

Ramchandra Vishnu Sable And Others Vs Narayan Shankarrao Game Patil And Others

Court: Bombay High Court

Date of Decision: Jan. 30, 2025

Acts Referred: Code of Civil Procedure, 1908 " Section 34

Contract Act, 1872 " Section 73, 74, 75

Specific Relief Act, 1963 " Section 21

Hon'ble Judges: S.M. Modak, J

Bench: Single Bench

Advocate: Machhindra A. Patil, Vijay R. Gorad, S.G.Deshmukh, Rajaram Bansode, Sheetal M. Ubale, Kalpesh Patil

Final Decision: Disposed Of

Judgement

”

S.M. Modak, J",,,

1. The issue involved in both these appeals is "whether both the Courts below were justified in awarding an amount of Rs.6,01,000/-along",,

with interest @ 12% p.a. to the plaintiff on account of liquidated damages? Whether both the Courts below have considered "the parameters",,

prescribed under Sections 73, 74 of Indian Contract Act while awarding that sum?"",,,

2. This amount is awarded by the Court of Civil Judge Senior Division at Malshiras as per judgment dated 28 April 2010 passed in Spl. Civil Suit,,

No.46/2004. This was confirmed by the Court of District Judge No.1 Malshiras in RCA No.50/2012 on 14 June 2018.

These directions were given in,,

a Suit for grant of damages filed by the purchaser of an agricultural land situated at Village Malkhambi, Tal. Malshiras, Dist.Solapur. This direction",,

was given to Defendant Nos.1 to 3 (who are the legal representatives of one Vishnu Devaba Sabale who was owner/vendor). In pursuance to an,,

agreement dated 8 May 2000, said Vishnu could not execute sale deed in favour of Narayan (though executed in favour of one Satyabhama ")",,,

mother of Narayan-plaintiff) and that is why Narayan filed a Suit for liquidated damages on the basis of a term in that agreement (to pay double the,,

amount of earnest money of Rs.3 lakhs).,,

Pendency of two second appeals,,

3. Initially, second appeal No.246/2018 was filed by all the three defendants (through their power of attorney Ramchandra-appellant No.1). Prior to",,,

disposal, there was some dispute amongst them and hence appellant No.3 Popat was transposed as respondent No.3. Subsequently, he filed separate",,,

Second Appeal No.249/2024.,,,

4. Accordingly, I have heard Mr.Machhindra Patil learned Advocate and Mr. Kalpesh Patil for the appellants in both appeals and learned Advocate",,,

Shri Deshmukh assisted by learned advocate Shri Bansode for Respondent No.1/original plaintiff. Both the sides have consented for disposal of both,,,

the appeals at an admission stage. Respondent Nos.2a and 2b are few legal heirs of deceased respondent No.2/defendant No.4-Satyabhama. They,,,

were not represented in these appeals through any Advocate. She is the mother of plaintiff-Narayan. She filed written-statement pleading certain,,,

facts about sale deed in her favour. She has pleaded about separation with her son Narayan. She has not opposed decreeing the suit. She has neither,,,

given any evidence nor cross examined the witnesses. Even her legal representatives were brought on record before the trial court has not given any,,,

evidence. Atleast it is not shown from the record.,,,

5. Second appeal No. 246/2019 was argued before me and draft substantial question of law were also tendered before me. At that time second appeal,,,

remain to be disposed of. Again this appeal was assigned to me. In the mean time new second appeal was filed as mentioned above. On the basis of,,,

earlier draft, I have framed the following substantial questions of law :-",,,

(1) Whether both the Courts below were justified in awarding "damages of Rs.6,00,000/- (being double the amount of earnest money) from the defendants" in",,,

favour of the plaintiff without considering "the principles laid down in Section 73 and 74 of Indian Contract Act?"",,,

(2) Whether both the Courts below were justified in awarding interest for a period prior to filing of Suit?,,

(3) What order and decree?,,

6. Prior to deciding those questions, it will be relevant to see the pleadings and evidence which are relevant.",,,

Pleadings and evidence,,,

7. There were two documents executed on 8 May 2000. It is in respect of land bearing Gut No.89 1 Hectre 41 Are situated at Village Malkhabi. The,,,

owner is Vishnu Devaba Sabale. He agreed to sale this land to the plaintiff-Narayan. The two documents are as follows:-,,,

a) an agreement recording the terms of sale dated 8 May 2000.,,,

b) receipt for payment of Rs.3 lakhs being part consideration of same date.,,,

The terms are as follows:-,,,

- a) The total consideration is Rs.9,80,000/-.",,
- b) Earnest money agreed is Rs.3 lakhs and paid also.,,
- c) time for payment of remaining consideration of Rs.6,80,000/- is upto 15 January 2001.",,
- d) time for execution of sale deed " 15 January 2001 in favour of purchaser/his nominee.,,
- e) Consequences for breach.,,
- (i) If breach is by the owner/vendor in executing sale deed in time " then the purchaser gets right to ask for Rs.6,00,000/- (being double amount of",,,
earnest).,,

This term was not part of an agreement but part of payment receipt dated 8 May 2000. In these appeals, the dispute is about exercise of this right.",,

- (ii) In case of breach by the purchaser in paying remaining consideration in time then the owner/vendor gets a right to forfeit the earnest money.,,

In these appeals, the issue is not about exercise of this right. The vendor/defendant Vishnu denied their execution.",,

Filing of Suit,,

8. The plaintiff/prospective purchaser-Narayan filed a suit making grievance of not executing sale deed in his favour by defendant-Vishnu. He,,

demand Rs.6,00,000/-. The grievance was sale deed was not executed in his favour and instead Vishnu executed sale deed on 27 June 2001 in",,,

favour of Satyabhama Patil (who happens to be his mother) without his consent. Owner Vishnu expired on 1 February 2002. Hence, the suit was filed",,,

against his three sons-defendant Nos.1 to 3. Their defence is twofold :--,,

- a. On one hand they have denied execution of any document by their father and,,
- b. on other hand, they have pleaded fulfillment of promises by their father as per the agreement. Their father have executed sale deed with",,,

Satyabhama- mother of Narayan. She has also filed written-statement. She expired on 11 November 2008. Her two sons were brought on record.,,

They have also filed written-statement.,,

Evidence adduced,,

9. Both the sides contested the suit vigorously. Their focus was on proving their respective claims and denying execution of documents. But the,,

defendants have failed before both the Courts. Even in present appeals their respective advocates have continued the same line of action. But the,,

1.,Tukaram Ishwar Madane,"the, stamp, vendor, who, ,

has, sold stamp, paper, of,

Rs.100/-, each, to purchaser, ,

Narayan, , and, , vendor

Vishnu.

2.,Narayan Game Patil,Plaintiff

3.,Narayan Ganpat Pawar,"Working in a bank, who wrote the agreement on 8 May 2000, in the house of plaintiff Narayan.

4.,Popat Nivrutti Jamdade,"who was present on 5 May 2000 when meeting was held, to discuss the transaction, for, sale, and purchase of land.

5.,Vilas Game Patil,"another witness who was present in the meeting dated 5 May 2000.

6.,Retired Circle Inspector,"who issued ration card to plaintiff- Narayan.

20. Trial Court found lacunae in the evidence of Defendant's witness (for short D.W. No.1. Facts not pleaded in written-statement is,,

discarded by the trial Court (Para No. 43). Trial Court gave due weightage to the admissions given by him during cross examination.,,

21. Defendant No.4-Satyabhama is a mother of Plaintiff. After sale deed, her name is mutated on 7/12 extract. After her death, being one of her legal,,

representative, Plaintiff has not claimed right. Trial Court opined both rights are different (Para No. 47). That land is sold by brothers of Plaintiff",,

subsequently to Tayyab Dohadwala (Para No. 50).,,

22. Trial Court discussed about the evidence of D.W. No. 2. He is a witness to agreement for sale and sale deed. Trial Court considered admission,,

given by him that there is no reference of an agreement for sale in the sale deed executed in favour of mother. Trial Court has not believed him.,,

23. Trial Court gave weightage to contents of documents as against oral evidence of D.W. No. 1 and D.W. No. 2. Trial Court also discussed about,,

two rival claims one about execution of sale deed in favour of Satyabhama with consent of Plaintiff on one hand and Plaintiff residing,,

separately from his mother since 1984-85. There is evidence of Circle Inspector-Aalur Sampat Pawar. He issued separate ration card to the Plaintiff.,,

Trial Court believed him and also about issuance of separate ration card to Plaintiff (Para No. 38).,,

24. Learned Advocate Shri Kalpesh Patil laid emphasis on one aspect. According to him residing separately is one aspect and separation of status as,,

a member of Joint family is a different aspect. According to him there was no evidence of separation from joint family.,,

25. While decreeing the suit, the trial Court has given weightage to the evidence of Plaintiff, his witness Circle Inspector and of witness Nos. 1 and 2",,,

for the Defendants. Admittedly, Plaintiff was not present at the time of sale deed with his mother. There is no reference about agreements executed",,,

with Plaintiff by Vishnu in that sale deed. The sale deed nowhere mentions it was executed in view of a clause of agreement for sale. Just because,,

Plaintiff is the son of Satyabhama, we cannot infer about his consent for executing sale deed in favour of his mother (and need not be executed with",,,

him). It is for the contesting Defendants to prove consent of Plaintiff. It can be proved either by adducing evidence about consent or by adducing,,

circumstantial evidence. Trial Court discarded the evidence of Defendant.,,

26. I do not find any fault in appreciation of evidence done by trial Court. I will also ascertain the findings given by the Appellate Court. Appellate,,

Court may agree with the findings or may not agree. Even, Appellate Court can reverse the findings, if they are erroneous.",,,

Findings by Appellate Court,,

27. There is emphasis by both the learned Advocates for Appellants that the Appellate Court has not framed any point in the judgment about the plea,,

of "Consent of Plaintiff to the sale deed taken by the Defendants". I have seen those points. It is not there. However, Mr. Deshmukh, learned",,,

Advocate has invited my attention to the findings in Para No. 16. The Appellate Court has referred about the evidence of ration card showing that,,

mother was not staying on that address. Appellate Court observed "sale deed do not suggest presence of Plaintiff". Appellate Court observed,,

"Defendants could not bring on record the reliable evidence to prove execution of sale deed with consent of Plaintiff".,,

28. The above observations are on the basis of evidence. Those findings are not perverse. So even if the Appellate Court has not framed any point",,,

there are observations. Hence, there is no prejudice. The Appellate Court has given findings on other aspect in favour of the Plaintiff. I do not",,,

consider them erroneous.,,

Not claiming specific performance,,

29. Admittedly, the Plaintiff has not claimed specific performance. When either of the party to the contract commits breach, other party gets bundle of",,,

rights. There can be acquiescence of breach. There can be an action through Court of law enforcing specific performance or there can be a claim for,,

compensation for damages sustained. Law gives choice to party which option he should opt. Law cannot compel a person to seek a particular relief,,

only. Specific Relief Act governs specific relief which a party can enforce through Court of law. Section 21 of the said Act, gives an option to the",,,

party to seek compensation. Even the Court can award compensation as an additional relief . It is true there are no provisions in Specific Relief Act,,

for determining the quantum of compensation. The Court is guided by the provisions of Indian Contract Act.,,

30. Similarly, if any of the party commits breach, there are provisions in Sections 73, 74 and 75 of the Indian Contract Act dealing with compensation.".,,

The observation in case of Bhikaram Vanzari nowhere opines about claiming specific relief mandatorily. It talks about insistence on pleading,,

Ã¢â¬Ïreadiness and willingnessÃ¢â¬Ï. It talks about granting compensation, only when it is asked by the party.".,,

31. For above discussion, I do not agree with the submission advanced on behalf of Appellants about not claiming specific performance. I reject that",,,

contention.,,

Satisfying parameters under Section 74 of Indian Contract Act.,,

32. Trial Court has referred about the provisions of section 74 of Indian Contract Act. Discussion finds place in para no. 52 to 63. Trial court opined,,

Ã¢â¬Ï"when there is breach of agreement, as per the provisions of section 74 of Contract Act, the plaintiff is entitled to recover double the",,,

amount of compensationÃ¢â¬Ï (para no. 63). While arriving at this conclusion trial court referred several judgments,".,,

33. The appellate court also concluded about the breach of the agreement and confirmed the findings given by the trial court. Appellate court has also,,

given weightage to the clause in the agreement about Ã¢â¬Ï"payment of double the amount of earnestÃ¢â¬Ï. According to both the learned advocates for,,

the appellants, both the court below have committed an error in granting compensation without considering the provisions of section 74 of Contract",,,

Act. According to Mr. Deshmukh, the findings of facts cannot be interfered by the second appellate court.".,,

34. Already there is concurrent finding about Ã¢â¬Ï"proof of the agreement and its breach.Ã¢â¬Ï The agreement lays down time limit for execution of the,,

sale deed that is up to 15.01.2001 and the receipt/bond provides for consequences (double the amount of earnest money) if owner fails to execute sale,,

deed. I have framed substantial question of law on this aspect. It will be relevant to consider the said provisions.,,

Provisions of Indian Contract Act,,

35. Chapter VI of Indian Contract Act provides for Ã¢â¬Ï"OF THE CONSEQUENCES OF BREACH OF CONTRACTÃ¢â¬Ï. There are three sections.,,

There are section 73, 74 and 75. Ã¢â¬Ï"Execution of the agreement and its breachÃ¢â¬Ï are the common issues as per all these sections. But as per section",,,

73 & 75, compensation can be claimed for the Ã¢â¬Ï" actual loss or damage caused/sustained from the breach .Ã¢â¬Ï So the party complaining of breach",,,

has to prove he caused loss or damage and how much. Whereas, section 74 comes into picture when the contract provides for "a certain sum of money",

to be awarded by way of compensation in case of breach. It does not insist upon causing/sustaining loss or damage. Does it mean that,

proving causing of loss or damage and actual loss/damage is dispensed with. For easy reference, it is reproduced below:-

"When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other

stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to

receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated",

for.

Section 74 also talks about stipulation by way of penalty. This clause was inserted by way of amendment made in the year 1899. This clause is not,

applicable. If we peruse the provisions of Section 74 (which is relevant for deciding the controversy), we may find following are the parameters:-

- a) There is breach of contract.,
- b) sum is named in the contract to be paid in case of breach.,
- c) Party complaining of breach is entitled.,
- d) Causing of actual loss/damage is proved or not.,
- e) To receive from the Party who has broken the contract.,
- f) Reasonable compensation not exceeding the amount named.,

It will be relevant to consider the observations from the judgments relied upon by the trial court itself. Those details are as follows:-

Judgments referred by the Trial Court,

36. *Maulana Bux V/s Union of India*, AIR 1970 SC 1955 . This judgment deals with the contingency of forfeiture of earnest money. The money,

was kept with the Government for due compliance of the terms of contract for supply of goods. The amount was not by way of part payment which,

the supplier owes from the Government. In fact, if terms are fulfilled, the supplier owes price for goods supplied from the Government. The supplier,

fails to supply goods in time and the purchaser/Government rescinded the contract and forfeited the earnest. Trial court referred it in para no.61. But,

the trial court has not considered the factual background. The amount forfeited by the Government is way of penalty. No doubt in case of *Maulana*,

Bux and in present appeal, there is a breach of the agreement. But the difference is the party complaining of the breach was holding the amount by,

way of deposit whereas in present appeal, the party complaining of the breach/plaintiff intends, the defaulter/defendants should pay him double the",,,

amount of earnest hold by them by way of compensation. That is how we are not dealing with this controversy as involved in case of Maulana,,

Bux. Trial court has not addressed this aspect but blindly followed the observations.,,

37. Trial Court (Para No. 53) referred the observations in case of Sukhdev Kaur Vs. Hoshiar Singh AIR 2004 P & H 178. It was a suit for specific,,

performance and alternate relief for refund of earnest money at double rate. Specific performance was refused but earnest money at double rate was,,

granted. High Court observed :,,

"proof of damages is required. But when party knew at the time of entering into contract damages are likely to occur in case of breach then no proof of actual,,

loss/ damage is required" (Para No. 23),,

That is why decree of refund of earnest money at double rate was granted. It was on the basis of term in an agreement for sale (Para no. 9). The,,

said observations by High Court of Punjab and Haryana are on the basis of facts and the relevant provisions of Contract Act are not discussed.,,

38. Trial Court also referred the observations in case of Surjit Kaur Vs. Naurata Singh AIR 2000 SC 2927 (Para No. 57). Specific performance,,

was refused. However, the Hon'ble Supreme Court granted refund at double amount of earnest money (Para No. 17). However the provisions of",,,

Section 74 of Indian Contract Act were not referred. The observations are purely on facts. All other judgments referred by the trial court are not on,,

the issue of compensation under Section 74 of Indian Contract Act.,,

39. Trial court simply referred the observations in earlier judgments. But has nowhere observed how the principles laid down therein are applicable to,,

the facts and evidence. Any Judge deciding the dispute has to assess the evidence objectively. Whether he has done it or not can be ascertained only,,

on the basis of reasoning given by him. They are absent.,,

40. There is more and more tendency to quote judgments and arrive at conclusion without considering how they are applicable. Even the appellate,,

court committed the same mistake. I am saying this because the provisions of Contract Act are referred without considering the principles underlining,,

them. What are the principles behind particular provision in any Act can be found on the basis of interpretations given by the constitutional courts.,,

That is why this Court has done this exercise.,,

41. On this background, the issue is "merely because there is breach of a contract and there is a term providing sum of money to be paid",,,

whether Court is bound to award that sum named in the agreement? We get guidelines from the observation in few other judgments delivered,,

by the Hon'ble Supreme Court.,,

Other Judgments delivered by Supreme Court.,

42. In case of Oil and Natural Gas Corporation Ltd. v/s. Saw Pipes Ltd 2003 (5) SCC 705, this issue has cropped up involving a contract to supply",,,

pipes. They could not be supply in time due to non procurement of raw materials. There was a strike. They were supplied belatedly. The purchaser,,

paid the bill but by deducting an amount of liquidated damages (Para No. 34). It was observed:,,

“In such a case there may not be necessity of leading evidence for proving damages, unless the court arrives at the conclusion that no loss is likely to occur”,,

because of such breach. Further, in case where the court arrives at the conclusion that the term contemplating damages is by way of penalty, the court may grant”,,

reasonable compensation not exceeding the amount so named in the contract on proof of damages. However, when the terms of the contract are clear and”,,

unambiguous then its meaning is to be gathered only from the words used therein. (Para No. 46),,

Further it is observed,,

“In our view, in such a contract, it would be difficult to prove exact loss or damage which the parties suffer because of the breach thereof. In such a situation, if”,,

the parties have pre-estimated such loss after clear understanding, it would be totally unjustified to arrive at the conclusion that the party who has committed”,,

breach of the contract is not liable to pay compensation. It would be against the specific provisions of Section 73 and 74 of Indian Contract Act (Para No. 67)“,,

43. Whereas in case of Kailash Nath Associates Vs. Delhi Development Authority (2015) 4 SCC 136 there was a bid for sale of plot. Part of bid,,

price was paid. There was delay in paying remaining amount. Bidder filed a suit for specific performance. There was alternate prayer for refund of,,

amount. After taking overview of the judgments, certain conclusions were drawn (Para No. 43). The relevant conclusions are as follows:,,

a) If liquidated amount is genuine pre-estimate of damages fixed by both the parties and if found to be such by the Court, it can be awarded.”,,

b) In other cases, reasonable compensation can be granted not exceeding the amount mentioned therein.”,,

c) If the amount is mentioned as a penalty, only reasonable amount can be granted as a compensation.”,,

d) The principles laid down in Section 73 of Indian Contract Act needs to be followed.,,

e) Damage/loss is sine qua non for grant of compensation.,,

f) The expression “Whether/not actual loss/damage is proved to have been caused” means :-,,

Date of Agreement, 8 May 2000,

Date of Receipt for Rs.3 Lakhs, 8 May 2000,

Date of proposed Sale Deed, 15 January 2001,

Total consideration,"Rs.9,80,000/-",

Amount to be returned,"Rs.6,00,000/-",

Date of execution of Sale deed with mother,27 June 2000,

Consideration paid by mother,"Rs. 1,87,000/-",

Date of notice,01-10-2001,

Date of filing of suit,21-12-2001,