

Signing a contract? Find out why time is of the essence

The finer points of a contract, its timelines and other aspects have to be carefully scrutinised by both buyers and sellers. Non-compliance of 'time is of the essence' clause can spell trouble for buyers

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Contracts are of critical importance. The finer points of a contract, its timelines and other aspects have to be carefully scrutinised by the parties concerned. They must be careful while entering into contracts in which time is of the essence, as non-compliance of this condition can lead to violation of contract.

When an agreement to sell for an immovable property has been executed between parties and time of essence clause has been included, will any violation regarding timeline entitle the party which suffered losses to terminate such agreement to sell?

This question came up for consideration in the Supreme Court in the case of Padmakumari and others versus Dasayyan and others in 2015.

In the case, the property owners entered into an unregistered agreement to sell on April 19,

1992, with buyers interested in the property. The buyers paid an advance when the agreement was signed and the parties agreed that the remaining amount would be paid within nine months from the date of the agreement to sell.

However, as the buyer failed to pay up the final sum within the agreed time period, the owners sold part of the suit property vide a registered sale deed dated April 19, 1993, to some third parties.

After almost one year from the date of execution of the agreement to sell, the buyers issued a legal notice to the erstwhile owners, demanding execution of sale deed as per the agreement to sell. When they did not get a response, the buyers filed a suit against the owners and the third parties in the trial court.

The trial court observed that the sale deed was not valid and the third parties had not purchased the suit property in good faith and passed a decree in favour of the buyer.

Aggrieved by the order the third parties filed an appeal before the high court, which concurred with the findings of the trial court. Thereafter, the third parties approached the Supreme Court with their complaint.

The apex court on its part took up the issue seriously. Explaining the concept of time being the essence of the contract, SC relied on the clause in the agreement to sell, wherein the buyer had agreed to pay the balance consideration within nine months.

It held that if time or date was stipulated in a contract and it was not performed by such time or date, the innocent party could terminate the contract.

However, SC also provided an exception, saying there could be situations where inference could not be made of time being the essence of the contract. This could happen if the contract stipulated a timeline for fulfillment of an obligation, but had other clauses that specified penalties



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for time extensions or delay in performance of work or had clauses that allowed postponement of performance. SC also observed that it was an undisputed fact that the buyer had not made the payment in the stipulated time and ruled in favour of the third parties.

The apex court also observed that the agreement to sell executed by the buyers was unregis-

tered and the third parties even upon verification could not have reasonably known about it.

Therefore, the SC set aside the decision of the trial court and the high court and held that since third parties had paid the consideration in good faith and without knowledge of the original contract, they would be protected by law and the sale deed dated April 19, 1993

executed between the owners and the third parties would be considered valid.

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