

**\* THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI**

**+ Appeal Suit No.586 OF 2019**

% 13.03.2024

# Between:

G. Lachi Reddy

Appellant

Vs.

M/s. Conzug Logistics Private Limited

Respondents

! Counsel for Appellants : Sri Jalli Kanakaiah

^ Counsel for Respondents : Sri P.Veeraju

<GIST:

> HEAD NOTE:

? Cases referred :

1. 2022 Live Law (SC) 1026

**THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI****A.S.No.586 OF 2019****JUDGMENT:**

Aggrieved by the judgment and decree dated 06.06.2019 in O.S.No.132 of 2012 (Old O.S.No.699 of 2011) (hereinafter will be referred as 'impugned judgment') passed by the learned XII Additional District Judge, Vikarabad, Ranga Reddy District (hereinafter will be referred as 'trial Court'), the defendant preferred the present appeal to set aside the impugned judgment.

2. For the sake of convenience, the parties hereinafter are referred to as they are arrayed before the trial Court.

3. The brief facts of the case, which necessitated the appellant to file the present appeal, are as follows:

a) The plaintiff filed O.S.No. 132 of 2012 (Old O.S.No.699 of 2011) against the sole defendant claiming compensation of Rs.10,81,400/- together with subsequent interest @ 24% per annum and for costs due to breach of contractual obligations

by the defendant. The brief averments of the plaint are as under:

i) Plaintiff being Private Company Limited registered under the provision of Indian Companies Act intended to purchase land for establishment of stockyard, garage and parking. After negotiations with the defendant, the plaintiff agreed to purchase the agricultural land from the defendant to an extent of Ac.3.35 guntas in Sy.No.127/A2 at Fathepur Village, Shankarpally Mandal, Ranga Reddy District for consideration of Rs.21,50,000/- per acre making total sale consideration of Rs.83,31,250/-. Accordingly, an advance amount of Rs.4,00,000/- was received by the defendant through two cheques i.e., bearing Nos.225754 dated 05.10.2008 and 225767 dated 05.10.2008 drawn on IDBI, Visakhapatnam by the plaintiff which were encashed on 10.10.2008 and on 06.10.2008 respectively by the defendant. While receiving the advance sale consideration, the defendant executed an agreement of sale in favour of the plaintiff on the same day agreeing to sell the plaint schedule property for a consideration of Rs.83,31,250/-. The terms and conditions of said document

are that total consideration was fixed at Rs.83,31,250/- and balance is payable within two months and the defendant agreed to deliver the possession with easement rights and to produce all previous title deeds relating to the schedule property and to pay all taxes. The defendant further agreed to get clearance certificate stating that it is not assigned land and no objection certificate from revenue authorities stating that land is not assigned land or surplus land under Land Ceiling Act.

ii) When the plaintiff demanded the defendant to produce the title deeds, link documents and no objection certificate in respect of the land, the defendant postponed the arrangement of title deeds and link documents of proposed land and execution of agreement of sale under the guise of one pretext or the other and finally declared that the contract cancelled/rescinded for his failure to perform his contractual obligations and promised to refund the advance amount with interest.

iii) In the month of April, 2009 when the plaintiff insisted the defendant agreed to refund the amount with interest thereon @

24% per annum till the date of repayment. But defendant failed to keep his promise and played fraud. The defendant does not have title deeds or valid marketable right, title or possession over the suit schedule property. Hence, the contract of agreement of sale was void.

iv) On 23.04.2011 the plaintiff got issued a registered lawyer notice seeking payment of advance amount with interest and damages. Since the contract was already frustrated by the defendant by breach of contractual obligations, the plaintiff filed the suit for compensation in lieu of specific performance of the contract. Since it is a commercial transaction and as the defendant caused a wrongful loss to the plaintiff, the defendant is liable to refund Rs.4,00,000/- together with interest @ 24% per annum as agreed by him. The plaintiff claimed advance amount of Rs.4,00,000/-, interest amount of Rs.2,81,400/- and damages to a tune of Rs.4,00,000/- for the inconvenience and mental agony. Hence, the plaintiff filed the suit by claiming total compensation of Rs.10,81,400/- with interest which includes advance amount of Rs.4,00,000/-.

b) In reply to the plaint averments, the defendant filed written statement, the brief averments of which are as under:

i) In the month of October, 2008 the representatives of plaintiff company approached the defendant for land to establish the stock yard of the company at Fathepur Village and selected lands of one Shabad Buchi Reddy, S. Laxmi, Dharmannagari Srilatha, Menta Bal Reddy, Gundra Manikyaa Reddy, J. ManoharRao and this defendant for total admeasuring more than Ac.30.00 guntas covered in Sy. Nos. 126, 127, 136 and 137 of Fathepur Village. Accordingly, the plaintiff company has approached all the farmers and requested them to alienate their respective lands in above said survey numbers and fixed different rates based on the surface, distance and other conditions. The plaintiff entered into an oral agreement of sale with the defendant in respect of his land in Sy.No.127/A2 admeasuring Ac.3.35 guntas situated at Fathepur Village for an amount of Rs.21,50,000/- per acre and plaintiff company paid Rs.4,00,000/- and promised to enter into agreement in writing within a week and also promised to

complete total sale consideration within two months from the date of payment of token advance i.e., 05.10.2008. thereafter, the plaintiff never turned up to proceed with the sale transaction with the defendant by paying balance sale consideration though the defendant was ever ready to perform his part of contract. Whenever the defendant contacted the plaintiff over phone, they asked him to wait for some time and committed breach of contract as agreed in their respective agreements. On the other hand, the plaintiff filed separate O.S.Nos.698 of 2011 to 705 of 2011 against the vendors of the plaintiff.

ii) The defendant is the absolute owner, pattadar and possessor of the above land having all relevant documents, such as pattadar passbook, title deed and record of rights also outstanding in his name and there is no defect regarding the marketable title of the defendant in respect of suit schedule property. All the relevant copies of passbooks and pahanies were supplied to the plaintiff company on the date of payment of token advanced but for the reasons best known to the

plaintiff they failed to come forward to complete the sale transaction with the defendant and with other vendors. On the date of payment of token advance money, the plaintiff agreed that if they failed to proceed with sale consideration and to complete the same within two months, the token advance amount paid to the defendant shall be forfeited but with malafide intention, the plaintiff got issued notice to the defendant with all false allegations of refund the token advance for which the plaintiff is not entitled to. The plaintiff never expressed its readiness to perform their part of contract and even after receipt of legal notice through defendant approached Plaintiff Company and informed his readiness to execute registered sale deed in favour of plaintiff by receiving balance sale consideration, the plaintiff filed suit for compensation and blackmailing the defendant. According to the defendant, the plaintiff never ready to perform their part of contract and plaintiff is not entitled for the compensation as claimed and suit is liable to be dismissed with exemplary costs.

c) Based on the pleadings of both the sides, the trial Court



has framed the following issues:

1. *Whether the plaintiff is entitled for recovery of suit amount with interest, as prayed for?*
2. *To what relief?*

d) The plaintiff, to support its case, has examined PWs 1 and 2 and got marked Exs. A1 to A7. On the other hand, the defendant got examined himself as DW1 and got marked Exs.B1 to B9. The trial Court on appreciating the evidence on record, has decreed the suit by awarding Rs.4,00,000/- with subsequent and future interest @ 6% per annum on Rs.4,00,000/- and dismissed the rest of the claim of the plaintiff.

4. Aggrieved by the judgment and decree, the defendant filed the present appeal.

5. Heard both sides and perused the record including the grounds of appeal.

6. The first and foremost contention of the learned counsel for the defendant is that in Ex.A5 i.e., agreement of sale deed

between plaintiff and defendant there is a clause that entire sale transaction shall be completed within two months, as such instead of finding fault with the plaintiff, the trial Court decreed the suit perversely. Now, it has to be interpreted as to whether time is the essence of the contract as per Ex.A5. A careful perusal of Ex.A5, discloses that the balance amount shall be paid by the plaintiff within two months. However, there is no condition that in the event of failure on the part of plaintiff, to deposit balance amount, the advance amount paid by the plaintiff is liable for forfeiture. Moreover, in response to the Ex.A6 copy of legal notice got issued by the plaintiff, the defendant got issued Ex.A7 reply notice dated 12.05.2011, wherein at page No.3 Paragraph No.1 the defendant stated as under:

*“Even now also my client is ready to perform his part of contract as agreed by him in the agreement”*

The above statement of defendant relaxes the condition that the transaction shall be completed within two months. Accordingly, it can be said that time is not the essence of the contract. When specific performance of the terms of the

contract has not been done, the question of time being the essence does not arise more particularly when the obligations of one party are dependent on the fulfillment of obligations of another party.

7. It is the contention of the plaintiff that defendant does not have title deeds or valid marketable right, title or possession over the suit schedule property, hence, the contract of agreement of sale was void. On the other hand, it is the contention of the defendant that the trial Court failed to appreciate the ownership of the petitioner in the form of pahanies. As stated supra, the defendant relied upon Exs.B1 to B9 in support of his case. Exs.B1 to B7 are the pahanies for various years which disclose that the defendant is the owner of the suit schedule property. Ex.B8 is the original certificate issued by the Manager, Corporation Bank, Shankarpally, R.R. District stating that defendants are holding title passbook No.521 issued by the government of Andhra Pradesh to the plaintiff. Ex.B9 original pattadar passbook of the defendant in respect of suit schedule property. In the case on hand, the

plaintiff entered into contract with defendant in respect of suit schedule property but as per the admission of the defendant, his mother, wife and minor son are also co-sharers of the suit schedule property. DW1 admitted that he has not obtained any permission from the District Court to alienate share of his minor son Amarender Reddy in the property mentioned under Ex.A5. A perusal of the Ex.A5 discloses that except the signature of defendant, the signatures of his wife, mother and minor son being represented by the defendant were not present and the places where the signatures of family members of defendant are required, were kept vacant. In this regard, DW1 admitted that though the names of his mother, wife and son were mentioned in Ex.A5, yet till today even after issuing notice to him, he has not got Ex.A5 signed by his family members. DW1 also admitted that the suit schedule property is his ancestral property. When the suit schedule property is ancestral property and apart from the defendant, his family members are also co-sharers of the suit schedule property, certainly the defendant alone has no marketable title to alienate the suit schedule property to the plaintiff.

8. It is the contention of the learned counsel for the defendant that due to non payment of balance sale consideration by the plaintiff company to the defendant as agreed in the agreement of sale within promised period, he sustained huge loss financially, as the amounts invested by the defendant paying the amounts to third parties as token advances for the purchases of house plots were forfeited and moreover since the subject matter agreement of sale is existing, he could not sell his land to any third parties. However, DW1 admitted that they have not filed any suit for specific performance in pursuance of Ex.A5 nor they made any counter claim in the present suit. It is not even the case of the defendant that he has issued any legal notice to the plaintiff company expressing his readiness and willingness to perform the part of contract and intention of filing suit for specific performance in pursuance of Ex.A5. It is not even the case of the defendant that due to non performance of obligation on the part of the plaintiff, the defendant issued legal notice for termination of agreement under Ex.A5. If at all the defendant

is aggrieved by the non performance of obligation by the plaintiff, certainly nothing prevented him from filing a suit for specific performance or for cancellation of agreement under Ex.A5.

9. The other contention of the defendant is that the trial Court ought to have dismissed the suit and directed the respondent to file a suit for specific performance as per the Agreement of sale dated 05.10.2008, as such entertaining of suit by the trial Court itself is illegal and arbitrary. In **Desh Raj and others v. Rohtash Singh**<sup>1</sup> the Honourable Supreme Court observed as under:

*“31. Firstly, we may refer to Section 22 of the Specific Relief Act of 1963 (hereinafter, ‘SRA Act’) which provides that any person suing for the specific performance of the contract for the transfer of property may ask for (a) possession or partition and separate possession of the property in addition of such performance OR (b) such person may seek any other relief to which he is entitled to “including the refund of any earnest money or deposit paid or made by him” in case his claim for specific performance is refused. However, sub Section (2) thereof puts a caveat that the abovementioned reliefs shall not be granted by the court unless “it has been specifically claimed”. The proviso to sub Section (2) further says that even if such relief was not specifically claimed in the plaint, it is the discretion of the Court to permit the plaintiff to amend the plaint “at any stage of the proceedings” and allow him to include the claim for refund of the earnest money or deposit paid. The relevant part of the provision of SRA Act reads as follows :*

*22. Power to grant relief for possession, partition, refund of earnest money, etc.— (1) Notwithstanding*

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<sup>1</sup> 2022 LiveLaw (SC) 1026

*anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for*

*(a) possession, or partition and separate possession, of the property in addition to such performance; or*

*(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.*

*(2) No relief under clause (a) or clause (b) of sub section (1) shall be granted by the Court unless it has been specifically claimed:*

*Provided that where the plaintiff has not claimed any such relief in the plaint, the Court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.*

*(Emphasis Applied)*

*On a plain reading of the above reproduced provision, we have no reason to doubt that the plaintiff in his suit for specific performance of a contract is not only entitled to seek specific performance of the contract for the transfer of immovable property but he can also seek alternative relief(s) including the refund of any earnest money, provided that such a relief has been specifically incorporated in the plaint. The court, however, has been vested with wide judicial discretion to permit the plaintiff to amend the plaint even at a later stage of the proceedings and seek the alternative relief of refund of the earnest money. The litmus test appears to be that unless a plaintiff specifically seeks the refund of the earnest money at the time of filing of the suit or by way of amendment, no such relief can be granted to him. The prayer clause is a sine qua non for grant of decree of refund of earnest money.”*

10. In view of the principle laid down in the above said decision, it can be held that the plaintiff is entitled either for specific performance or refund of money and it is not mandatory that without filing the suit for specific performance of agreement, the plaintiff cannot claim refund of earnest

money.

11. It is the contention of the learned counsel for the defendant that Section 65 of Indian Contract Act is not applicable to the instant case on hand. As rightly observed by the trial Court, both the parties were at fault. The plaintiff did not send any legal notice after expiry of two months stipulated in Ex.A5 and the defendant also failed to send any legal notice to the plaintiff seeking specific performance of agreement of sale under Ex.A5 or atleast for cancellation of the agreement. It is also to be noted that even as on the date of his cross examination, the defendant failed to obtain the signatures of his family members on Ex.A5 to obtain valid marketable right and title over the suit schedule property. Hence, the trial Court by invoking sections 65, 70 and 72 of Indian Contract Act has rightly awarded refund of earnest money with interest from the date of filing of the suit till the date of realization. Though the plaintiff sought Rs.4,00,000/- as damages, the trial Court did not award the same by considering the latches on the part of the plaintiff in coming forward to pay the balance amount



within stipulated period or atleast taking steps for cancellation of the agreement as per the procedure.

12. It is settled law that part payment of purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract. In other words, if the payment is made only towards part payment of consideration and not intended as earnest money then the forfeiture clause will not apply. In the case on hand, the plaintiff company has paid Rs.4,00,000/- as advance towards part of sale consideration and not as a guarantee for the due performance of the contract. Since the defendant is claiming forfeiture of the advance money paid by the plaintiff company, the onus of establishing that said advance money was penal in nature lies on the defendant. Even as per the evidence of DW1, the amount of Rs.4,00,000/- paid by the plaintiff company to defendant was towards advance sale consideration but not towards earnest money. In such circumstances, the defendant is not entitled for forfeiture of the advance sale consideration paid by the plaintiff company. The defendant alone without having any alienable right over the suit schedule property has retained the advance sale

consideration of Rs.4,00,000/- paid by the plaintiff company for three long years and thus, he defendant cannot be permitted to enjoy the unjust enrichment, more particularly when he admitted that he did not take any permission from the District Court to alienate share of his minor son Amarender Reddy in the property mentioned under Ex.A5.

13. In view of the above facts and circumstances, this Court do not find any merits in the appeal to set aside the impugned order and in fact, the trial Court has elaborately discussed all the aspects and arrived to a proper conclusion.

14. In the result, this appeal is dismissed. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

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**JUSTICE M.G. PRIYADARSINI**

Date: 13.03.2024

Note: LR Copy to be marked.  
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