

Motilal Itchhalal Gandhi - - - - - *Appellant*

v.

Haji Moosa Haji Mahomed - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 23RD JANUARY, 1925.

Present at the Hearing :

LORD SHAW.

LORD CARSON.

LORD BLANESBURGH.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* LORD SHAW.]

The Board is at a considerable disadvantage in this case on account of the absence of the respondent. The case, however, has been explained with complete candour and fullness by Sir George Lowndes, on behalf of the appellant.

In the contract for the sale of this immoveable property, made in the month of February, 1919, there was a clause making the settlement and the payment of the price subject to the condition that time was of the essence of the contract. The negotiations, however, proceeded, and the parties entered into communication with regard to the furnishing of a title, requisitions were made and answered, and arrangements with the municipality, usual in Bombay, had to be come to so that the battaki announcements should be made in the district.

It is quite clear to their Lordships that the time allowed for completion was far exceeded and the condition as to time being of the essence of this contract was, by the conduct of the parties, obliterated therefrom.

The circumstances which are argued to be alone relevant to the issue, are said to begin late in the month of August, 1919. But their Lordships desire it to be understood that they make no pronouncement with regard to whether a notice as to completion would be reasonable or abrupt in the case of a contract made at that period. The contract had been made months before. What had happened was that before the period in August, 1919, alluded to, a clean title had been furnished, a draft conveyance had been prepared, it had been approved by the vendor and had been sent to the agents for the purchaser; and that nothing *de facto* remained to be done of this transaction—every kind of complication being removed—except the mere clerical item of engrossing the draft, and the financial result, namely, the payment of the price. Those two matters alone remained: the price to be paid and the draft conveyance engrossed for signature.

In those circumstances, on the 23rd August, 1919, the vendor's agents wrote saying that the matter must be completed without delay. They intimated by their letter of that date that nearly six months had elapsed since the agreement was executed, and the sale must accordingly now be completed. The letter may be fully quoted. It is as follows, viz :—

“ Bombay, 23rd August, 1919.

“ Messrs. Rustamji and Ginwala.

“ *Re* Sale of Property at Ardeshir Dady Street.

“ DEAR SIRS,

“ We extremely regret to note that we have not yet received the engrossment of the Conveyance for our comparison. Requisitions on title were answered long ago. Your client had inspection of Trust Deed, and they have been satisfied on all the points. Our client has waited sufficiently long for completion.

“ Our client says that your clients have no money and that they have purchased the property from our client only with a view to profiteering. They are out for some purchaser but they have not been able to secure any. It is nearly six months that the agreement was executed and the sale must now be completed without any delay. You should not lose sight of the fact that the agreement provides that the time for completion is the essence of the contract.

“ We are therefore instructed to request you to send us the engrossment for comparison. The draft conveyance has already been sent to you duly approved. We are expecting the engrossment within four days from the receipt hereof by you.

“ Yours truly,

“ (Sd.) MOTICHAND AND DEVIDAS.”

This letter of the 23rd August was not unnatural in the circumstances which their Lordships have stated, namely, that everything except the clerical part of engrossing the draft and the financial part of payment had been already finished.

In answer to the letter of the 23rd August this letter, dated 25th August, 1919, was, however, received by the defendant's agents from the agents for the plaintiff, the purchaser. They say :

" Bombay, 25th August, 1919.

" Messrs. Motichand and Devidas.

" *Re Sale of Property at Dady Street.*

" DEAR SIRs,

" With reference to your letter dated the 23rd instant we beg to state that the delay was on your client's part in not replying to the requisitions in time and not furnishing the Municipal bill for a very long time.

" We received the Battaki only recently and have since then taken the engrossment in hand which we shall let you have as soon as it is ready. Your client's suggestion that our client has no money or that he is trying to secure a purchaser is an imaginary one. Our client's moneys are lying idle with him since two months past and he is more eager to complete this matter than your client.

" Yours truly,

" (Sd.) RUSTAMJI AND GINWALA."

This letter accordingly cleared away any doubt or hesitation on the part of the vendor and his advisers as to the reasonableness of making an immediate demand for the completion of the sale and the payment of the price. They thereupon wrote the letter of the 27th August giving the five days' notice, which was received on the 28th August, so that four days remained during which these two simple things had to be done, namely, engross the deed and pay the money.

The question before their Lordships is not any serious or complicated question as to what would be a demand of equity in the completion of a transaction of sale recently made, with reference to which many practical things had to be done by way of clearing the title, and reasonable time for needful business arrangements had to be taken into account. In the circumstances of this case it is simply the ordinary commonplace question: Was it reasonable, with the assurance given by a purchaser that he had the money in the bank and the title in his hand, to say, " Well, the contract having been made months ago, do this little matter within four days or the contract is off " ?

The Board, having considered the matter, is of opinion that there was no abruptness whatsoever in the conduct of the defendant's agents or in their letter of the 27th August, 1919, and, there being no abruptness in it, the unreasonableness falls to the ground, because the unreasonableness of the demand consists, not in its method, but would have consisted in this, that it would have put the purchaser, whose finances might have been allowed to drop owing to the dragging on of the negotiations, into a position of much embarrassment on such a short notice being given.

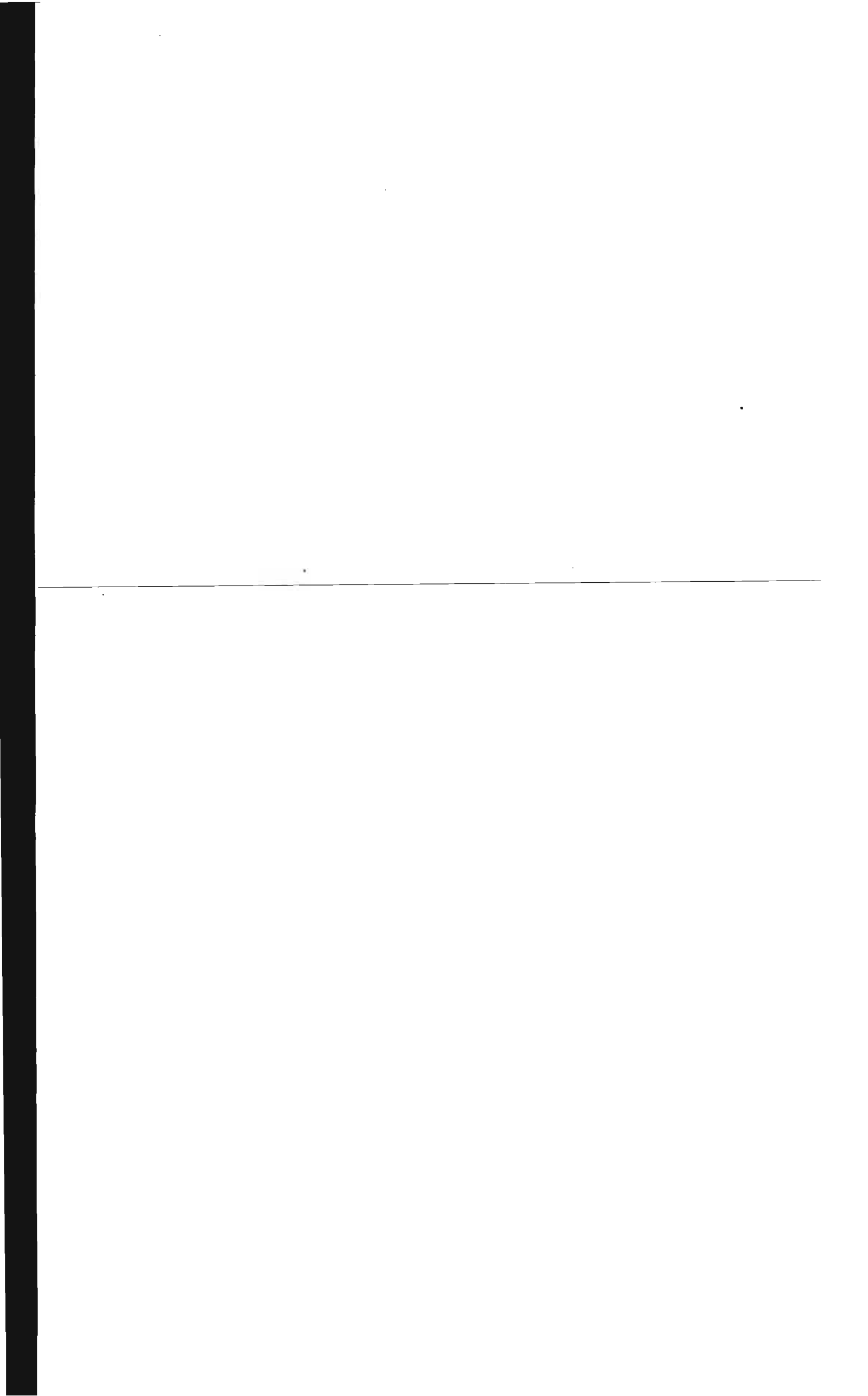
Their Lordships are further of opinion that it is not open to this purchaser to set up such a case because the purchaser had given, prior to that notice, the very assurance that no abruptness could be felt by the two statements that he had made, namely,

that his money was ready and his title was engrossed. In these circumstances the case for the purchaser falls to the ground. It is explained to the Board that the letter of the 25th August had misstated the facts and that it was not in accordance with truth that (*inter alia*) he was ready with the purchase money. It is clear that he is estopped from maintaining that the facts are otherwise than his letter of the 25th August, 1919, represented them to be.

But their Lordships are further of opinion that, whether he was estopped or not, the circumstances of a long-drawn-out transaction in which all remaining to be done was the engrossment of the deed of sale and the payment of the price, demonstrate that as between purchaser and vendor of immoveable property in a time of financial strain it was not a reasonable position for a purchaser to occupy to be unable to complete within four days.

For these reasons their Lordships have to take the course which will presently be announced, but before doing so they have to note that prior to these proceedings the vendor, who was in possession of a certain deposit of Rs. 500, had made offer to refund that if the transaction went off. Through his counsel, an intimation has been made to the Board that he does not resile from that position. Their Lordships do not think it necessary to put this into the decree, but it will be recorded in their judgment and the vendor will act accordingly.

Their Lordships will humbly advise His Majesty that the appeal should be allowed, and that the decree of the Trial Judge should be restored, with costs in both Courts. The respondent will pay the costs of the appeal.



In the Privy Council.

MOTILAL TCHHALAL GANDHI

2.

HAJI MOOSA HAJI MAHOMED

DELIVERED BY LORD SHAW.

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