

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**SUBJECT : CODE OF CIVIL PROCEDURE**

**FAO(OS) 196-197/2005 & FAO(OS) 205/2005**

**Date of Decision: 11<sup>th</sup> March, 2008**

**1. FAO(OS) 196-197/2005**

VIPUL INFRASTRUCTURE DEVELOPERS . . . . . Appellants  
LTD. & ANR.

Through Mr.Arun Bhardwaj, Sr. Advocate with  
Mr.Manish Sharma and Mr.Amit  
Bhardwaj, Advocates

versus

ROHIT KOCHHAR & ANR. . . . . Respondents

Through Mr.P.V. Kapur, Sr. Advocate with  
Mr.Anish Kapur and Mr.Vimal Nagrath,  
Advocates for respondent No.1.  
Mr.Valmiki Mehta, Sr. Advocate with  
Mr.Rajeev M. Roy, Advocate for R-2

**2. FAO(OS) 205/2005**

PUNIT BERIWALA . . . . . Appellant

Through Mr.Valmiki Mehta, Sr. Advocate with  
Mr.Rajeev M. Roy, Advocate

versus

ROHIT KOCHHAR & ORS. . . . . Respondents

Through Mr.P.V. Kapur, Sr. Advocate with  
Mr.Anish Kapur and Mr.Vimal Nagrath,  
Advocates for respondent No.1.  
Mr.Arun Bhardwaj, Sr. Advocate with

Mr.Manish Sharma and Mr.Amit  
Bhardwaj, Advocates for respondents  
No.2 and 3.

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MS. JUSTICE REVA KHETRAPAL**

**DR. MUKUNDAKAM SHARMA, CJ:**

1. These appeals which involve similar issues are disposed of by this common judgment and order.
2. The issue that arise for consideration in these appeals is as to whether or not the Delhi Court would have jurisdiction to entertain the suit instituted by the respondent. In paragraph 46 of the plaint it was stated thus:-

“46. That the Corporate office of Defendants No.1 & 2 and the Registered office of Defendant No.3 is at Saket, New Delhi and the Defendants carry on business and work for gain at Delhi. The Defendants made the offer to sell the suit premises to the Plaintiff at New Delhi and the Plaintiff accepted the said offer also at New Delhi. The payments were also made by the Plaintiff to Defendant No.1 at New Delhi. Accordingly, the Agreement was concluded at New Delhi. Further, the Plaintiff is merely seeking the relief of specific performance of the contract dated 16/20.01.2004 for sale concluded between the parties, which relief can be entirely enforced through the personal obedience of the Defendants. Therefore, this Hon’ble Court has the territorial jurisdiction to entertain and try the present suit.”

3. The aforesaid suit was based on the alleged contract dated 16/20.01.2004 alleging that the commercial property measuring 10,747 sq. ft. (1998.420 sq. mtrs.) on the second floor of the Fortune Global Hotel and

Commercial Complex, Gurgaon was sought to be conveyed. In para 8 of the  
plaint it was stated thus:-

“8. That after discussions and negotiations Shri Achal Raina, Vice President of Defendant No.1 sent a written communication dated January 16, 2004 (hereinafter referred to as the “Offer Letter”) containing the aforesaid offer to the Plaintiff, in respect of the suit premises. The Offer Letter contained the following terms and conditions:  
PRICE :Rs. 4200/- persq. ft.

PAYMENT SCHEDULE :

Immediately on Booking : 10% of the total sale  
Consideration.

By 28.02.2004 : 85% of the total sale  
consideration.

At the time of notice for  
possession of the premises: Balance 5% of the  
total sale consideration.

1. The offer also includes 15 number of Car parking  
spaces in the basement.

2. Further the above price does not include the cost  
towards registration/stamp duty, electricity connection,  
maintenance deposit and other miscellaneous charges for  
the registration of the said premises.

3. Any delayed payment shall attract an interest @ 18%  
per annum (compounded quarterly) for the period of delay.

4. The above offer is valid till the close of business hours,  
i.e., 20<sup>th</sup> February, 2004.”

4. The appellant, therefore, has extracted in the aforesaid paragraph, the  
entire alleged contract which was allegedly created between the respondent

and the appellant. In paragraphs 42 and 43 it is stated by the respondent-plaintiff as follows:

“42. That since the Defendants have not executed the sale deed or any other document to transfer the right, title and interest in the suit premises in favour of the Plaintiff despite repeated requests from the Plaintiff, the Plaintiff, as such, is left with no other remedy, except for seeking specific performance of the contract dated 16/20.01.2004 concluded between the parties, through the intervention of this Hon’ble Court.

43. That the Plaintiff is also entitled to claim damages from the Defendants on account of the loss suffered due to the delay in conclusion of the sale and the consequent delay in the Plaintiff’s plans of expansion and starting a new office at Gurgaon. The delay is still continuing and the exact loss suffered by the Plaintiff can be computed only after the sale has been concluded, hence the plaintiff seeks leave of this Hon’ble Court to sue the Defendants for damages on account of delay at a later date. The Plaintiff along with the plaint is moving an appropriate application under order 2 rule 2(3).”

5. When the prayer in the plaint is examined minutely, it is crystal clear that in the said plaint the respondent has not prayed for delivery of possession of the suit property. The respondent-plaintiff has only prayed for a decree for specific performance, commanding the defendants to transfer the right, title and interest in the suit premises to the plaintiff, by executing and getting registered the sale deed/document to transfer the title of the suit premises in terms of the aforesaid alleged contract dated 16/20.01.2004.

6. Upon being served with the summons, the appellants entered

appearance and they filed a written statement taking, inter alia, a preliminary objection with regard to the maintainability of the suit in Delhi Court. The said objection was taken in the following manner:-

“46. Para No.46 of the plaint is absolutely wrong and vehemently denied. The suit property is situated at Gurgaon. The defendants carry on business and work for gain at Gurgaon. The defendants No.1 to 3 have also shifted their offices to Gurgaon. Since the suit property is situated in Gurgaon, the Courts at Gurgaon alone have got the jurisdiction to try and decide the present suit. The making of payment is irrelevant and inconsequential for the purpose of conferring jurisdiction upon this Hon’ble Court to decide the present suit. It is wrong and denied that any concluded contract came into existence between the parties at any place including New Delhi. It is false to contend that plaintiff is seeking relief of specific performance of alleged contract dated 16/20.1.2004 and that same can be enforced through personal obedience of the defendants at Delhi. Specific performance is being sought for in relation to immovable property situated at Gurgaon. The question of this Hon’ble Court enjoying territorial jurisdiction to entertain and try the present suit does not arise. The plaint is liable to be rejected on this ground alone.”

7. In paragraph 2 of the said written statement also the following objection was taken:

“This Hon’ble Court does not have the territorial jurisdiction to entertain and try the suit or grant any reliefs as prayed for. The suit is in respect of a property which is admittedly situated at Gurgaon. Courts at Gurgaon alone can have jurisdiction to entertain any suit in respect of the relief claimed in the suit, assuming without admitting there to be any cause of action in favour of the Plaintiff and assuming without admitting the Plaintiff to be entitled to any relief.”

8. The learned Single Judge who considered the aforesaid preliminary objection held that since only a declaration of right and title to the suit property is sought for in the plaint and not delivery of possession, therefore, Delhi Court will have jurisdiction. The learned Single Judge drew a distinction between a suit relating to specific performance of a contract for sale of immovable property simplicitor and a suit where additional relief for delivery of possession is prayed for. It was held by the learned Single Judge that if delivery of possession through the agency of the court is sought for and has to be ordered, only in that case the location and situation of the property would have relevance, and if only a declaration of right is sought for in that event the location and situation of the property would have no relevance at all, and that such a suit can be instituted even outside the territorial jurisdiction of the court within which the aforesaid property is situate. The learned Single Judge while coming to the aforesaid conclusion referred to the following judgments:-

1. **Sidharth Choudhary v. Mahamaya General Finance** :80(1999) DLT 460;
2. **Karan Mahendru & Anr. v. M/s Vatika Plantations (P) Ltd.**: 111(2004) DLT 264;
3. **Adcon Electronics Pvt. Ltd. v. Daulat & Anr.**:(2001) 7 SCC 698; and
4. **Babu Lal v. Hazari Lal Kishori Lal & Ors.**:(1982) 3 SCR 94.

9. Reference was also made by the learned Single Judge to the provisions of Section 16 of the Code of Civil Procedure and to the

provisions of Section 22 of the Specific Relief Act and also to the provisions of Order 2 Rule 2 of the Code of Civil Procedure. The aforesaid findings and conclusions recorded by the learned Single Judge were challenged before us by filing the aforesaid appeals by the two defendants, who are appellants herein.

10. It was submitted on behalf of the appellants that the learned Single Judge was not justified in making the aforesaid distinction in a case of specific performance of the contract, where, according to the appellants, decree of delivery of possession is inherent in a decree for specific performance of contract. It was submitted that in a case where possession of immovable property is vested with the vendor, even if any decree for possession is not sought for and only a decree of specific performance of contract is sought for, the Court will be empowered to grant decree for possession of immovable property in favour of the plaintiff, particularly in view of the fact that the seller is bound to give possession of the property to the buyer. Section 16(d) of the Code of Civil Procedure, 1908 and Section 22 of the Specific Relief Act, 1963 read as follows:

**Section 16(d) CPC**

**“16. Suits to be instituted where subject-matter situate:-** Subject to the pecuniary or other limitations prescribed by any law, suits,-  
(a)....

- (b)....
  - (c)....
  - (d) for the determination of any other right to or interest in immovable property,
  - (e)....
  - (f).....
- shall be instituted in the Court within the local limits of whose jurisdiction the property is situate.

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.”

### **Section 22 , Specific Relief Act, 1963**

**22. Power to grant relief for possession, partition, refund of earnest money, etc.**-(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 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.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21. “

11. Section 16 is one of the provisions found in the Code of Civil Procedure which deals with territorial jurisdiction of the Courts. It provides that the suits for recovery or partition of immovable property or for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property or for determination of any other right to or interest in immovable property, or for compensation for wrong to immovable property, or for recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate. The proviso attached to the aforesaid provisions provides that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant, may where the relief sought can be entirely obtained through his personal obedience be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

12. Section 22 of the Specific Relief Act, on the other hand, provides that any person suing for specific performance of a contract for transfer of immovable property may, in an appropriate case sue, for possession, or partition and separate possession, of the property, in addition to such performance. It is further provided in the said provision that no relief under the said provision 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.

13. The aforesaid provisions of Section 22 of the Specific Relief Act came to be considered by the Supreme Court in the decision of *Babu Lal (supra)*. In the said decision it was held by the Supreme Court that Section 22 of the Specific Relief Act provides that a person in a suit for specific performance of a contract for the transfer of immovable property, may ask for appropriate relief, namely, he may ask for possession, or for partition, or for separate possession including the relief for specific performance. The Supreme Court also took note of Sub-section (2) of this section which specifically provides that these reliefs cannot be granted by the Court, unless they have been expressly claimed by the plaintiff in the suit. The Supreme Court further

went on to hold that the proviso to Sub-section (2), however, says that where the plaintiff has not specifically claimed these reliefs in his plaint at the initial stage of the suit, the court shall permit the plaintiff, at any stage of the proceedings, to include one or more of the reliefs mentioned above by means of an amendment of the plaint on such terms as it may deem proper. The Supreme Court examined the object and purpose of enacting the aforesaid provision and thereafter held that the said provision has been enacted to avoid multiplicity of suits and that the plaintiff may get appropriate relief without being hampered by procedural complications. In the said decision the Supreme Court also took note of the expression “in appropriate cases” as appearing in Section 22 (1) which was found to be most significant. While interpreting the said provision it was held by the Supreme Court that the said expression only indicates that it is not always incumbent on the plaintiff to claim possession or partition or separate possession in a suit for specific performance of a contract for the transfer of the immovable property. That has to be done where the circumstances demanding the relief for specific performance of the contract of sale embraced within its ambit not only the execution of the sale deed but also possession over the property conveyed under the sale deed. The aforesaid proposition laid down by the Supreme Court was further explained holding that it may not always be necessary for

the plaintiff to specifically claim possession over the property, the relief of possession being inherent in the relief for specific performance of the contract of sale. The Supreme Court went on to hold that in a case where exclusive possession is with the contracting party, a decree for specific performance of the contract of sale simpliciter without specifically providing for delivery of possession, may give complete relief to the decree-holder. In order to satisfy the decree against him completely the judgment debtor is bound not only to execute the sale-deed but also to put the property in possession of the decree-holder. This is also in consonance with the provisions of Section [55\(1\)](#) of the Transfer of Property Act, 1882 which provides that the seller is bound to give, on being so required, to the buyer or such person as he directs, such possession of the property as its nature admits.

14. Relying on the said decision and also on the decision of the Supreme Court in *Harshad Chiman Lal Modi v. DLF Universal Limited* 85(2000)DLT 501, learned counsel appearing for the appellant has submitted that the findings recorded by the learned Single Judge are erroneous and, therefore, should be set aside. Counsel appearing for the respondent, however, submitted before us that since the appellant has only sought for a decree for specific performance of the contract by declaring that the

respondent-plaintiff is the owner and title holder of the suit property, and no decree for delivery of possession has been sought for by the appellant, the distinction between a case for declaration of right and title simplicitor and a suit where decree for possession is additionally sought for, was justified. It was submitted by him that *Harshad Chimman Lal Modi's case (supra)* which arose out of a decision of the Delhi High Court was in the second category of cases. Therefore, the same will have no application to the facts of the present case. Counsel submitted that the decree for declaration of right and title in respect of the property situate outside the jurisdiction of this Court could be obtained through the personal obedience of the defendant and, therefore, the proviso to Section 16 is applicable to the facts of the present case and the learned Single Judge was justified in holding that the Delhi Court will have jurisdiction.

15. In the light of the aforesaid submissions we have considered the facts of the case. It is established and proved, as disclosed from the records and from the facts of the case, that in the relief and prayer clause of the plaint there is no claim and no prayer for a declaration of delivery of possession of the suit property. However, in order to find out as to the nature of the reliefs that could be granted by the Court, the whole of the plaint is to be read and not only the relief part of the plaint. In the plaint, the respondent-plaintiff

has referred to the contents of the alleged agreement to sell. When a decree is passed for specific performance of the contract necessarily all the contents of the said alleged contract shall have to be enforced and directed to be verified. The said contract dated 16/20.01.2004 also contains a payment schedule. There is also a stipulation therein that payment of the sale consideration has to be made in the manner provided therein. It is stipulated that 10% of the total sale consideration has to be paid immediately on booking, 85% of the sale consideration has to be paid by 28<sup>th</sup> February, 2004 and the balance 5% of the total sale consideration shall have to be paid at the time of notice for possession of the premises. The said alleged contract also stipulates for delivery of possession of the suit property on payment of balance 5% of the total sale consideration, which has to be paid on receipt of notice issued by the appellant to the respondent for possession of the premises. Section 55 of the Transfer of Property Act, 1882 also casts an obligation on the seller to deliver possession to the transferee pursuant to a sale deed, as it is laid down that a seller is not only bound on payment or tender of the amount due in respect of the price to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place but also to give, on being so required to the buyer, or to such person as he directs, such possession of the property as its nature

admits.

16. In *Babu Lal's case (supra)* it was also held that in satisfaction of a decree for specific performance of a contract for sale, the handing over of the possession of the property is incidental. Thus the judgment debtor has to not only to execute the sale deed, but also to deliver the property to decree holder. Further reference was also made in the said case to a Division Bench decision of the Calcutta High Court in a case titled as *Subodh Kumar Banerjee v. Hiramoni Dasi and Ors.* reported in AIR 1955 Cal 267, wherein it was held that in view of clause (1) of Section 55 unless there is a contract to the contrary, giving delivery of the possession to the buyer by the seller is an incident of a contract for sale, and that right springs out of the contract which is being specifically enforced and as a net result of the execution and completion of conveyance. The aforesaid provision has to be read harmoniously with the provisions of Section 22 of the Specific Relief Act. The decisions which are referred to in this judgment and relied upon by the counsel appearing for the parties at different stages also throw light on the aforesaid aspect. It is established from the ratio of the aforesaid decisions that it could be possible by filing a suit not only to seek a declaration of the right and title and to enforce an agreement to sell, but an amendment thereto could also be obtained seeking for decree of delivery of possession at any

stage of the suit, even at the execution stage.

17. The interpretation that is sought to be given by the respondents herein, if accepted, would in view of the aforesaid decision, lead to an incongruous situation, as a person who is located in Delhi and buys a property in Gurgaon or in Mumbai, would seek for declaration at Delhi and at the execution stage, get the decree transferred to Gurgaon or Mumbai for its execution.

18. In the present case, it is an admitted position that the appellant had entered into the aforesaid alleged contract at its Corporate office at Delhi. It is the specific stand of the appellant that they were initially residents of Delhi and that they had moved to Gurgaon and their corporate office is now also located at Gurgaon. It is the contention of the counsel appearing for the respondents that the proviso to Section 16 of Code of Civil Procedure is applicable which is sought to be invoked, for, the relief which is sought for could be entirely enforced through the personal obedience of the defendants in Delhi. There is however not only a prayer in the plaint for declaration of the right and title, but also to transfer the right, title and interest in the suit premises situate at Gurgaon. As, in our opinion, the suit can be decreed in favour of the plaintiff only when the Court can get the sale deed executed and registered in favour of the plaintiff which would confer the title of the



suit premises on the plaintiff, and the execution and the registration of the sale document would have to take place at Gurgaon and, for this the Court will also have to pass a decree directing the defendant to get the sale deed executed and registered at Gurgaon, implication of the same will be that a direction will have to be given to the defendant that he shall have to move out of Delhi and go to Gurgaon and get the same registered. No sale deed is sought to be registered at Delhi and, therefore, in our considered opinion such a relief cannot be entirely obtained through the personal obedience of the defendant, who in this case has to go to the jurisdiction of another court to get the decree executed and the sale deed registered.

19. Accordingly, we are of the considered opinion that the submissions of the learned counsel for the respondent and the findings recorded by the learned Single Judge that the present case is covered by the proviso of Section 16 of the Code of Civil Procedure are misplaced. In the facts and circumstances of the case as delineated, the relief in the present suit cannot be entirely obtained through the personal obedience of the defendants. The proviso to Section 16 of the Code of Civil Procedure would be applicable to a case where the relief sought for by the plaintiff was entirely obtainable through the personal obedience of the defendant, i.e., the defendant has not at all to go out of the jurisdiction of the Court for the aforesaid purpose. The

present case is not a case of the aforesaid nature. In the present case for execution of the sale deed the defendants will have to go out of the jurisdiction of this Court and get the same executed and registered in Gurgaon.

20. In the present case also it is an admitted position that possession of the said property was with the seller and, therefore, in terms of the provisions of Section 55(1) of the Transfer of Property Act, 1882, the relief of possession is inherent in the relief of specific performance of the contract. In our considered opinion the ratio of the decision of the Supreme Court in *Babu Lal(supra)* and the principles laid down in the case of *Harshad Chiman Lal Modi(supra)* are applicable to the facts of the present case. In *Harshad Chiman Lal Modi (supra)* it was found that in addition to passing decree, the court was also required to deliver possession of the property. It was held that such a relief can be granted only by sending the concerned person responsible for delivery of possession to Gurgaon and the court at Delhi does not have the jurisdiction to get the aforesaid decree enforced for the property situate outside territorial jurisdiction of Delhi High Court. The Court while referring to the provisions of Section 16 of the CPC held that the location of institution of a suit would be guided by the location of the property in respect of which and for determination of any right or interest whereof the

suit is instituted. The proviso to Section 16 CPC is also not applicable to the case, as the relief sought for cannot be entirely granted or obtained through the personal obedience of the respondent.

21. The decision of the Supreme Court in the case of **Adcon Electronics Pvt. Ltd. v. Daulat and Another** (2001) 7 SCC 698, relied upon by the respondents, would also not be applicable to the facts of the present case. The said decision was rendered in the context of the expression "suit for land". The Supreme Court in the said decision held that suit for specific performance of an agreement for sale of the suit property, without a claim for delivery of possession, cannot be treated as a "suit for land" and is, therefore, triable under clause 12 if the other conditions thereunder are fulfilled. The facts of the said case are, therefore, distinguishable and are not applicable to the case in hand. The said decision was rendered due to specific provision therein and it is also apparent from the fact that the case of **Babu Lal(supra)** was not even referred to in that case.

22. Another decision of the Supreme Court which needs reference at this stage is the case of **Begum Sabiha Sultan v. Nawab Mohd. Mansur Ali Khan and others** (2007) 4 SCC 343. In para 12 of the said judgment it was held by the Supreme Court that reading the plaint as a whole in this case, there cannot be much doubt that the suit is essentially in relation to the relief

of partition and declaration in respect of the properties situate in Village Pataudi, Gurgaon, outside the jurisdiction of court at Delhi. In that view of the matter it was also held that the Delhi Court will have no jurisdiction to try and decide the aforesaid suit. It was also held in the said decision by following the decision of *Harshad Chimani Lal Modi (supra)* that the relief of partition, accounting and declaration of invalidity of the sale executed in respect of immovable property situate in Village Pataudi, Gurgaon, could not entirely be obtained by personal obedience to the decree by the defendants in the suit. It was further held that applying the test laid down therein, it is clear that the present suit could not be brought within the purview of the proviso to Section 16 of the Code or entertained relying on Section 20 of the Code on the basis that three out of the five defendants are residing within the jurisdiction of the court at Delhi.

23. In view of the above facts and circumstances, we are of the considered opinion that the Delhi court would not have the territorial jurisdiction to entertain and decide the aforesaid suits. Consequently, we hold that the decision rendered by the learned Single judge cannot be upheld. The same is accordingly set aside and quashed.

24. The appeals are allowed. Accordingly, the plaint be returned to the plaintiff in accordance with law.

**CHIEF JUSTICE**

**REVA KHETRAPAL, J**

**March 11, 2008**  
**Rohtash**