ALTERNATIVE RELIEF OF REFUND OF EARNEST MONEY UNDER SECTION 22 OF THE SPECIFIC RELIEF ACT, 1963 CANNOT BE GRANTED SUO MOTO BY THE COURTS

INTRODUCTION:

*The Supreme Court in a decision in K.R. Suresh Vs R. Poornima & Ors.[1], inter alia held that the plaint may be amended at any stage of the proceedings to enable the plaintiff to seek an alternative relief. However, under Section 22 of the Specific Relief Act, 1963 ("**Act**"), the courts cannot grant such a relief suo moto and that the forfeiture of earnest money is not penal in the ordinary sense, rendering section 74 of the Indian Contract Act, 1872 inapplicable.*

FACTS:

The dispute arises from a claim for specific performance of the agreement to sell dated 25th July, 2007 ("**ATS**") in respect of a property at Kengeri Satellite Town Layout, Bangalore ("**suit property"**).

The Respondent No. 1 acquired absolute title over the suit property by way of a Will dated 12th November, 2002 executed by her late mother.

Thereafter, Respondent Nos. 1 to 4 executed the ATS in favour of the Appellant for the sale of the suit property for a consideration of INR. 55,50,000/-. The Appellant issued two cheques of INR. 10,00,000/- each towards part payment.

Pertinently, the ATS stipulated that the sale transaction shall be completed by payment of the balance amount within four months, pursuant to which the sale deed would be executed.

It is the case of the Appellant that, upon approaching the bank for a loan to purchase the suit property, he was advised by the bank to secure the original title documents and a probate certificate from Respondent No. 1, as Respondent No. 1 had acquired title of the suit property under an unregistered Will.

Accordingly, the Appellant requested the Respondent Nos. 1 to 4 to obtain a probate certificate from the competent court. However, despite promising to furnish the said documents, Respondent No. 1 failed to do so.

It is also the case of the Appellant that despite him orally expressing his readiness and willingness to complete the sale transaction, the Respondent Nos. 1 to 4 did not come forward to perform their part of the contract.

Thereafter, the Appellant issued a legal notice on 18th February 2008 expressing his readiness and willingness and called upon Respondent Nos. 1 to 4 to execute the sale deed – the Appellant also claimed that the said Respondents were attempting to alienate the suit property to Respondent No. 5 and her since deceased husband (being original Defendant No. 6 to the Suit) while the ATS was subsisting.

It is the case of Respondent Nos. 1 to 4 that the ATS was time bound and that they never agreed to produce the probate or the original title deed.

[1] Civil Appeal No. 5822 of 2025

The Respondent Nos. 1 to 4 terminated the ATS and forfeited the advance paid by the Appellant. The said Respondents contended that at no point during the validity of the ATS, did the Appellant convey or express his readiness and willingness to complete the transaction.

In the above circumstances, the Appellant instituted Suit No. 3559 of 2008 before the Trial Court praying for an order directing Respondent No. 1 to execute the sale deed in the Appellant's favour; to deliver the possession of suit property; and a declaration that the subsequent sale deed dated 15th February, 2008 in favour of Respondent No. 5 and her husband is not binding on the Appellant.

Before the Trial Court, Respondent No. 5 and her husband took the stand that they were *bona fide* purchasers of the suit property for a valuable consideration and stated that they had no knowledge of the ATS – they argued that the suit filed by the Appellant was not maintainable as the sale deed in their favor was not challenged by the Appellant.

The Trial Court observed and held the following:

1. Time was the essence of the ATS;
2. Respondent No. 1 is the absolute owner of the suit property and that a Will need not be registered – procurement of a probate is not necessary;
3. The Appellant did not produce any document to establish having sufficient finances to pay the balance consideration within the stipulated four month period;
4. There is no evidence that the Appellant had sufficient funds and has conceded that his legal notice dated 15th February, 2008 was issued after the four month period had lapsed;
5. Respondent No. 1 to 4 were not required to notify the Appellant about the lapse of the four month period or the subsequent sale of the suit property;
6. Respondent No. 1 had absolute legal right to alienate the suit property;
7. Respondent No. 5 and her husband were bona fide purchasers of the suit property.
8. The advance money being primarily a security for the due performance of the ATS was rightfully forfeited by the Respondent Nos. 1 to 4 and that the Appellant was not entitled to a refund.

Being aggrieved by the judgment of the Trial Court, the Appellant preferred the first Appeal before the High Court in R.F.A. No. 386 of 2013 (SP). However, the High Court dismissed the appeal and affirmed the judgment passed by the Trial Court. The High Court also held that the Appellant had not sought for an alternate prayer for refund of the advance sale consideration in the suit as mandated by Section 22 of the Act and that with the absence of a specific claim for refund of advance money, the Appellant was not entitled to such refund.

ISSUE FOR CONSIDERATION:

The issue for consideration before the Apex Court was whether the Appellant was entitled to refund of the earnest money in the absence of a prayer to that effect.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

The Appellant submitted that Respondent No. 1 failed to obtain the promised probate certificate despite multiple requests, submitting further that, Respondent No. 4 had specifically admitted that between 18th February, 2008 and 20th February, 2008, the Appellant voluntarily offered

to pay an additional INR. 10,00,000/- beyond the agreed sale consideration of INR. 55,50, 000/-.

It was further contended that, the aforesaid admission proved his readiness and willingness to fulfil his part of the contract. It was also submitted that Respondent Nos. 1 to 4 sold the suit property to Respondent No. 5 and her husband with a *mala fide* intent for INR. 38,40,000/- within just two months after expiry of the stipulated period of four months and that no prior notice had been served on the Appellant before forfeiting the advance sale consideration or executing the sale deed in favour of Respondent No. 5 and her husband.

In the alternative, it was submitted that the Appellant was entitled to a refund of the advance money paid by him.

Relying upon the judgments in the case of ***Desh Raj vs. Rohtash Singh***[2] and ***Kamal Kumar vs. Premlata Joshi***[3] the Appellant argued that the relief of refund of advance money can be granted under prayer (c) of the Plaint which beseeches the Court to pass any order as it deems fit, despite there being no specific prayer to that effect.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

It was *inter alia* also argued by the Respondent Nos. 1 to 4 that time was the essence of the contract as the balance sale consideration was to be paid within four months from the execution of the ATS which was further established by the very purpose of the sale being an urgent business requirement of Respondent Nos. 1 to 4. It was further contended that there was consensus between the parties with respect to the forfeiture of advance money in the event of Appellant's default in fulfilling the terms of the agreement.

JUDGMENT:

At the outset, the Apex Court observed that there existed an explicit forfeiture clause in the ATS, stipulating that the advance money paid would stand forfeited in the event of default by the buyer in fulfilling the terms of the contract.

The Apex Court answered on the issue for consideration in two parts:

1. Validity of the Forfeiture of Advance Money; and
2. Law on the Alternative Relief of Refund of Earnest Money under Section 22 of the Act.

On the validity of Forfeiture of Advance Money, the following was held by the Court:

Referring to and relying upon a catena of judgments, the Apex Court held that the amount of INR. 20,00,000/- termed as "advance money" in the ATS, was essentially "earnest money". The Court observed that the said amount was paid at the very execution of the ATS and meant to be adjusted against the total sale consideration.

Further, it was liable to be forfeited in the event the transaction fell through by reasons of default on part of the purchaser. Consequently, when the Appellant failed to comply with the contractual stipulation of paying the balance sale consideration within four months, Respondent Nos. 1 to 4 were justified in forfeiting the advance money.

The Court referring to and relying upon the judgments passed in ***Chand Rani vs. Kamal***

[2] (2023) 3 SCC 714

[3] (2019) 3 SCC 704

Rani[4] and ***Welspun Specialty Solutions Ltd. vs. ONCG***[5] and having regard to the intention of the parties and the surrounding circumstances in the present case observed that, the forfeiture clause in the ATS was intended to bind the contracting parties and ensuring the due performance of the contract, which is particularly significant given the stipulated four month period for completing the sale transaction, and the primary object of executing the ATS being the urgency of Respondent Nos. 1 to 4 regarding OTS which was known to the Appellant as also recorded by the Trial Court – the findings of the Trial Court, along with the impugned judgment affirming that time was of essence, further substantiate the said intent.

The Apex Court also held that a clause for the forfeiture of earnest money is not penal in the ordinary sense, rendering Section 74 of the Indian Contract Act, 1872 inapplicable. Further, the forfeiture clause under the ATS was fair and equitable rather than one-sided and unconscionable, as it imposed liabilities on both the purchaser and sellers, wherein the seller was obliged to pay twice the advance amount paid by the purchaser in case of his default.

On the aspect of alternative relief of refund of Earnest Money under Section 22 of the Act, the Court relied upon a catena of judgments and held that it is a settled position of law that the plaint may be amended at any stage of the proceedings to enable the plaintiff to seek an alternate relief, including that of refund of earnest money, and the courts have been vested with wide judicial discretion to permit such amendments. However, under Section 22 of the Act, the courts cannot grant such relief *suo moto*, since the inclusion of the prayer clause remains *sine quo non* for the grant of such a relief.

Relying upon the judgment in ***Desh Raj vs. Rohtash Singh***[6], the Court held that when an appropriate case exists for seeking the said relief under the provision, it must be specifically sought either in the original plaint or by way of an amendment. The Court observed further that the decision in *Desh Raj (supra)* contradicts the position of the Appellant, reiterating that in absence of a prayer for the relief of refund of earnest money, such relief cannot be granted by the Court.

In view of the above, the Apex Court held that the forfeiture of advance money by Respondent Nos. 1 to 4 was justified.

The appeal was accordingly dismissed.

[4] (1993) 1 SCC 519
[5] (2022) 2 SCC 382
[6] (2023) 3 SCC 714