidences even adduced at the end of the appellant-defendant, it is crystal clear that he intended to sell the property for purchase of

Ã¢â¬ÅAnpurna KutirÃ¢â¬Å at Patna and for that, there was negotiation amongst the parties which finalized at a total consideration amount of Rs.5,61,000/-

and out of which Rs.61,000/- was paid by the respondent- plaintiff as an earnest money followed with preparation of deed of sale of agreement on

12.11.2001. It is also an admitted fact that the deed in question was ascribed by the appellant-defendant himself in carbon process having signature of

the respective parties alongwith a witness and then, a copy thereof was retained by each of the parties. It is further admitted that the payment of

remaining consideration amount appertaining to Rs.5 lacs was to be materialized by 15.12.2001. It is also an admitted fact, though neither pleaded at

the rival end nor deposed on that very score that no provision is there, with regard to execution of the sale deed as well as delivery of possession. If

the same is considered in its right perspective, it depicts that time is not essence of contract.

Then, it has been submitted that the plaintiff was in readiness and willingness to perform his part and so, just after execution of agreement of sale he

shifted in making arrangement for collection of the total amount and having so collected, immediately rushed to the place of the appellant- defendant

on 10.12.2001 having the money in briefcase and handed it over to the appellant-defendant to accept the same but the appellant- defendant averted to

accept the money by saying that as he is going outside, it will be unwise, unsafe to keep the money in the vacant house and so, directed him to come

on 15.12.2001 on which date also appellant- defendant, on being approached by the respondent/ plaintiff alongwith some other person taking the

money in his briefcase placed it over to the appellant- defendant which he declined to accept on the pretext that now he has changed his mind and so,

he is not inclined to sell the property. He had also offered to take back the earnest money, Rs.61,000/-. He repeatedly requested, served Advocate

notice, even before filing of the suit on 23.2.2002 he again approached the appellant-defendant to accept the remaining amount and execute the sale

deed but having been frustrated at the end of the appellant- defendant, lastly he filed the suit. All those events suggest the readiness as well as

willingness of the respondent- plaintiff. Even during course of evidence, part from the other P.Ws. the respondent- plaintiff, P.W.14 succeeded in

substantiating presence of the money, approaching the appellant- defendant on 10.12.2001 as well as on 15.12.2001 alongwith the money, during

pendency of the suit, always ready and shown his willingness in having the sale deed executed in his favour at the end of the defendant by way of

accepting the remaining balance amount and just after passing of the decree, no sooner than the court directed deposited remaining consideration

amount got the sale deed executed in his favour through the process of the court. All these steps are glaring example with regard to readiness as well

as willingness of the respondent- plaintiff.

It has further been submitted that it is not the requirement of law that at every moment the plaintiff should show the money though, in this case the

respondent- plaintiff had followed with tendering readiness and willingness at every occasion even after institution of the suit, there should be evidence

on record that the plaintiff was in a position to discharge his obligation just exposing the event of readiness and willingness. It has then been submitted

that though the plaint is not happily worded but that will not make any kind of deficiency in case of the plaintiff as, there happens to be consistency as

well as uniformity over the readiness and willingness coupled with availability of the money. Then it has been submitted that the plaintiff has got

obligation to substantiate its case wherein the plaintiff succeeded. At the present juncture, it has also been submitted that the conduct of the defendant

though does not happen to be of much importance, cannot be ignored and having a glance over the same as well as properly appreciated would

substantiate the case of the plaintiff additionally as, by way of introduction in the second Advocate notice regarding acceptance of money only by the

Bank draft is indicative of the fact that anyhow the defendant was trying to thwart the readiness and willingness at the end of the plaintiff, knowing

full well that the mode of payment was not at all disclosed in the deed of sale of agreement nor agreed upon. Further more, it has also been submitted

that keeping theme of execution of sale deed conspicuously absent in the deed of sale of agreement alongwith delivery of possession is indicative of

the fact that 15.12.2001 was not the actual date by which the plaintiff was under obligation to pay the amount, that means to say schism of sale of

agreement. That being so, the principle that "time is essence of contract" is not at all found to be applicable in the facts and circumstances of the

case coupled with the fact that the same is non-applicable enforceable denuded in terms of Section 18 of the Specific Relief Act, whereupon, the

agreement was (is) effective even after expiry of 15.12.2001 and the parties remain bound by the terms of agreement.

Then, it has been submitted that so far identity of land is concerned, although during course of cross- examination of certain witnesses, it has come

that the family of the defendant constitute his wife and two sons, would not put obstacle over the case of the defendant because of the fact that in

terms of Section 55 of the T.P.Act, certain obligation is to be over the seller covering the present controversy and further, the defendant never raised

the plea on the aforesaid preface. That being so, the judgment impugned recorded by the learned lower court is fit to be dismissed.

Also relied upon in the case of K.Prakash vs. B.R.Sampath Kumar, reported in 2014 (4) PLJR 419 (SC), in the case of Amathal vs. Maruthathal,

reported in AIR 2018 SC 340, in the case of Gobind Singh vs. Ram Ballav Upadhyay, reported in 1992(2) PLJR 205, in the case of A zhar Sultana vs.

B. Rajamani & ors., reported in AIR 2009 SC 2157, in the case of Sri Rajan Kumar Verma & anr. vs. Sri Sachchidanand Singh, reported in 2006(1)

PLJR 251.

After hearing the rival parties as well as going through the judgment impugned, the sole question in the background of nature of judgment arose for

consideration is whether the judgment impugned fulfills the ingredients thereof. It is needless to say that both the parties have been requested to argue

over quality of the judgment. The learned counsel for the appellant/ defendant has submitted that the same happens to be cryptic, perverse, while

learned counsel for the respondent/ plaintiff has argued that it is based upon the capability, capacity of the learned lower court.

As per Section 33 of the C.P.C., it is incumbent upon the court to pronounce a judgment followed with decree after conclusion of hearing. Order XX

of the C.P.C. guides the issue on that very score. Rule 4(2), 5 of Order XX prescribes the requirement which the Court has to follow during

pronouncement of the judgment. For better appreciation the same is quoted hereinbelow:

“O XX R4(1) “A judgment ...

4(2) Judgments of other Courts.- Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision

thereon, and the reasons for such decision.

O XX R(5) Court to state its decision on each issue.- In suits in which issues have been framed, the Court shall state its finding or decision, with the

reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

In *Balraj Taneja & anr. vs. Sunil Madan & anor.*, reported in (1999)8 SCC 396, it has been observed:

“41. There is yet another infirmity in the case which relates to the judgment passed by the Single Judge and upheld by the Division Bench.

42. “Judgment” as defined in Section 2(9) of the Code of Civil Procedure means the statement given by the Judge of the grounds for a decree or

order. What a judgment should contain is indicated in Order 20 Rule 4(2) which says that a judgment

“shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

It should be a self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was

tried to be settled by the court and in what manner. The process of reasoning by which the court came to the ultimate conclusion and decreed the suit

should be reflected clearly in the judgment.

In *Smt. Swaran Lata Ghosh (Smt.) vs. H.K. Banerjee & ors.*, reported in (1969) 1 SCC 709, it has been held:

“6. Trial of a civil dispute in court is intended to achieve, according to law and the procedure of the court, a judicial determination between the

contesting parties of the matter in controversy. Opportunity to the parties interested in the dispute to present their respective cases on questions of law

as well as fact, ascertainment of facts by means of evidence tendered by the parties, and adjudication by a reasoned judgment of the dispute upon a

finding on the facts in controversy and application of the law to the facts found, are essential attributes of a judicial trial. In a judicial trial the Judge not

only must reach a conclusion which he regards as just, but, unless otherwise permitted, by the practice of the court or by law, he must record the

ultimate mental process leading from the dispute to its solution. A judicial determination of a disputed claim where substantial questions of law or fact

arise is satisfactorily reached, only if it be supported by the most cogent reasons that suggest themselves to the Judge a mere order deciding the

matter in dispute not supported by reasons is no judgment at all. Recording of reasons in support of a decision of a disputed claim serves more

purposes than one. It is intended to ensure that the decision is not the result of whim or fancy, but of a judicial approach to the matter in contest; it is

also intended to ensure adjudication of the matter according to law and the procedure established by law. A party to the dispute is ordinarily entitled to

know the grounds on which the court has decided against him, and more so, when the judgment is subject to appeal. The Appellate Court will then

have adequate material on which it may determine whether the facts are properly ascertained, the law has been correctly applied and the resultant

decision is just. It is unfortunate that the learned Trial Judge has recorded no reasons in support of his conclusion, and the High Court in appeal merely

recorded that they thought that the plaintiff had sufficiently proved the case in the plaint.Ã¢â¬â¸

In Navanath & ors. vs. State of Maharashtra, reported in (2009)14 SCC 480 it has been held:

Ã¢â¬â¸46. The matter, in which the High Court has dealt with the issue, in our opinion, cannot be appreciated. A court of law must base its decision on

appreciation of evidence brought on record by applying the correct legal principles. Surmises and conjectures alone cannot form the basis of a

judgment.Ã¢â¬â¸

In Jalendra Padhiary vs. Pragati Chhotray, reported in (2018)16 SCC 773, it has been held:

Ã¢â¬â¸15. In our view, mere perusal of the order of the Family Court and the High Court quoted supra, would go to show that both the courts failed to

apply their judicial mind to the factual and legal controversy insofar as award of permanent alimony to the respondent (wife) is concerned. Both the

courts did not even mention the factual narration of the case set up by the parties on the question of award of permanent alimony and without there

being any discussion, appreciation, reasoning and categorical findings on the material issues such as, financial earning capacity of husband to pay the

alimony and also the financial earning capacity of wife, a direction to pay Rs. 15,00,000 by way of permanent alimony to the wife was given. In our

opinion, such direction is wholly unsustainable in law.

16. Time an again, this Court has emphasised on the courts the need to pass reasoned order in every case, which must contain the narration of the

bare facts of the case of the parties to the lis, the issues arising in the case, the submissions urged by the parties, the legal principles applicable to the

issues involved and the reasons in support of the findings recorded based on appreciation of evidence on all the material issues arising in the case.

17. It is really unfortunate that neither the Family Court nor the High Court kept in mind these legal principles and passed cryptic and unreasoned

orders. Such orders undoubtedly cause prejudice to the parties and in this case, it caused prejudice to the appellant (husband) because the orders of

the High Court and the Family Court deprived him to know the reasons for fixing the permanent alimony amount of Rs. 15,00,000 payable to his wife.

18. We cannot countenance the manner in which both the courts passed the order which has compelled us to remand the matter to the Family Court

for deciding the issue afresh on merits.Ã¢â¬â€

Now coming to the judgment impugned, it is evident that issue no. 4, 5, 6, 7 have been conjointly deal with and during course thereof, irrespective of

the fact that (a) terms of negotiation is admitted, (b) payment of earnest money to the tune of Rs.61,000/- is admitted, (c) payment of remaining

consideration amount appertaining to Rs.5 lacs was deferred, (d) execution of deed of agreement of sale whereunder payment was to be made by

15.12.2001, the learned lower court under para-7 at page-9, dealt with only the relevant portion of examination-in-chief of the plaintiff, who examined

himself as P.W.14 whereunder he stated that he had gone to the place of the defendant on 10.12.2001 as well as on 15.12.2001 to pay Rs.5 lacs

alongwith other witnesses which, the defendant failed to acknowledge and also declined to execute the sale deed supported by P.W.6 Arun Kumar

Singh at para-1 and 2, P.W.7 at para-1 and 6, P.W.8 at para-1, P.W.9 at para- 1 as well as in his cross-examination, P.W.10 at para-1, P.W.11 at

para-1. The defendant, who is D.W.4, has admitted with regard to creation of deed of agreement for sale. Further more, it has also been narrated that

the defendant has admitted in para-16 that on 18.12.2001 the plaintiff had contacted him over telephone and requested him to receive balance

consideration amount. Then, there happens to be inference at the end of the learned lower court that when the person was ready to pay on

18.12.2001, why not he was in contact with the defendant on 15.12.2001. D.W.6, wife of the defendant, had also accepted in her examination-in-chief

regarding creation of deed of agreement to sale with regard to land and the remaining amount was to be paid at Patna by 15.12.2001. The aforesaid

finding of the learned lower court is sufficient to show that the evidence in its totality (examination-in-chief as well as cross examination) of the

witnesses have not been properly considered, discussed and in likewise manner, failed to construe whether from the evidences having on the record,

the plaintiff substantiated whether on 10.12.2001 as well as on 15.12.2001, he was in possession/ readiness of Rs.5 lacs and had gone to the place of

defendant along with others arranging the desired amount for payment. From para-7 of the judgment impugned it is evident that the learned lower

court had failed to draw an inference from the evidences available on record whether the plaintiff was in readiness as well as willingness in getting his

part of the contract duly performed and for that, whether he was in a possession of the desired money, contrary to it at the fag end of page no.9 of the

judgment he confined his judicial scrutiny towards Ext.3 series, Advocate notice and on the basis thereof, drew inference that the consecutive service

of notice is sufficient to infer the conduct of the plaintiff that he was in readiness as well as willingness to perform his part.

Consequent thereupon, the judgment and decree impugned suffers from inherent defect whereupon, is set aside. The appeal is allowed.

Matter is remitted back to the learned lower court with a direction to hear both the parties and then pass judgment in accordance with law.

However, in the facts and circumstances of the case, the parties will bear their own costs.