



Coromandel Law

Striding Forward Together

**Siddamsetty Infra Projects v. Katha Sujatha Reddy - The
Supreme Court of India revisits the law on the specific
performance of Agreements to Sell**

10 November 2024

Siddamsetty Infra Projects v. Katha Sujatha Reddy - The Supreme Court revisits the law on the Specific Performance of Agreements to Sell.

Executive Summary

1. Some important takeaways from this decision of the Supreme Court of India, particularly for prospective property owners and litigants in similar property disputes are:
 - (a) Section 10 of the Specific Relief Act, 1963 in its amended form is a substantive provision and would take effect from 1 October 2018 onwards.
 - (b) The payment of the entire sale price is not required to establish readiness and willingness of a purchaser when seeking the discretionary remedy of specific performance.
 - (c) When Section 52 of the Transfer of Property Act, 1882 or the doctrine of lis pendens is applied, it is computed from the date of institution of the proceedings, regardless of whether the petition / plaint is undergoing scrutiny in the registry of a court and is possibly in a defective state.

Analysis

2. It is rare to see the Supreme Court of India exercise its powers of review under Article 137 of the Constitution of India and Order 47 of the Supreme Court Rules, 2013 to recall its earlier decision. On 8 November 2024, the Supreme Court through its decision in *Siddamsetty Infra Projects Pvt. Ltd. v. Katta Sujatha Reddy & Ors.*¹ (“**Siddamsetty II**”) recalled its earlier decision dated 25 August 2022 (“**Siddamsetty I**”) where it had overturned a judgement of the High Court of Telangana in appeal and refused the specific performance of an Agreement to Sell.

The Review jurisdiction

3. A Review differs from an appeal in some significant ways. It is filed before the same Court and if possible before the same bench, unlike an appeal which is filed before an appellate authority. The second significant way in which a review differs from an appeal is in the scope of the Court’s re-examination of the decision. While an

¹ M/s Siddamsetty Infra Projects Pvt. Ltd. v. Katta Sujatha Reddy & Ors. | Review Petition (C) No. 1565 of 2022 in C.A. No. 5822 of 2022.

appeal is a broader reconsideration of the decision on merits, a review is designed to be narrower in scope and is meant only to address serious errors that are apparent on the face of the record.

4. The Supreme Court of India is empowered to review its decisions by Article 137 of the Constitution of India and applies Order 47 of the Code of Civil Procedure 1908 and Order 47 of the Supreme Court Rules, 2013 while reviewing its decisions.
5. In *Siddamsetty II*, the Supreme Court reiterated the principles of the exercise of its review jurisdiction laid down in its earlier decisions in *Murali Sundaram v. Jothibai Kannan*², *Karnail Singh v. State of Haryana*³, *Kamlesh Verma v. Mayawati*⁴ and *Sanjar Kumar Agarwal v. State Tax Officer*⁵. Pertinently, it reiterated that the power to review cannot be exercised on the ground that its decision was erroneous on merits, or that a divergent view was possible on the subject matter of the *lis*.

Factual Matrix

6. The subject matter of the dispute were two agreements to sell, dated 26 March 1997 (“**1st Agreement**”) and 27 March 1997 (“**2nd Agreement**”), entered by vendors who were themselves purchasers of a larger property that included the property being transacted in the 1st and 2nd Agreements to Sell.
7. The Review Petitioner in *Siddamsetty II*, (“**Petitioner**”) had admittedly made payment of around 75% of the sale consideration of the property, an amount that was more than the advance stipulated in the 1st Agreement and 2nd Agreement. It was a contested fact between the parties that possession of the property was with the Petitioner. The Petitioner had through legal notices called on the vendors to accept the balance sale consideration and execute a sale deed.
8. The vendors, who were respondents in *Siddamsetty II*, refused to execute sale deeds claiming that the execution of the agreement was barred by limitation. The Petitioner filed a suit for specific performance before the Trial Court in Telangana.
9. Some key contractual terms of the 1st Agreement and 2nd Agreement that became the fulcrum of the dispute were:

² *Murali Sundaram v. Jothibai Kannan* | 2023 SCC OnLine SC 185.

³ *Karnail Singh v. State of Haryana* | 2021 SCC OnLine SC 961

⁴ *Kamlesh Verma v. Mayawati* | (2013) 8 SCC 320

⁵ *Sanjay Kumar Agarwal v. State Tax Officer* | (2024) 2 SCC 362

*“3. The purchaser shall pay a sum of Rs. 27,07,200/- (Rupees Twenty Seven Lakhs seven thousand five hundred only) towards the balance sale consideration within three months from this date to the parties of the second part herein and if the purchaser does not honour to pay the balance sale consideration of Rs. 27,07,500/- (Rupees Twenty-Seven Lakhs Seven Thousand and Five Hundred Only) within a period of three months from the date of this date, the advance amount paid will be forfeited **and** this agreement of sale will be cancelled if the vendors fail to furnish the non-encumbrance certificate, income tax exemption certificate, agricultural certificates to the purchaser within three months.”*

10. The Trial Court refused to grant a decree of specific performance to the Petitioner on inter alia the grounds that:

- (a) The Petitioner did not have possession of the property, which could be inferred from the transcript of cross examination and an alternate prayer in the suit seeking possession in case of a finding that the Petitioner was not in possession of the property.
- (b) The Petitioner had not shown readiness and willingness to perform the contract because the entire sale consideration was not paid and the Petitioner had not called on the vendors to accept the balance consideration earlier.
- (c) Time was not of the essence of the 1st and 2nd Agreements because they provided a timeline for the payment of consideration but not for when the property certificates and papers were to be handed over to the Petitioner.
- (d) The suit was barred by limitation as it should have been filed within 3 years of the time fixed for performing the contract, i.e. from the expiry of the 3 months post execution within which the sale consideration was to be paid.

11. The Petitioner challenged the Trial Court’s decision in an appeal before the Telangana High Court which allowed the appeal and granted specific performance of the 1st Agreement and 2nd Agreement including because:

- (a) Clause 3 of the Agreements to Sell only fixed a time for the payment of the consideration and not for the performance of the contract, which was left

unspecified. In these circumstances, in terms of Article 54 of the Limitation Act, 1963, the period of limitation would commence from the date of refusal to perform the contract, which occurred when the vendors refused to accept the balance consideration and execute the sale deeds in response to the Petitioner's legal notices calling on them to do so.

- (b) The Petitioner's possession of the property was irrelevant to the consideration of whether specific performance of the 1st and 2nd Agreements should be granted.
 - (c) The Petitioner had proved readiness and willingness by paying a significant portion of the total consideration under the agreements to the vendors and by depositing the balance consideration before Court.
 - (d) The Trial Court's finding that time is not of the essence of the contract is correct.
 - (e) The suit was filed within limitation.
 - (f) Section 10 of the Specific Relief Act, 1963 is procedural and therefore the amendment carried out in 2018 to the provision, would apply to pending proceedings.
12. The Supreme Court of India was approached by way of special leave under Article 136 of the Constitution of India, and when leave was granted, the matter was converted into an appeal before the Supreme Court.
13. The Supreme Court in its decision in Siddamsetty I, i.e., *Katta Sujatha Reddy v. Siddamsetty Infra Projects Pvt. Ltd.*, reversed the decision of the Telangana High Court on several grounds including that:
- (a) Time was of the essence of the contract since there was a fixed time for the payment of consideration by the Petitioner and the recitals of the 1st and 2nd Agreements mention that they are intended to provide a 'last opportunity to successfully enter into a sale-purchase agreement'.
 - (b) The time for completion of performance was 3 months after execution, by which time the consideration ought to have been paid by the Petitioner, the sequitur to this finding being that in terms of Article 54 of the Limitation Act,

1963, the suit was to be filed within 3 years from the expiry of the time fixed for performance, therefore making the present suit barred by limitation.

(c) Section 10 of the Specific Relief Act, 1963 is a substantive provision and not a procedural one, therefore amendments to the same would have a prospective effect. Under the unamended provision, a Court exercised discretion in granting specific performance of a contract to vigilant plaintiffs.

(d) The Petitioner did not demonstrate readiness and willingness to perform the contract as he did not make payment of the consideration in terms of the timelines fixed in the 1st and 2nd Agreements.

(e) The vendors were directed to repay the sale consideration with interest.

14. The Supreme Court in Siddamsetty II examined its earlier decision in review. After setting out the limits of its review jurisdiction, it examined the findings on fact that it had reached in Siddamsetty I.

15. On an examination of Clause 3 of the 1st Agreement, it held that the conclusion that the clause did not provide for a consequence for the non-production of certificates by the vendors is an error apparent on the face of the record. The Supreme Court noted that its decision in Siddamsetty I seemed to have missed the portion of the clause that provided for the cancellation of the agreement of sale.

16. It also noted that the reliance on the language contained in Clauses 21 and 23 were misplaced. In Siddamsetty I, the Supreme Court had mistaken a reference to the agreement between the vendors and the original owners of the larger property of which the suit scheduled property was a part, with an agreement between the parties before it that had not materialized but had been referenced in the recitals to the 1st Agreement.

17. The Supreme Court concluded that its earlier finding that the 1st and 2nd Agreements fixed a time for the execution of sale deeds / agreements was incorrect and based on an erroneous reading of the contractual clauses. Therefore, in terms of Article 54 of the Limitation Act, 1963, the period of limitation commenced on the date on which there was a refusal to perform. Admittedly the vendors had refused to accept the balance consideration and execute sale deeds only after the Petitioner issued legal notices calling upon them to do so.

18. The Supreme Court then dealt with its finding in Siddamsetty I that Section 10 of the Specific Relief Act, 1963 was a substantive provision and not a procedural one, thereby making any amendments to the provision prospective. This finding was not disturbed in review.
19. The question of whether the Petitioner was entitled to specific performance of the contract was up to the discretion of the Court in terms of the unamended Section 10 of the Specific Relief Act, 1963. The Supreme Court examined its conclusion that the Petitioner was not ready and willing to perform his portion of the contract.
20. It held that in Siddamsetty I it had erroneously concluded that the Petitioner was not ready and willing to perform the contract. The Court held that the Petitioner had paid nearly 75% of the total consideration, far in excess of the earnest money stipulated in the contract, and this itself proved his readiness and willingness to perform the contract. The Supreme Court noted that the explanation to Section 16(c) of the Specific Relief Act, 1963 specifically provides that actual tendering of money by the plaintiff was not essential where a contract involved the payment of money, to establish readiness and willingness and avoid the personal bar to a decree of specific performance.
21. The Supreme Court then examined a development in the dispute that was subsequent to its decision in Siddamsetty I. After the said decision it so transpired that the vendors had transferred the property to a third party purchaser.
22. In its decision in Siddamsetty II, the Supreme Court observed that the review petition before it had been instituted within the 30 day limitation period and was undergoing scrutiny in the Supreme Court registry. It held that the doctrine of lis pendens, recognised statutorily in India in Section 52 of the Transfer of Property Act, 1882, was attracted on the date of institution of proceedings and not the date on which notice is issued in the said proceedings.
23. Based on the above, the Supreme Court of India held that any transfer of property during the pendency of a suit relating to the property would make the third party purchaser bound by the decision in the suit / final result in the litigation.
24. The Supreme Court of India recalled its decision in Siddamsetty I having concluded that errors apparent on the face of the record went to the root of its reasoning on issues of limitation and specific performance. It restored the

judgement of the Telangana High Court which decreed specific performance in favour of the Petitioner.