Supreme Court of India

P. Sathasivam, Ranjan Gogoi, JJ.

Satya Jain (Dead) Through Lrs. v. Anis Ahmed Rushdie (Dead) Through Lrs.

Civil Appeals No. 8653 of 2012 with Nos. 8654-55 of 2012, 8656 of 2012, 3657 of 2012 and 8675-76 of 2012

3.12.2012

Specific Relief Act, 1963 Section 20 – Appropriate to direct specific performance of a contract relating to the transfer of immovable property, especially given the efflux of time and the escalation of prices of property.

39. The long efflux of time (over 40 years) that has occurred and the galloping value of real estate in the meantime are the twin inhibiting factors in this regard. The same, however, have to be balanced with the fact that the plaintiffs are in no way responsible for the delay that has occurred and their keen participation in the proceedings till date show the live interest on the part of the plaintiffs to have the agreement enforced in law.

40. The discretion to direct specific performance of an agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles. The parameters for the exercise of discretion vested by Section 20 of the Specific Relief Act, 1963 cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. It must however be emphasised that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance. .....

41. The twin inhibiting factors identified above if are to be read as a bar to the grant of a decree of specific performance would amount to penalising the plaintiffs for no fault on their part; to deny them the real fruits of a protracted litigation wherein the issues arising are being answered in their favour."

Specific Relief Act, 1963 Section 16 – The principles of law on the basis of which the readiness and willingness of the plaintiff in a suit for specific performance is to be judged – To sum up, no straitjacket formula can be laid down and the test of readiness and willingness of the plaintiff would depend on his overall conduct i.e prior and subsequent to the filing of the suit which has also to be viewed in the light of the conduct of the defendant. [Para 36]

Business efficacy – Principle of business efficacy is normally invoked to read a term in an agreement or contract so as to achieve the result or the consequence intended by the parties acting as prudent businessmen. Business efficacy means

the power to produce intended results – The business efficacy test, therefore, should be applied only in cases where the term that is sought to be read as implied is such which could have been clearly intended by the parties at the time of making of the agreement – The Moorcock is normally invoked to achieve the intended results of the parties and to avoid a failure of consideration that neither party would have intended as reasonable businessmen – In such cases, only the bare minimum term required to achieve this goal should be read into the contract and nothing more. [Para 33, 34]

The Satya Jain Principle links the test to terms which "could have been" clearly intended by the parties. It is not entirely clear whether this would include cases where parties did not contemplate the term at all. In such a case, the Satya Jain Principle can be interpreted to have two meanings: On one hand, it could be argued that the phrase "could have been" includes cases where the parties who did not contemplate the term at all, would have included such a term had they thought about it. This interpretation would be in line with Delhi Cloth and General Mills, which held that implication of a term which remedies an obvious oversight would be justified in cases where the term was "not clearly intended"; in such cases, the term not contemplated is the obvious oversight and implication is the remedy. This suggests that the parties need not have contemplated such a term, but would have done so, or could have done so, and if they did, they would have both agreed to such a term. This would also be in line with my earlier observation that the term should be fair (if not contemplated by both parties); and On the other hand, it could be argued that "could have been" means the same as "must have been" or "was" i.e. the term must have been actually intended by the parties. The paragraphs of the judgment immediately preceding the Satya Jain Principle suggest this interpretation, as they use language such as "must have been intended at all events", "must have been in the contemplation of both parties" and "the parties must have intended that term to form part of their contract"

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Judgment

Ranjan Gogoi, J.:— Leave granted.

2. The appellants, Narendra *Jain* (original Plaintiff 2), and Arvind *Jain* (original Plaintiff 3) also claim to be the legal heirs and representatives of the original Plaintiff 1 who had along with Narendra *Jain* and Arvind *Jain* instituted Suit No. 994 of 1977 in the High Court of Delhi seeking a decree of specific performance in respect of an agreement dated 22-12-1970

executed by and between original Plaintiff 1 (Bhikhu Ram *Jain*) and the original defendant *Anis Ahmed Rushdie* in respect of a property described as Bungalow No. 4, Flag Staff Road, Civil Lines, Delhi (hereinafter referred to as "the suit property"). Plaintiffs 2 and 3 are the sons of the original Plaintiff 1. The suit was decreed by the learned trial Judge. The decree having been reversed by a Division Bench of the High Court the present appeals have been filed by the original Plaintiff 2, Narendra *Jain* and Arvind *Jain* (original Plaintiff 3) and the other appellants who claim to be vested with a right to sue on the basis of the claims made by the original plaintiffs in the suit. It is, however, made clear at the very outset that though all such persons claiming a right to sue *through* the deceased Plaintiffs 1 and 3 are being referred to hereinafter as "the plaintiffs" and an adjudication of the causes/claims espoused is being made herein the said exercise does not, in any way, recognise any right in any such impleaded "plaintiffs" which question(s) are left open for decision if and when so raised.

3. The pleaded case of the respective parties may now be briefly noticed. In the suit filed by the original plaintiffs it was pleaded that the defendant, who was the owner of the suit property, after inducting Plaintiff 1 as a tenant in respect of the half portion of the suit property at a monthly rent of rupees three hundred w.e.f 20-12-1970 had executed an agreement dated 22-12-1970 to sell the suit property to the said Plaintiff 1. According to the plaintiffs the price fixed under the agreement was Rs 3,75,000 (Rupees three lakh and seventy-five thousand only) out of which an amount of Rs 50,000 (Rupees fifty thousand only) was paid to the defendant by Plaintiff 1 as part-payment.

4. Under Clauses (4), (5) and (7) of the agreement dated 22-12-1970 the defendant was required to obtain necessary tax clearance certificate from the Income Tax Authorities for sale of the suit property and intimate the said fact and also deliver to Plaintiff 1 a copy of such certificate within twelve months from the date of the execution of the agreement dated 22-12-1970. Within three months thereafter, Plaintiff 1 was required to pay the balance sale consideration on receipt of which the defendant was under an obligation to execute the sale deed in favour of the plaintiff. Under Clause (7) of the agreement dated 22-12-1970 Plaintiff 1 was to pay to the Income Tax Authorities such amount as may be desired by the defendant (not exceeding the balance sale price of the property) against the tax dues of the defendant so as to facilitate the grant of the required tax clearance certificate. Clause (7) of the agreement also contemplated that such money as may be paid by Plaintiff 1 to the Income Tax Authorities in the defendant-vendor's account was to be deducted by the plaintiff from the balance of the sale price at the time of the execution of the sale deed.

5. According to the plaintiffs, as Plaintiff 1 had not received any intimation from the defendant in the matter of execution of the sale deed he had written a letter dated 27-12-1971 to the defendant enquiring about the steps taken to obtain the necessary tax clearance certificate from the Income Tax Authorities. The plaintiffs had pleaded that the said letter was not replied to. Instead a legal notice dated 6-11-1972 was issued on behalf of the defendant wherein it was, inter alia, claimed that the defendant had written a letter to Plaintiff 1 as far back as on 9-9-1971 calling upon him to pay a sum of rupees one lakh so as to enable the defendant to furnish a bank guarantee to the Income Tax Authorities in

order to facilitate the issuance of the necessary tax clearance certificate. The request of the defendant was not responded to by Plaintiff 1. Accordingly, by the notice dated 6-11-1972, the defendant had asked/required the plaintiff to pay the aforesaid amount of rupees one lakh within three days failing which, it was mentioned, the agreement dated 22-12-1970 would stand terminated and the earnest money (Rupees fifty thousand) paid shall stand forfeited.

6. According to the plaintiffs, in response to the aforesaid notice dated 6-11-1972, Plaintiff 1 wrote a letter dated 14-11-1972 denying the receipt of any communication from the defendant that he had applied for the tax clearance certificate or any intimation to the effect any amount is required to be paid to the Income Tax Authorities for processing the matter of grant of the clearance certificate. In the aforesaid letter Plaintiff 1 had further stated that under Clause (7) of the agreement he was obliged to deposit, at the request of the defendant, any amount not exceeding the total sale consideration with the Income Tax Authorities and no further/additional amount was required to be tendered to the defendant after payment of the initial amount of rupees fifty thousand. In the said letter dated 14-11-1972 Plaintiff 1 had also reiterated his readiness to tender any payment as may be due under the aforesaid Clause (7) of the agreement. As the letter dated 14-11-1972 was not responded to, Plaintiff 1 had addressed another letter dated 15-12-1972 to the advocate of the defendant reiterating the contents of his earlier letter dated 14-11-1972. Thereafter, there was no correspondence between the parties for about five years until the suit was filed on 3-11-1977.

7. It may be specifically noted, at this stage, that according to the plaintiffs the suit could not be instituted earlier as the defendant was all along residing in London. Another relevant fact that would be required to be noticed is that on 16-9-1977 Plaintiff 1 had received a notice terminating the tenancy qua half portion of the suit property which had commenced on and from 20-12-1970. It is in these circumstances that the plaintiff had filed the suit seeking a decree of specific performance of the agreement dated 22-12-1970 and, in the alternative, for a decree of a sum of Rs 1,30,120.50 being the total of the part amount paid to the defendant and damages along with interest thereon.

8. Denying the claims made by the plaintiffs the original defendant had filed a written statement contending, inter alia, that the suit was barred by limitation. Though the defendant had admitted the creation of the tenancy in favour of Plaintiff 1 on 20-12-1970 as well as execution of the agreement to sell dated 22-12-1970, it was contended that the plaintiffs were not entitled to a decree of specific performance of the agreement inasmuch, as Plaintiff 1 had breached the conditions of the agreement, particularly, Clause (7) thereof. In this regard, it was specifically pleaded by the defendant that on 9-9-1971 the defendant had addressed a letter to Plaintiff 1 informing him that as the Income Tax Authorities had agreed to issue the necessary tax clearance certificate on furnishing of a bank guarantee of Rs 1 lakh in favour of the Commissioner of the Income Tax, the aforesaid amount be made available to the defendant or the same be credited in the defendant’s bank account. According to the defendant, Plaintiff 1 failed to so act as a result of which the bank guarantee could not be furnished and consequently the income tax clearance certificate was not issued. The defendant had also filed an amended/additional written statement

pleading that undue hardship would be caused to him in the event a decree for specific performance is to be granted. The defendant had also taken the plea that apart from addressing the letter dated 9-9-1971, the demand/request of the defendant to make available the additional amount of Rs 1 lakh for the purpose of furnishing the bank guarantee to the Income Tax Authorities was conveyed to Plaintiff 1 *through* the common broker of the parties, one Lajjya Ram Kapur (PW 3).

9. On the pleadings of the parties the following issues were framed for trial in the suit:

9.1 Whether the suit is within time?

9.2 Whether the suit is for misjoinder of Plaintiffs 2 and 3?

9.3 Whether the written statement has been signed and verified by a duly authorised person? If not to what effect?

9.4 Whether Plaintiff 1 has always been ready and willing to perform his part of the agreement dated 22-12-1970?

9.5 Whether the defendant has committed the breach of the agreement dated 22-12-1970?

9.6 Whether Plaintiff 1 has committed breach of any of the terms of the agreement dated 22-12-1970, if so, to what effect?

9.7 Whether the plaintiffs are entitled to specific performance of the agreement dated 22-12-1970?

9.8 If Issue 9.7 is not proved, whether Plaintiff 1 is not entitled to refund of earnest money and interest thereon?

10. The learned trial Judge by the judgment dated 5-10-1983 decreed the suit of the plaintiffs for specific performance of the agreement dated 22-12-1970 and directed execution of the sale deed by the defendant in favour of any of the plaintiffs, failing which, the Registry of the Court was directed to ensure the execution of the same. The balance of the sale consideration i.e Rs 3.25 lakhs was to be paid by the plaintiffs at the time of the execution of the sale deed and in the event the sale deed was to be executed *through* the Registry of the Court the aforesaid amount was to be deposited in Court before registration of the sale document.

11. Aggrieved by the aforesaid judgment and decree passed by the learned trial Judge, the original defendant had filed an appeal which was allowed by the impugned judgment dated 31-10-20111. During the proceedings of the appeal before the High Court the original Plaintiff 1 as well as the original defendant had died. As already noticed, while the original Plaintiff 2 and original Plaintiff 3 continue to remain on record as appellants, the remaining appellants claim to be the legal heirs/representatives of the deceased Plaintiff 1. Insofar as the original defendant in the suit is concerned the legal representatives of the said defendant are on record having been so impleaded.

12. We have heard Mr Shanti Bhushan, Mr A.B Dial and Mr P. Vishwanatha Shetty, learned Senior Counsel appearing for the appellants and Dr Abhishek Singhvi, Mr *V*. Giri and Mr Vijay Hansaria, learned Senior Counsel appearing for the respondents.

13. On behalf of the appellants it is urged that the decree passed by the learned trial Judge has been reversed in appeal, inter alia, on the ground that the plaintiffs' suit is barred by limitation. It is contended that the said conclusion has been reached on an apparent misinterpretation of the provisions of Section 15(5) of the Limitation Act, 1963. It is also contended that the claim of the plaintiff that a letter dated 9-9-1971, had been sent by the defendant to the plaintiff, requesting for a further sum of Rs 1 lakh for the purpose of furnishing a bank guarantee in favour of the Income Tax Authorities so as to facilitate the issuance of the tax clearance certificate(s) and the alleged refusal/failure of the plaintiff to comply with the said request, is not borne out by the evidence on record. No such request was made and neither the letter dated 9-9-1971 nor was the verbal request to the said effect allegedly made *through* the broker, Lajjia Ram Kapur, was received or communicated to the plaintiffs.

14. In any event, according to the learned counsel, under Clause (7) of the agreement the plaintiff was obliged to make further amounts available, on the defendant's account, to the Income Tax Authorities only. Apart from the initial payment of rupees fifty thousand the plaintiff was not required to make any further payment directly to the defendant. The meaning attributed by the first appellate court to Clause (7) of the agreement on the principle of "business efficacy" and the consequential findings on the question of readiness and willingness of the plaintiffs are plainly incorrect. The learned counsel has submitted that in such a situation, notwithstanding the expiry of long efflux of time, when the plaintiff was in no way at fault a decree of specific performance should follow, if required by suitably enhancing the value of the property. Specifically, the learned counsel has indicated the willingness of the plaintiffs to offer an amount of Rs 6 crores for the property in question as against the amount of Rs 3.75 lakhs as mentioned in the agreement dated 22-12-1970.

15. Opposing the contentions advanced on behalf of the appellants, the learned counsel for the respondent (referred hereinafter in the singular) have submitted that the meaning sought to be attributed to the provisions of Section 15(5) of the Limitation Act, 1963 is wholly unacceptable. It is argued that the law does not countenance a situation where the initiation of a civil action can be postponed till the availability of the defendant in India, which would be the virtual effect of Section 15(5) of the Limitation Act if the arguments made on behalf of the appellants on this score are to be accepted. It is further urged that the cause of action for the suit arose on the expiry of 15 months from the date of the agreement, namely, on 22-3-1972 and the period of three years for filing the suit had expired on 22-3-1975. Alternatively, as by letter dated 6-11-1972, three days' further time has been granted by the defendant to the plaintiff, the cause of action may be understood to have arisen on 9-11-1972 and the period of limitation of three years to be over on 9-11-1975.

16. The learned counsel has also submitted that as by letter dated 13-11-1972/15-11-1972 further four months' time had been granted by the plaintiff to the defendant the cause of

action may be understood to have accrued on 14-3-1973 and the period of three years for filing the suit to be over on 14-3-1976. Yet, the present suit was filed on 3-11-1977 though from the materials on record it is evident that the defendant was present in India between 7-9-1977 to 1-10-1977. The provisions of Section 15(5) of the Limitation Act, according to the learned counsel, have to be purposively and reasonably interpreted so as to avoid any absurd consequence(s).

17. Continuing, the learned counsel has urged that the materials on record, particularly the correspondence exchanged between the parties, indicate that even when the contents of the letter dated 9-9-1971 were specifically brought to the notice of the plaintiff in the subsequent correspondence addressed by the defendant, the plaintiff had not denied receipt of the said letter. As the plaintiff failed to respond to the defendant's request to make available the amount of rupees one lakh required by him for the purpose of furnishing the bank guarantee, the defendant, who was a British national, could not comply with the demand of the Income Tax Authorities as a result of which the necessary tax clearance certificate(s), which is a prerequisite for the sale of the property, could not be obtained. It is, therefore, contended that though the defendant was, at all times, ready and willing to execute the sale deed it is the plaintiff who had failed to perform his part of the bargain. Consequently, the High Court was correct in refusing the decree of specific performance. In any event, according to the learned counsel, specific performance of the agreement dated 22-12-1970 ought not to be ordered by this Court at this juncture in view of the completely altered market conditions in respect of immovable property in the national capital where the suit property is situated. It is also pointed out that the High Court had already granted refund of the part consideration (Rupees fifty thousand) paid by the plaintiff to the defendant along with interest at the rate of 12% from the date of payment of the said amount till the date of the realisation/return of the same. The said direction, it is submitted, adequately takes care of the equities arising in the present case.

18. On the basis of the discussions that have preceded three issues, in the main, arise for our determination. In proper sequential order, the first would be whether the suit is barred by limitation. If not, which of the parties to the agreement dated 22-12-1970 is in breach of the terms and conditions thereof and, lastly, if no such breach can be attributed to the plaintiff whether a decree of specific performance should be granted at this belated point of time.

19. Even going by any of the three different/alternative dates on which the cause of action for the plaintiffs' suit had arisen, as conceded by the learned counsel for the respondent, it is evident that the suit was filed beyond the stipulated period of three years from any of the dates of the accrual of the cause of action. However, the plaintiffs have invoked the provisions of Section 15(5) of the Limitation Act, 1963 to claim the benefit of the exclusion of the period during which the defendant was absent from India. There can, indeed, be no doubt that if the plaintiff is entitled to exclude the period of such absence the bar of limitation will not apply to the present suit. The Court, therefore, must make an endeavour to find out the true meaning of the provisions contained in Section 15(5) of the Limitation Act in order to determine as to whether the plea put forward by the plaintiffs is sustainable in law.

20. The provisions contained in Section 15(5) of the Limitation Act, 1963 are in pari materia with those in Section 13 of the Limitation Act, 1908. The aforesaid provision of the 1908 act has received a full and complete consideration of this Court in P.C.K Muthia Chettiar *v*. V.E.S Shanmugham Chettair P.C.K Muthia Chettiar *v*. V.E.S Shanmugham Chettair, AIR 1969 SC 552. While holding that the words of the section (Section 13), namely, "that time during which the defendant has been absent from India" are clear and therefore must be excluded in computing the period of limitation, two earlier decisions in Atul Kristo Bose *v*. Lyon & Co. ILR 1887 14 Cal 457 and Muthukanni Mudaliar *v*. Andappa Pillai AIR 1955 Mad 96 were also noticed by this Court.

21. The discussion in respect of the aforesaid two earlier decisions which had formed the basis of the conclusions in P.C.K Muthia Chettiar as noticed above, have been set out in para 6 of the judgment which may be profitably extracted below: (P.C.K Muthia Chettiar case, AIR pp. 554-55)

"6. In Atul Kristo Bose v. Lyon & Co. the defendants were foreigners and they never came to India on or after the date of the accrual of the cause of action. The Calcutta High Court held that Section 13 applied and that the suit was not barred by limitation. The Court was not impressed with the argument that according to this construction a defendant who was in England when a cause of action against him accrued, and has remained there ever since might be liable after an indefinite time to be sued in a Calcutta Court. In Mathukanni Mudaliar v. Andappa Pillai the plaintiff and the defendant who were residents of Mannargudi in India had gone to Kuala Lumpur to earn their livelihood, and while there the defendant executed a promissory note to the plaintiff on 16-11-1921. In 1925 the plaintiff brought a suit on the promissory note in the District Munsif's Court of Mannargudi. The cause of action in the suit arose outside India. A Full Bench of the Madras High Court held that the plaintiff was entitled to the benefit of Section 13 and in computing the period of limitation he was entitled to exclude the time during which the defendant was absent in Kuala Lumpur. We agree with this decision. The Full Bench rightly overruled the earlier decisions in Rathina Thevan v. Packirisami Thevan AIR 1928 Mad 1088 and S.P.S Subramaniam Chettiar v. Maruthamuthu AIR 1944 Mad 437. We hold that the suit is not barred by limitation."

22. In the present case from the evidence on record it is established that till the date of filing of the suit i.e 3-11-1977, the defendant was in India during the following periods:

(1) from 24-9-1970 to 15-10-1970,

(2) from 17-12-1970 to 28-12-1970,

(3) from 16-8-1971 to 11-9-1971,

(4) from 29-10-1972 to 10-11-1972 and

(5) from 2-9-1977 to 1-10-1977.

23. The decision of this Court in P.C.K Muthia Chettiar clearly lays down that the operation of Section 13 of the Limitation Act, 1908 [corresponding to Section 15(5) of the Limitation

Act, 1963] does not make any exception in cases where the cause of action had arisen in a foreign country or in India or in cases in which the defendant was in India or in a foreign country at the time of the accrual of the cause of action. Taking into account the ratio laid down by this Court in P.C.K Muthia Chettiar and the period during which the defendant was absent from India there can be no doubt, whatsoever, that on due application of the provisions of Section 15(5) of the Limitation Act, 1963, the suit filed by the plaintiff was well within time as the period of the absence of the defendant from India has to be excluded while computing the limitation for filing of the suit.

24. To answer the next question that would arise consequent to our decision on the first issue the clauses of the agreement between the parties will have to be noticed in some detail. The total sale price was agreed at Rs 3,75,000 out of which a sum of Rs 50,000 had been acknowledged to have been paid by the purchaser (Plaintiff 1) to the vendor (the defendant) by means of an account-payee cheque. Under Clause (4) of the agreement, the vendor was required to obtain, at his own cost, a wealth tax clearance certificate to enable the transfer of property to be made and to intimate the said fact along with a copy of the tax clearance certificate to the purchaser not later than 12 months from the date of the agreement.

25. Under Clause (5) of the agreement, the vendor was to execute the sale deed within a period of 15 months from the date of the agreement. The purchaser, in turn, was to pay to the vendor the balance sale consideration after deducting the amount of Rs 50,000 at the time of the registration of the sale deed which was to be within three months after receipt of the necessary intimation that the tax clearance certificate has been obtained along with the copy thereof as contemplated under Clause (4) of the agreement.

26. Under Clause (7) of the agreement, the purchaser was obliged to pay to the Income Tax Authorities such amount as may be desired by the vendor (not exceeding the balance sale price payable) in order to enable the vendor to get the required wealth tax clearance certificate. The aforesaid clause further stipulated that such money as may be paid to the Income Tax Authorities, at the request of the vendor and on the vendor’s account, will be deducted by the purchaser from the balance sale consideration at the time of the execution of the sale deed. It must also be noted that under the terms of the agreement between the parties apart from the payment contemplated by Clause (7) to the authority and in the manner specified therein the purchaser had no obligation to tender any further payment directly to the vendor.

27. The defendant had claimed that on 9-9-1971 he had hand delivered a letter of the even date (Ext. D-1) to Plaintiff 1 requesting the plaintiff to pay to the defendant or to deposit in the defendant’s bank account a sum of rupees one lakh in order to enable the defendant to furnish a bank guarantee for the purpose of obtaining the necessary tax clearance certificate. According to the defendant though the plaintiff had written a letter dated 27-12-1971 (Ext. PW-11) enquiring about the status of the tax clearance certificate and reiterating his anxiety to have the sale transaction completed there was neither any mention of the letter dated 9-9-1971 in the said communication dated 27-12-1971 nor did the same contain the response of the plaintiff to the request of the defendant for further

money. The defendant has also relied on a notice dated 6-11-1972 issued to the plaintiff (Ext. P-6) wherein reference to the letter dated 9-9-1971 of the defendant was made and the request for further money was reiterated. Furthermore, according to the defendant, though the plaintiff had replied to the aforesaid notice dated 6-11-1972 by his letter dated 14-11-1972, once again, the plaintiff had remained silent with regard to the letter dated 9-9-1971.

28. On the other hand, according to the plaintiffs, the letter dated 9-9-1971 was not received by Plaintiff 1 at any point of time; neither had the plaintiff been intimated about the defendant's demand or request, as may be, for the further amount of Rs 1 lakh *through* the broker Lajja Ram (PW 3). Furthermore, in his reply dated 14-11-1972 Plaintiff 1 had stated that under the agreement he was duty-bound to pay such further amount as may be requested by the defendant (up to the limit of the balance sale consideration) only to the Income Tax Authorities. No such request had been received by the plaintiff, though, the plaintiff was ready to deposit any amount, up to the extent of the balance sale price, with the Income Tax Authorities as required under Clause (7) of the agreement.

29. Though considerable arguments had been advanced by the learned counsel for either side on what would be the correct conclusion that should be drawn from the above correspondence exchanged by and between the parties insofar as the question of identification of the party at fault is concerned it will not be necessary for us to enter into the said arena and record any finding on the contentions advanced. Nothing would hinge on the existence or receipt of the letter dated 9-9-1971 as the demand for the additional payment of Rs 1 lakh by the defendant was clearly made by the defendant's legal notice dated 6-11-1972 which, admittedly, Plaintiff 1 had received. In his reply dated 14-11-1972 to the said notice dated 6-11-1972 Plaintiff 1 had unequivocally stated that under the terms of the agreement he was required to pay, at the defendant's request, further amount(s) only to the Income Tax Authorities which he is ready to do, if a request is so made by the defendant. What, therefore, has to be addressed by the Court is whether the demand raised by the defendant for an additional amount of rupees one lakh for the purpose of facilitating the issuance of the tax clearance certificate and the refusal of the plaintiff to pay any such amount renders either of the parties in default of the terms of the agreement dated 22-12-1970.

30. Clause (7) of the agreement is in the following terms:

"7. That the purchaser agree to pay to the Income Tax Authorities such money as may be desired by the vendor (not exceeding the balance sale price of the property) against the tax dues from the vendor to facilitate the vendor to get the required wealth tax certificate. Such money as paid to the Income Tax Authorities on the request of the vendor will be paid in the vendor's account and will be deducted by the purchaser from the balance of the sale price at the time of the execution of the sale deed."

31. Under the said Clause (7) of the agreement, clearly, the obligation of Plaintiff 1 was to pay to the Income Tax Department such sum (not exceeding the balance consideration

payable) as may be requested by the defendant. Neither Clause (7) nor any other clause of the agreement had cast upon Plaintiff 1 a duty to tender any further payment to the defendant or to credit the bank account of the defendant with any further advance amount after payment of the initial amount of Rs 50,000. Insofar as the obligation to pay the Income Tax Department as contemplated by Clause (7) is concerned it has been already noticed that Plaintiff 1 had repeatedly asserted in the correspondence referred to above that he was always ready and willing to pay any amount (within the balance consideration payable) to the Income Tax Department so that the necessary tax clearance certificate can be issued in favour of the defendant. Nothing has been brought on record by the defendant to show that any demand or request had been made by him to Plaintiff 1 for payment of any amount to the Income Tax Department.

32. The High Court, notwithstanding the clear language of Clause (7) of the agreement, had invoked the principle of "business efficacy" to hold that a slight deviation from the plain meaning of the language of Clause (7) would be justified so as to read an obligation on the part of the plaintiff to pay the further amount of Rs 1 lakh as demanded by the defendant instead of insisting on making such further payment(s) only to the Income Tax Authorities.

33. The principle of business efficacy is normally invoked to read a term in an agreement or contract so as to achieve the result or the consequence intended by the parties acting as prudent businessmen. Business efficacy means the power to produce intended results. The classic test of business efficacy was proposed by Bowen, L.J in Moorcock7. This test requires that a term can only be implied if it is necessary to give business efficacy to the contract to avoid such a failure of consideration that the parties cannot as reasonable businessmen have intended. But only the most limited term should then be implied—the bare minimum to achieve this goal. If the contract makes business sense without the term, the courts will not imply the same. The following passage from the opinion of Bowen, L.J in Moorcock sums up the position: (PD p. 68)

"… In business transactions such as this, what the law desires to effect by the implication is to give such business efficacy to the transaction as must have been intended at all events by both parties who are businessmen; not to impose on one side all the perils of the transaction, or to emancipate one side from all the chances of failure, but to make each party promise in law as much, at all events, as it must have been in the contemplation of both parties that he should be responsible for in respect of those perils or chances."

34. Though in an entirely different context, this Court in United India Insurance Co. Ltd. *v*. Manubhai Dharmasinhbhai Gajera 2008 10 SCC 404 had considered the circumstances when reading an unexpressed term in an agreement would be justified on the basis that such a term was always and obviously intended by and between the parties thereto. Certain observations in this regard expressed by courts in some foreign jurisdictions were noticed by this Court in para 51 of the Report. As the same may have application to the present case it would be useful to notice the said observations: (SCC p. 434)

"51. … '… "Prima facie that which in any contract is left to be implied and need not be expressed is something so obvious that it goes without saying; so that, if, while the parties

were making their bargain, an officious bystander, were to suggest some express provision for it in their agreement, they would testily suppress him with a common 'Oh, of course!'" Shirlaw *v*. Southern Foundries (1926) Ltd. 1939 2 KB 206, KB p. 227.'

'... An expressed term can be implied if and only if the court finds that the parties must have intended that term to form part of their contract: it is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them: it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, although tacit, formed part of the contract which the parties made for themselves. Trollope and Colls Ltd. v. North West Metropolitan Regl. Hospital Board 1973 1 WLR 601, All ER p. 268a-b.'"

(emphasis in original)

35. The business efficacy test, therefore, should be applied only in cases where the term that is sought to be read as implied is such which could have been clearly intended by the parties at the time of making of the agreement. In the present case not only the language of Clause (7) of agreement dated 22-12-1970 is clear and unambiguous there is no other clause in the agreement which had obliged Plaintiff 1 to make any further payment after the initial part-payment of Rs 50,000. The obligation of Plaintiff 1 was to pay any further amount(s) to the Income Tax Authorities, at the request of the defendant, in order to facilitate the issuance of the tax clearance certificate. No payment to the defendant beyond the initial amount of Rs 50,000 was contemplated by all. The above would appear to be consciously intended by the parties so as to exclude the possibility of any substantial monetary loss to the plaintiff in the event the defendant is to resile from his commitment to execute the sale document. The intent of the parties, acting as prudent businessmen, appears to be clear. An obvious intent to exclude any obligation of the plaintiff to pay any further amount (beyond Rs 50,000) to the defendant is clearly discernible. Consequently, resort to the principle of business efficacy by the High Court to read such an implied term in the agreement dated 22-12-1970, in our considered view, was not warranted in the facts and circumstances of the present case.

36. The principles of law on the basis of which the readiness and willingness of the plaintiff in a suit for specific performance is to be judged finds an elaborate enumeration in a recent decision of this Court in J.P Builders *v*. A. Ramadas Rao 2011 1 SCC 429. In the said decision several earlier cases i.e R.C Chandiok *v*. Chuni Lal Sabharwal 1970 3 SCC 140, N.P Thirugnanam *v*. R. Jagan Mohan Rao 1995 5 SCC 115 and P. D'Souza *v*. Shondrilo Naidu 2004 6 SCC 649 have been noticed. To sum up, no straitjacket formula can be laid down and the test of readiness and willingness of the plaintiff would depend on his overall conduct i.e prior and subsequent to the filing of the suit which has also to be viewed in the light of the conduct of the defendant. Having considered the matter in the above perspective we are left with no doubt whatsoever that in the present case Plaintiff 1 was, at all times, ready and willing to perform his part of the contract. On the contrary it is the defendant who had defaulted in the execution of the sale document. The insistence of the defendant on further payments by the plaintiff directly to him and not to the Income Tax Authorities as agreed upon was not at all justified and no blame can be attributed to the

plaintiff for not complying with the said demand(s) of the defendant.

37. Having arrived at the above conclusion it is wholly unnecessary for us to consider the arguments advanced on behalf of the appellants with regard to the provisions of the Foreign Exchange Regulation Act, 1973 (FERA) in the light of which it had been contended that it was not open in law for the plaintiff to comply with the demands for the additional amount(s) made by the defendant. The failure of the defendant to bring on record the draft sale deed which had to accompany the application for the required tax clearance certificate, an aspect highlighted on behalf of the appellants to show the absence of a genuine desire of the defendant to go *through* the transaction, also, would not require any consideration for the abovestated reason.

38. The ultimate question that has now to be considered is: whether the plaintiff should be held to be entitled to a decree for specific performance of the agreement of 22-12-1970?

39. The long efflux of time (over 40 years) that has occurred and the galloping value of real estate in the meantime are the twin inhibiting factors in this regard. The same, however, have to be balanced with the fact that the plaintiffs are in no way responsible for the delay that has occurred and their keen participation in the proceedings till date show the live interest on the part of the plaintiffs to have the agreement enforced in law.

40. The discretion to direct specific performance of an agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles. The parameters for the exercise of discretion vested by Section 20 of the Specific Relief Act, 1963 cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. It must however be emphasised that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance. Such a view has been consistently adopted by this Court. By way of illustration opinions rendered in P.S Ranakrishna Reddy *v*. M.K Bhagyalakshmi 2007 10 SCC 231 and more recently in Narinderjit Singh *v*. North Star Estate Promoters Limited 2012 5 SCC 712 may be usefully recapitulated.

41. The twin inhibiting factors identified above if are to be read as a bar to the grant of a decree of specific performance would amount to penalising the plaintiffs for no fault on their part; to deny them the real fruits of a protracted litigation wherein the issues arising are being answered in their favour. From another perspective it may also indicate the inadequacies of the law to deal with the long delays that, at times, occur while rendering the final verdict in a given case. The aforesaid two features, at best, may justify award of additional compensation to the vendor by grant of a price higher than what had been stipulated in the agreement which price, in a given case, may even be the market price as on date of the order of the final court.

42. Having given our anxious consideration to all the relevant aspects of the case we are of

the view that the ends of justice would require this Court to intervene and set aside the findings and conclusions recorded by the High Court of Delhi in *Anis Ahmed Rushdie v*. Bhiku Ram *Jain* and to decree the suit of the plaintiffs for specific performance of the agreement dated 22-12-1970. We are of the further view that the sale deed that will now have to be executed by the defendants in favour of the plaintiffs will be for the market price of the suit property as on the date of the present order. As no material, whatsoever is available to enable us to make a correct assessment of the market value of the suit property as on date we request the learned trial Judge of the High Court of Delhi to undertake the said exercise with such expedition as may be possible in the prevailing facts and circumstances.

43. All the appeals shall accordingly stand allowed in terms of our above conclusions and directions.

Equivalent: (2013) 8 SCC 131, 2013 AIR 434 (SC)