

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present

Mr. Justice Md. Riaz Uddin Khan

And

Mr. Justice Raziuddin Ahmed

First Appeal No. 293 of 2020

IN THE MATTER OF:

Erina Begum

... Defendant-Appellant

-Versus-

Mustafizur Rahman and another

... Plaintiff-Respondents

Mr. Shasti Sarker, Advocate

... For the Defendant-Appellant

Ms. Nahid Yesmin with

Mr. Iqbal Hasan, Advocates

... For the Plaintiff-Respondents

Judgment on: 06.11.2025

Md. Riaz Uddin Khan, J:

This appeal is directed against the judgment and decree dated 21.07.2019 (decree signed on 25.07.2019) passed by the Joint District Judge, 1st Court, Satkhira in Title Suit No. 04 of 2018 decreeing the suit.

Succinct facts for disposal of this first appeal are that the respondent as plaintiff filed Title Suit No. 04 of 2018 before the Joint District Judge, 1st Court, Satkhira for specific performance of the contract in relation to a land measuring 14 decimals stating *inter alia* that the defendant came to an agreement with the plaintiff to sale the scheduled land at a price of taka 28,16000/- and accordingly an agreement for sale was executed and registered on 01.02.2017 and on that day the plaintiffs paid taka 10,76000/- and in that agreement it was stated that after payment of rest of the amount within 31.12.2017 a deed of sale would be registered and on the date of

agreement possession was handed over to the plaintiffs. Thereafter, the plaintiffs paid taka 3,00,000/- more on 01.02.2017 and taka 200,000/- on 06.02.2017 and thereafter taka 50,000/- on 06.08.2017 by various cheques. Thereafter the plaintiff also paid taka 2,10,450/- through a chalan in the name of defendant No.1 on 06.08.2017 as on that date the sale deed was supposed to be registered. The further case of the plaintiffs is that at various dates they also paid taka 3,58,000/- in cash. Though the plaintiff paid all the consideration money but the defendant refused to execute the deed registered on 20.12.2017 hence, the suit for specific performance of the contract.

The defendant No. 1 contested the suit by filing written statement. The definite case of the defendant No. 1 is that her husband Monsur Ali Gazi fell ill for which they were in need of money for his treatment and they took taka 5,00,000/- as loan from the plaintiff No. 1 who was his business partner. The defendant No.1 denied that, other than those taka 5,00,000/- taken as loan, they received any money from the plaintiffs. Defendant's further case is that on 20.09.2017 they have paid back the loan money of taka 5,00,000/- and flatly denied any execution of agreement for sale.

During trial the plaintiffs adduced 3 witnesses while the defendant no.1 adduced 1 witness while one Md. Mohabbat Ali (CW-1), a bank officer, deposed as court witness and both the parties produced some documents to prove their respective cases. After considering all the documents and the evidence on record the trial court decreed the suit by his impugned judgment on the finding that pursuing the deed of agreement the plaintiffs in total paid taka 21,08,140/- out of taka 28,16000/- and directed the plaintiffs to pay

the rest balance consideration money amounting to Tk-7,07,860/- within 30 (thirty) days and directed the defendants to register a sale deed within 45 days failing which to register the same through Court.

The plaintiffs filed a review case against the finding of the trial court being Miscellaneous Case No. 42 of 2011. After considering the Miscellaneous Case No. 42 of 2011 the learned judge after reviewing his earlier judgment found that the plaintiffs have been able to prove the payment of taka 3,50,000/- through exhibit nos.1 and 1(ka) but could not prove the payment of taka 3,57,860/- and accordingly corrected its earlier judgment and decree. The plaintiffs after receiving that order from the trial court deposited taka 3,57,860/- through chalan.

Being aggrieved by and dissatisfied with the judgment and decree as aforesaid the defendant filed the instant appeal.

Mr. Shasti Sarker, the learned advocate appearing for the defendant-appellant submits that the trial court committed wrong in directing the plaintiffs to pay balance consideration money after conclusion of trial. Drawing our attention on section 21A(b) of the Specific Relief Act, 1877 Mr. Sarker submits that according to this section there is no scope to deposit balance consideration of money after filing the suit. Mr. Sarker then submits that admittedly the plaintiff did not deposit entire balance consideration money before filing of the suit hence the trial court had no option but to refuse to pass any decree of specific performance of the contract. In support of his submission Mr. Sarker cited the decisions of Imran (Md) Vs. Shamim Kamal and others reported in 60 DLR 597; Panasonic Power Division Vs. Chemico Co. Bangladesh limited and

others reported in 69 DLR (AD) 333; Mosarraaf Hossain Vs. Rekha Khatun and others reported in 74 DLR (AD) 146 and the unreported case of S.M. Murshed Alam Vs. Mrs. Lutfunnahar and another passed in First Miscellaneous Appeal No. 372 of 2018 with Civil Rule No. 311 (FM) of 2018.

Per-contra Ms. Nahid Yesmin along with Mr. Iqbal Hasan, learned advocate appearing for the plaintiff-respondents submitted that the defendant-appellant raised a new issue regarding non-payment of balance consideration before institution of suit as required by section 21A(b) of the Specific Relief Act, 1877 but in every case the party should come before the Court raising such point in an initial stage of trial but in this instant suit the appellant raised this question of non-payment of balance consideration money at a delayed stage after pronouncement of judgment with ulterior motive and hence the impugned judgment and decree should not be interfered by this Court. The learned advocate then submits that the plaintiffs being purchasers paid the price of suit land as agreed upon in several installments and the same was categorically asserted in paragraph No. 3 of the plaint and the rest unpaid amount was paid through chalan dated 09.01.2018 before filing of the suit, therefore, there was no outstanding on the date when the suit was filed. As such there was no requirement of depositing any amount of consideration of the contract to file a suit for specific performance of the contract. In support of her contention the learned advocate also relied upon the decision of 69 DLR (AD) 333 (supra) cited by her opponent especially emphasizing on paragraph No.9. Ms. Yesmin then submits that in the instant suit the plaintiffs paid the consideration of the contract to the defendant no.1 in several methods

and installments and the transactions were categorically stated in the Paragraph No.03 of the plaint and the same was admitted by the defendant Erina Begum as D.W.-1 in her depositions but among the aforesaid transactions a single payment remain doubtful to the trial Court and hence directed the plaintiffs to pay the same within stipulated period of time after pronouncement of judgment and the plaintiff-respondents paid the same at once and hence the judgment and decree should be affirmed. The learned advocate next submits that the case laws preferred by the appellant are relevant to pre-emption cases which are regulated by State Acquisition and Tenancy Act, 1950 and in those cases preemptor has to submit deed money + 25% compensation on sale price + 8% annual simple interest on consideration money, but in a suit for specific performance of the contract, the plaintiff has just to pay the balance consideration money, if any. So the case laws preferred by the Appellant reported in 31 DLR (AD) 91, 74 DLR (AD) 146, 43 DLR (AD) 108, 31 DLR (AD) 87, 31 DLR (AD) 108 has no manner of application in the instant suit. Ms. Yesmin further submits that section 21A(b) of Specific Relief Act provides that the balance amount of consideration of the contract is to be deposited in the Court at the time of filing of the suit for specific performance of the contract. As the provision of section 21A of the Specific Relief Act does not provide for the consequence, if the suit is filed without depositing the balance amount of consideration of the contract in the Court, therefore, the provision of section 21A is merely directory and not mandatory and the Court has power to exercise its discretion justly for ends of justice and in the instant suit the learned trial judge passed the impugned judgment

and decree lawfully and equitably and hence the judgment and decree should not be interfered by this appellate Court. In support of her submission she cited the decision reported in 2014 BLD 638.

We have heard the learned advocates for both the parties, perused the impugned judgment and decree and examined the lower court record including the depositions of the parties, exhibited documents and other relevant papers.

It appears from record that plaintiff No.1, Mustafizur Rahman as PW-1 in his deposition stated that the agreement for sale was registered on 01.02.2017 at a consideration of taka 28,16,000/- out of which on that day they paid taka 10,76,000/- and thereafter on 01.02.2017 they paid taka 3,00,000/- on 06.02.2017 they paid taka 2,00,000/- thereafter on 06.08.2017 taka 50,000/- and on 06.08.2017 taka 2,10,450/-. The plaintiff produced the agreement for sale (exhibit No. 2). On perusal of exhibit-2 which is a registered document, it appears that the plaintiffs paid taka 10,76,000/-. Mere denial of contents of a registered document is not sufficient for the defendant and on this point the trial court rightly found that according to Evidence Act the defendant cannot deny this payment. It further appears from the exhibited documents of payment through various cheques and chalan of various dates that the plaintiffs have proved their payment of consideration which is also undeniable and the trial court rightly found that the plaintiffs proved their documents of payment of consideration money. On the other hand the defendant no.1 has utterly failed to prove that she did not execute the deed of agreement for sale which is a registered document, taking of loan of taka 500,000/- for

the treatment of her husband from the plaintiff no.1 and repayment of the same.

However, the only point raised before this Court by the learned advocate for the appellant is that as per section 21A(b) of the Specific Relief Act whether the trial court is correct in decreeing the suit for specific performance of contract directing the plaintiffs for payment of balance consideration of taka 3,57,860/-.

It appears from the impugned judgment that the judge of the trial court observed that in the instant case the plaintiffs claimed that they have paid all the consideration money before filing of the suit and in support of their contention they have adduced and produced witnesses and some documents before the Court and able to prove payment of consideration of Tk-24,58,140/- (Tk-21,08,140/- + 350,000/-) out of Tk-28,16000/- but could not prove the payment of Tk-3,58,000/- as cash which the plaintiffs might have paid and in such view instead of dismissing the suit, for ends of justice, the plaintiffs should be directed to pay the consideration money of Tk-357,860/-. To deal with this matter it will be profitable if we refer section 21A of the Specific Relief Act, 1877 which reads as under-

“21A. Unregistered contract for sale
not specifically enforceable-**Notwithstanding**
anything to the contrary contained in this
Act or any other law for the time being in
force, no contract for sale of any
immoveable property can be specifically
enforced unless-

(a) the contract is in writing and
registered under the Registration

Act, 1908, whether or not transferee has taken possession of the property or any part thereof; and

(b) the balance amount of consideration of the contract is deposited in the Court at the time of filing the suit for specific performance of the contract.”

From reading of the above section it is very much clear that the Court shall not apply its discretion for specific performance of a contract unless the contract is in writing and registered under the Registration Act and if the balance amount of consideration of contract is not deposited in the Court at the time of filing of the suit for specific performance of the contract. In this regard the Appellate Division in the case of Abul Kalam (Md) Vs. Md. Mohiuddin and others reported in 69 DLR (AD) 239 clearly observed that-

“8. We have considered the provision of section 21A(b) of the Act. The language of the section is so unambiguous that it does not require any interpretation to come to conclusion that in case of failure of depositing the balance amount at the time of filing the suit for specific performance of the contract, the suit cannot be maintained. Even then, from the impugned judgment and order, it appears that the High Court Division considered various decisions of this

Court and of the Indian jurisdiction and came to the finding that the deposit of the balance consideration of the contract before filing a suit for specific performance of the contract is a condition precedent and that having not been done in the instant case, that suit was barred under the provision of section 21A(b) of the Act. Therefore, the plaint was liable to be rejected under Order VII, Rule 11 of the Code of Civil Procedure. We find no error with the view taken by the High Court Division in view of the language used in section 21A(b) of the Act.”

So, it is abundantly clear that the provision of section 21A of the Specific Relief Act is a mandatory provision and as a general rule the Court cannot direct the plaintiff to deposit the balance amount of consideration of the contract after filing of the suit for specific performance of the contract. This view of our Apex Court is being consistently followed by both Divisions of our Supreme Court. Now, let us considered the instant case whether the trial court is correct in decreeing the suit for specific performance of contract directing the plaintiffs for payment of balance consideration of taka 3,57,860/- in the light of the above decision of our Apex Court. In the instant case in their pleading the plaintiffs stated the payment of the amount of consideration and how they have paid the consideration money for agreement of sale and their payment of balance consideration before filing of the suit but the trial court on analyses of the

depositions of the plaintiffs along with their exhibited documents firstly disbelieved of payment of total amount of taka 7,07,860/- but on review the trial court corrected itself and accepted payment of taka 3,50,000/- as it has been proved by exhibited documents but at that time also the trial court found that plaintiffs failed to prove the payment of consideration money of taka 3,57,860/- in cash. The trial court expressed its doubt regarding the payment in cash and directed to pay the same.

We have minutely examined the depositions of the plaintiffs and their exhibited documents and we do not find any reason to disagree with the findings of the trial court regarding the failure of the plaintiffs to prove the payment of cash of taka 3,57,860/- or 3,58,000/- as claimed by the plaintiffs on various dates. Though in the plaint and in his depositions PW-1 claimed payment of taka 3,58,000/- in cash but it was not proved by supporting evidence. As such the plaintiffs failed to prove those statements of payment in cash by adducing any documents or by sufficient oral evidence.

Now, the question is whether this non proof of small amount of consideration money should be treated as non-payment of balance amount of consideration of contract as stated in section 21A(b) of the Specific Relief Act. The plaintiffs in support of their plaint case tried to prove their payment of entire consideration of the contract but failed to prove payment of taka 3,57,860/- only out of total 28,16,000/-. In our considered view, this non-proof of an small amount of payment of consideration should not be treated as non-payment of balance amount of consideration of the contract as stated in section 21A(b) of the Specific Relief Act, 1877 and Court can direct the

plaintiff to pay the non-proof amount within specified period. In that view of the matter the trial court rightly and justly directed the plaintiffs to pay the sum which they could not prove giving a specific period of time. And after receiving such order from the trial Court the plaintiffs paid that amount which is evident from order No.29 dated 20.09.2019, exhibit 1-1A. In the instant suit the trial court rightly applied its judicial discretion in decreeing the suit of specific performance of contract after considering the evidence on record and all aspects of the suit.

The decisions cited by the learned advocate for the defendant-appellant reported in 60 DLR 597; 69 DLR (AD) 333; 74 DLR (AD) 146 and the unreported case of S.M. Murshed Alam Vs. Mrs. Lutfunnahar and another passed in First Miscellaneous Appeal No. 372 of 2018 with Civil Rule No. 311 (FM) of 2018 are regarding the mandatory provision of payment of balance amount. We have already mentioned by citing the decision reported in 69 DLR (AD) 239 (supra) that the provision of section 21A of the Specific Relief Act is a mandatory provision and as a general rule the Court cannot direct the plaintiff to deposit the balance amount of consideration of the contract after filing of the suit for specific performance of the contract. The facts and circumstances of the instant case are quite different from those of the cases referred by the learned advocate for the appellant. In such view of the matter we are of the view that the contention raised by the appellant has no substance in the present case. Hence, we are not inclined to interfere with the judgment and decree passed by the trial court.

In the result the appeal is **dismissed**. However, without any order as to cost. The judgment and decree dated 21.07.2019 (decree signed on 25.07.2019) as amended on 16.02.2020 in Miscellaneous Case No.42 of 2019 passed by the Joint District Judge, 1st Court, Satkhira is hereby affirmed.

Send down the Lower Court Records along with a copy of this judgment at once.

Raziuddin Ahmed, J:

I agree.