

Is time an Essence of Contract, Relating to Immovable Property?

In matters relating to sale of immovable properties, whether time is or time is not an essence of contract is an important question of law so as to decide upon the question whether obligations undertaken by the parties under the contract are to be performed. This question whether time is an essence of contract is a mixed question of law and fact and has been decided by the courts of the country on the basis of facts of each case. The Supreme Court of India in the recent judgment of **Saradamani Kandappan v. S. Rajalakshmi and Ors in (2011) 12 SCC 18** have tried to address this question by calling upon the courts to revisit the principles laid down by the court in the preceding judgments on same issue and observed that as a general proposition of law time is not essence of contract unless the parties to the contract intend to make time an essential condition for the performance of contract. The court said that parties to a contract may intend to make time an essence of contract by expressly providing so or it can be inferred by necessary implication from the conduct of parties or circumstance surrounding the performance of contract. The court also said the general presumption of law that time is not essence of a contract that is for sale of immovable properties needs to be revisited as time forms an essential condition for the performance of contract in circumstance of ever-increasing prices of real-estate property which are bound to affect transactions of sale of immovable property.

The present article is intended to describe the stance taken by the Apex Court in different judgments on the issue of whether time is essence of a contract. It is important to discuss first the provisions of law before discussing the stand taken by the court on the same issue in different facts and circumstance.

Section 55 of the Indian Contract act uses the phrase ‘time is essence of contract’ and provides that where parties agree to perform a certain act on specified time and parties fail to perform the said act at the said time then the contract becomes voidable at the option of the promisee if it was intension of the parties to make time an essence contract. The Section further provides that in case where parties to contract do not intend to make time an essence of contract then promisee is entitled to claim compensation for any loss occasioned to him as a result of such default. Section 46 of Indian contract act further provides that where no time is specified in the contract for the performance of contract then it is to be performed within reasonable time –period.

These provisions of law come to rescue of the courts in deciding questions as to whether obligations undertaken by parties under the contract are to be performed as these provisions clearly indicate that contracts shall be repudiated in cases where time is made essence of contract and where the obligations undertaken by parties are not performed within the said specified time. Time is the essence of contract means that time is most essential condition of the contract for the performance of the contract or completion of contract. The Supreme Court of India have looked into the question of whether time is essence of contract on different facts and situations and have provided some principles of law to decide upon this question.

The following are some of the decisions of the apex court on different facts in different decade that shall assist in explaining how the apex court came to conclusion as mentioned in *Saradamani Kandappan v. S. Rajalakshmi and Ors* in (2011) 12 SCC 18 and how the law developed on this point.

The Supreme Court of India in ***Chandnee Widya Vati Madden v. Dr C. L. Katiai* 1964 AIR (SC) 978** after looking into the terms of agreement held that time was not essence of the agreement and reaffirmed the decision of the High Court decreeing specific performance of contract. The agreement in question provided that vendor/seller-defendant should obtain permission of the chief commissioner for the transaction of sale of immovable property within 2 months of the agreement and in case where permission was seen not to be forthcoming within the time specified then it was open to purchaser to extend the date or treat the agreement cancelled. The Court after looking into these express terms of the agreement i.e. purchaser could extend time inferred that time was not essence of agreement. The Court also looked into the fact that purchasers of the property were willing to extend time and perform their part of contract and it was seller who had wilfully refused to perform her part of contract and therefore the apex court directed the seller to apply to the chief commissioner for the performance of her part of contract to complete the performance of contract.

The Supreme Court dealt with the same question as to whether time is essence of contract in ***Chand Rani v. Kamal Rani* in (1993) 1 SCC 519** also. In this case, the apex court held that in case of sale of immovable property there is no presumption of law as to time being essence of a contract however even in case where time is not essence of contract then also the court may infer that it is to be performed in a reasonable time from the conditions of express terms of contract, from the nature of property and from surrounding circumstance like object of making contract. The court also held that even when parties to contract have expressly provided time to be essence of contract then also such stipulation will have to be read along with other terms of contract as on proper construction of these terms may indicate towards excluding inference that the completion of work by particular date was meant to be fundamental.

The contract for sale of immovable property in question provided that only Rupee 98,000 shall be paid by the second party to first party within a time period of 10 days only from the date of contract. The question that arose in the case was whether the phrase that payment was to be made “within 10 days only” was used to qualify only the amount or was it meant to qualify the payment also that is payment should be made within time-limit of 10 days only. The apex Court accepted the view of the lower appellate court division bench that the amount ought to be made within the time limit of 10 days and failure to do so amounted to breach of contract committed by the purchaser. The apex court said that word ‘only’ had been used twice over to qualify the amount and qualify the time-period of 10 days and further said that after having qualified the amount there was no need to qualify the same unless the intension of parties was to make time an essence of contract. The court thus further said that though as a general preposition of law time is not essence of contract in case of sale of immovable property **but the parties intended to make time essence of contract under the said clause of the suit agreement.**

The Apex court was faced with this question again in **K. S Vidyanadam V. Vairavan 1997 (3) SCC 1** where the question arose whether decree of specific performance of contract should be granted in every suit where the suit is filed within limitation period prescribed for filing of suit for specific performance and the agreement for sale of immovable property do not provide time as essence of contract thereby ignoring any time limits prescribed in the agreement.

The agreement in question had not provided time as essence of contract but had provided in the contract that purchaser was to pay balance consideration, purchase the stamp papers and thereafter seek execution of sale deed within 6 months. The purchaser had breached the said condition and after 2 years of inaction brought the suit of specific performance in the circumstance of substantial rise of prices of immovable properties.

The apex court relying upon precedent of Chand Rani held that even where time is not essence of contract then also the parties should perform the contract within a reasonable time and this reasonable time should be determined by looking into all surrounding circumstance including the express terms of the agreement and nature of the property. The court further said it cannot be said that time limits prescribed by the parties in the agreement neither have significance nor have any value and that they mean nothing. The court said that court should look at all the relevant circumstance including time-limits stipulated in the agreement and determine whether its discretion to grant specific performance should be exercised.

The court further observed that prices of immovable properties in case of urban properties are rising sharply over few decades and therefore the rule evolved by courts that time is not essence of contract for sale of immovable properties needs to be relaxed if not modified in case urban properties as the said rule was evolved in times where prices of immovable properties were stable and inflation was unknown. The court also said that if time limit was prescribed in the agreement for completion of sale then it was to have some value and as was stipulated then was for a reason and could not be ignored and that it meant that court while exercising its discretion in granting specific performance should bear in mind that when parties prescribe certain limits for taking steps by some party and other party then it was to have significance and that the said time limits cannot be altogether ignored on the ground that time has not been made essence of contract that is relating to sale of immovable property.

The court thus looking into express terms of agreement held that even where time is not essence of contract then also contract is to be performed within reasonable time that was to be determined by all surrounding circumstances including express terms of the agreement and nature of property. Thus, the court restored the decree of trial court and held that on account of delay, total inaction, express terms of agreement (time limits specified) and substantial rise of prices of urban properties, it would be inequitable to give relief of specific performance.

The apex court thus in case conclusively laid down that even where time is not essence of a contract then also contract relating to immovable property is to be performed within a reasonable time that is to be determined from surrounding circumstances including express terms of agreement and nature of property.

The apex court in **A. K. Lakshmi pathi and Ors v. Rai Saheb Pannalal H Lahoti Charitable Trust and Ors in (2010) 1 SCC 287** also dealt with the same question as to when time is essence of a contract. The clauses in the agreement had provided that time was to be the essence of contract and provided that under all circumstance, the purchaser/buyer was to make deposit of the balance amount of consideration by the date specified in the agreement. The agreement had also stipulated that buyer was to obtain clearance / permission from the Endowment department. The Court relying upon ratio of Chand Rani Case observed that as a general presumption of law time is not essence of contract in case of sale of immovable property unless parties intend to make it essence of contract or a contrary intension is expressed. The court looked at the various clauses of the agreement and observed that parties intended to and were aware from beginning that time was essence of contract and the clauses clearly stipulated payment of the balance amount was the essence of the agreement and failure to make the said payment by the date stipulated on account of whatsoever reason shall result in forfeiture of the earnest money paid and shall further result in loss of any right held by the vendee in the scheduled property.

The court further said that the intension of the parties to incorporate these clauses indicate towards the intension of parties to make time an essence of contract and thus held that parties always intended that time was to be of prime importance in contract and was essence of the contract. Thus the court in this case relying upon the express terms of agreement relating to sale of immovable property held that time was essence of the agreement.

The next case that came up before the apex court was of **Saradamani Kandappan v. S. Rajalakshmi and Ors in (2011) 12 SCC 18** wherein the court tried to address the issue as to time being essence of contract. The agreement in question provided that balance consideration was to be paid on some specified dates and in case of these being declared holiday then it was to be paid on the next immediate working day. The agreement also provided that failure to make the payment on specified date shall result in vendor cancelling the agreement. The agreement further provided that the sale deed shall be executed only at the convenience of the purchaser only after he is satisfied in regard to the title of the land and in case of her not being satisfied with the title then shall put the vendor notice of it and vendor has to satisfy the purchaser in regard to title and in case the vendor fails then vendor shall within 3 months from that date pay to the buyer all the money that was advanced to him.

The court after looking into express terms of the agreement held that parties to the agreement intended to make time as essence of contract in respect to the payment of balance consideration which was also manifested from the clauses of the agreement clearly indicating that payment was to made on the stipulated dates and even a day delay was not acceptable unless the due date declared holiday as evident from the clause providing payment on immediate working day in case of date of payment being declared holiday.

The court also after looking into clauses of the agreement providing for execution of sale deed held that time was not intended to be essence of agreement in relation to completion of sale transaction. The court observed that refund by vendor of all money advanced by purchaser after being dissatisfied of the title of land and failure of the vendor in satisfying the purchaser in relation

to the title indicated towards the fact that the payment of balance consideration on specified due dates were not dependent upon the further examination of title or satisfaction of the purchaser about the title and the execution of sale deed was dependent upon satisfaction of title indicating towards time not being made essence of contract in respect to execution of sale deed.

The Court further relying upon Chand Rani and K.S Vidyanadam case observed that the principle that time is not essence of contract for sale of immovable property does not apply in today's time because it is unsound or erroneous but because the circumstance that existed when the principle was evolved no longer exist today. The court said it cannot ignore the reality of steep increase in prices and inflation which makes it inequitable to grant the relief of specific performance of contract when the purchaser does not take steps to complete the sale within the agreed period and the vendor is not responsible of any delay or non-performance of contract. The court said that the purchaser cannot take shelter of the principle that time is not the essence in the performance of contract relating to sale of immovable property to cover his own delay or laches or breaches or his non-readiness and it would result in injustice if it is held that time was not intended to be essence of contract by the vendor when the vendor took 10 percent of earnest money and agreed for period of 3 to 4 months as period of performance of contract in the circumstance of galloping increase of prices of immovable property. The court also said that it would also be injustice to hold that time is not essence of contract when suits and appeals of specific performance of contracts takes decades to attain finality and the vendor receives the balance consideration after decades when prices of immovable properties run in crores. Thus, the court also said that principle that may hold good at one point of time may become with passage of time unreasonable and may make way to new principles and held that this principle of law should be revisited by the court to arrive at new conclusions in view of changed circumstance arising from inflation and steep increase in prices.

The court thus reinterred the stand of the court taken in K. S Vidyanadam case and observed that courts should bear in mind that while exercising discretion in suits of specific performance that time limits prescribed by parties in contract cannot be ignored as time limits for taking certain steps or for completion of transaction must have some significance and observed that every suit of specific performance must not be decreed merely because it is filed within the limitation period as the limitation period is intended for special cases where the major part of consideration is already paid by the purchaser and possession is to handed over and equity shifts in favour of purchaser. The court said that limitation period does not mean that the purchaser should wait for 1 and 2 years and thereafter file suit for specific performance.

Thus, the apex court conclusively reinterred principles of laws laid down Chand Rani and K S Vidyanadam case and held that principles as to time not being essence of contracts relating to sale of immovable property should be revisited in view of new circumstances of steep price rise where time is a very important consideration which if not held essential shall result in detriment and prejudice to the vendor or buyer as the case may be. This case is also significant as it indicates time as essence of contract can be made with respect to one part of contract or can be held in reference to a part of contract or for the contract as whole. The Court said that time as essence of contract shall be held so only when such intension of the parties is evident from the express terms

of the agreement or circumstances necessitating the sale set out in the agreement. The court said any reason stated in the agreement indicating towards payment by the specified time is also sufficient to indicate towards intention of the parties to make time essence of contract. The court held in this case that time was essence of contract only in respect to the payment of balance consideration and not with respect to execution of sale deed.

The last important apex court decision in **Citadel Fine Pharmaceuticals v. Ramaniyam Real Estates Private Limited and others in (2011) 9 SCC 147** where the apex court conclusively held on the issue of time as essence of contract. The court observed that as settled position of law in case of specific performance of contract relating to immovable properties, time is not normally considered an essence of contract but this is not absolute preposition of law and is subject to several exceptions. The court relying upon ratios laid down in its other decisions observed that time as essence of contract can be inferred from nature of properties or terms of agreement and held that in view of express terms of agreement time was intended to be essence of contract.

The agreement had provided sale of immovable property in commercial transaction where purchaser was builder and was into constructing building business and required the immovable property in question for the purpose of his business. The agreement clauses had provided time for the completion of the purchase shall be one year from date of the agreement and in case the purchaser fails to complete the transaction within the stipulated time then the agreement shall stand cancelled and the vendor shall return the earnest money without interest to the purchaser and can sell the immovable property to any person he wishes to. The purchaser under the agreement was required and on his volition undertook the obligation of acquiring approval from various authorities to obtain permission for sale of immovable property in question and failed to obtain any permission within the stipulated time. There was no delay on part of vendor. The court after looking into the terms of the agreement held that terms clearly indicated towards parties intending to make time an essence of contract and also noted the fact of commercial nature of transaction and observed that instant case relates to contract in commercial transaction and took judicial notice of the fact that where the prices of the real estates are constantly escalating in the city of Chennai and clear intension of the parties from stipulations in the agreement clearly indicate towards time being made essence of contract.

Thus, the court after looking into express terms of agreement, commercial nature of transaction and surrounding circumstances held that parties intended to make time essence of contract.

Law Senate Comment:

Thus, Supreme Court of India through these various decisions held and laid down the principle that time is not essence of contract unless parties to a contract expressly or by necessary implication provide for same. The court further said that even in case where time is not essence of contract then also it is to be performed within reasonable time which is to be determined from express terms of the contract, nature of the properties and surrounding circumstances.

The Court also said that the principle that in cases of sale of immovable property, time is not normally considered essence of time needs to revisited as this preposition of law cannot hold good

in today's time not because it erroneous or unreasonable but because the prices of real estate property have steeply arisen in last decades and there is change in economic situation which has resulted in inflation and in cases where time is not considered an essential condition in performance of the contract then it shall be resulting in causing prejudice to the seller who shall be forced to settle with a less price of immovable property when prices have arisen by leap and bounds in case buyer does not perform the contract within the stipulated time-period in the contract and perform 2 months or 1 or 2 years later when prices have changed. The apex court said that court cannot ignore this reality and **hence the time is an essential condition of contract relating to immovable property.**

In the end it can said that principle that time is not essence of a contract relating to sale of immovable property no longer holds good and even in cases where time is not essence of contract then also the contract is to be performed at a reasonable time that is to be determined by express terms of the agreement, nature of property and surrounding circumstances. Time is essential condition in performance in contract relating to immovable properties especially in wake of changed economic situation.

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