



A.S.No.326 of 2011

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

A.S.No.326 of 2011

and

Cross Obj.No.188 of 2011

and M.P.No.1 of 2011

1.Ramasamy (died)

2.Radjacoumar (died)

3.Radjasankar

4.Pouchepalata

5.Babu

[proposed appellants 2 to 5 are the legal heirs of
deceased 1st appellant]

6.Rajamalathi

7.Prethiviraj

8.Priyadarshni

[proposed appellants 6 to 8 are the legal heirs of
deceased 2nd proposed appellant]

Appellants 3 to 8 brought on record as Legal heirs



A.S.No.326 of 2011

of the deceased 1st appellant Ramasamy and deceased
elder brother Mr.Radjacoumar vide order of Court
dated 30.01.2020 made in C.M.P.Nos.27090, 27098 &
27060 of 2019 in A.S.No.326 of 2011 (SMSJ)

.. Appellants/defendants

Vs

Barathan

... Respondent/plaintiff

Prayer: First Appeal has been filed under Order 41 Rule (1) of the r/w
Section 96 of the Civil Procedure Code against the judgment and decree
dated 21.12.2009 made in O.S. No.22 of 2007 on the file of the II Additional
District Judge, Puducherry.

For appellant : Mr.J.Cyril Mathias Vincent

For Respondent : M/s.Elizabeth Ravi
for P.Raja



A.S.No.326 of 2011

J U D G M E N T

WEB COPY

The Appeal Suit has been filed to set aside the judgment and decree dated 21.12.2009 made in O.S. No.22 of 2007 on the file of the II Additional District Judge, Puducherry.

2.This is a suit filed by the plaintiff for Specific Performance in respect of the sale agreement dated 02.02.2006, directing the defendant to execute a sale deed in his favour after receiving the balance sale consideration of Rs.8,00,000/- from and in default this court to execute the sale deed and convey the suit property belonging to the defendant in his favour or in the alternative, direct the defendant to refund a sum of Rs.7,00,000/- with interest at 24% p.a. from 02.02.2006 till payment. The defendant in O.S.No.22 of 2007.

The averments in the plaint, in brief, are as follows:

There is a concluded contract entered into between the plaintiff and the defendant for the sale of a landed property in favour of the plaintiff. Accordingly a sale agreement dated 02.02.2006 was executed bilaterally by



A.S.No.326 of 2011

the defendant on one hand and the plaintiff on the other hand for the sale of two adjacent vacant land house sites measuring totally to an extent of 3603 sq.ft. situated at Kumaran Nagar, Saram Revenue Village, comprised in Cadastre Nos.1056 ½ part 1046 2/2 part, Re-survey No.17/1 C for due consideration of Rs.15,00,000/- and the defendant had received a sum of Rs.7,00,000/- from the plaintiff towards the advance amount of sale consideration at the time of executing the said agreement.

3.As per the terms of the sale agreement, the defendant should produce the title deeds of the suit property and other relevant documents on or before 25.06.2006 and complete the sale. The plaintiff has expressed his readiness and willingness to purchase the suit property from the defendant on several occasions through his relatives and also by direct phone calls. However, for the reasons best known to him, the defendant was postponing the execution of sale deed for one reason or other. When the plaintiff's brother in law by name Jayaraman approached the defendant on 25.03.2006 to pay the entire sale consideration of Rs.8,00,000/-, the defendant has informed that he has to get the patta copy and field map and therefore he required some time.



WEB COPY

4. While so, when the said Jayaraman has subsequently visited the suit property, found one Sithanandam in occupation of a portion of the suit property by putting up a new thatched hut. The said Jayaraman immediately brought this to the knowledge of the defendant. The defendant assured him that shortly, he would ask the said Sithanandam to remove the hut put up by him. But till date, the defendant has not done so. But to his surprise, the defendant sent a lawyer's notice on 21.09.2006 calling upon the plaintiff to get the sale deed executed in his favour by paying the balance sale consideration. The plaintiff received the said notice and sent a reply on 06.12.2006 through his counsel expressing his readiness and willingness to purchase the suit property by paying the entire balance sale consideration and further requested the defendant to hand over vacant possession of the suit property, after removing the thatched hut put by the third party in the suit property. Moreover, as per the terms of the sale agreement, the defendant is bound to hand over vacant possession of the suit property to the plaintiff. Since the defendant failed to do so, the plaintiff was constrained to file this suit for specific performance.



A.S.No.326 of 2011

WEB COPY 5.The averments in the written statement filed by the defendant in brief, are as follows:

6.It is true that the plaintiff and the defendant entered into an agreement dated 02.02.2006 for sale of suit property and the total sale consideration for the suit property was fixed at Rs.15,00,000/- and a sum of Rs.7,00,000/- was paid as advance. But the plaintiff failed to comply with the terms and conditions and schedule of payment as stipulated in the agreement to complete the sale on 02.02.2006. After the execution of sale agreement, the plaintiff left India for Australia and this defendant expressed his intention, readiness and willingness on several occasions to conclude the sale in terms of the agreement dated 02.02.2006 to the plaintiff and to his brother in law. However, the plaintiff was not interested in concluding the sale. This defendant denies that one third person is in occupation of a portion of the suit property by putting up a thatched hut. The said Sithanandam is a stranger to the suit property and was set up by the plaintiff for having a re-negotiation of the sale consideration, to reduce the sale consideration. The defendant is



A.S.No.326 of 2011

ready and willing to conclude the sale. But the plaintiff was not willing to conclude the sale. The defendant is also ready to deposit the advance amount into the court. Hence, he prays for dismissal of the suit.

7. On consideration of the pleadings, the trial Court framed the following issues:

- "1. Whether the Plaintiff is entitled to get the sale deed executed by the defendant in respect of suit schedule property as per the sale agreement dated 02.02.2006?
2. To what other relief the parties are entitled?"

8. This first appeal was preferred by the unsuccessful defendant against the grant of Decree for Specific performance in favour of the plaintiff. The suit was filed in O.S.No.22 of 2007 before IInd Additional District Judge, Puducherry.

9. The plaintiff examined himself as P.W.1 and Ex.A1 to A.5 were marked on the side of the plaintiff. The defendant was examined as D.W.1



A.S.No.326 of 2011

and no document was marked on the side of the defendant. On consideration of the oral and documentary evidence, the learned trial Judge came to the conclusion that the plaintiff has been ready and willing to perform his part of the Contract and granted the relief of specific performance to the plaintiff.

10. Aggrieved by the said judgment and decree, the defendant has preferred the above appeal.

11. Heard, Mr.J.Cyril Mathias Vincent, learned counsel appearing for the appellant/defendant and M/s.Elizabeth Ravi, learned counsel appearing for the respondent/plaintiff.

For the sake of convenience the parties are referred as per their ranking in the trial Court.

12. The learned counsel appearing for the appellant/defendant would submit that, in Ex.A.2 sale agreement, it is mentioned that on or before 25.05.2006 within which time, the sale shall be completed. But the Plaintiff



has neither made any attempt nor exhibited any tangible evidence to show that he was ready and willing to pay the balance sale consideration and to register the sale deed. The learned counsel would contend that when a clause in the agreement stipulate a fixed time schedule for payment of consideration, time was essence of Contract. His further contention is that, the plaintiff failed to prove with satisfactory evidence that he was always ready and willing to perform his part of contract at all material time as mandatorily required under Section 16 (c) of the Specific Relief Act 1963. To support his contention he has relied upon the following decision cases:

- 1. AIR 1993 SC 1742**
- 2. AIR 2011 SC 3234**
- 3. AIR 1997 SC 1751**
- 4. AIR 2022 SC 3361**
- 5. 2015 (14) SCC 341**

13. Therefore, he would submit that, without considering the above factual matrix the trial Court erroneously granted a Decree for Specific performance in favour of the plaintiff which called for interference.



WEB COPY

14. On the other hand, the learned counsel appearing for the respondent/plaintiff would submit that the plaintiff was always ready and willing to perform his part of the Contract. In fact, the defendant was evading to receive the balance sale consideration and to execute the sale deed in favour of the plaintiff. The defendant suppressed the material fact that a third party has put up a hut in the suit property and when the same was brought to the knowledge of the defendant, the defendant promised to remove the same and hand over vacant possession and complete the sale transaction. Since the defendant failed to comply the same, the plaintiff was forced to file the above suit. It is submitted that, the remedy for specific performance is an equitable remedy and it depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the plaintiff so that discretion would be exercised judicially in favour of the plaintiff. At the same time, if the defendant does not come with clean hands and suppresses material facts and evidence and misleads the Court, then such discretion should not be exercised by refusing to grant a specific performance. It is further submitted that efflux of time since execution of agreement of sale and escalation of



price of property in meanwhile, itself, is not a valid ground for refusal to exercise discretion to grant a decree for specific performance of agreement of sale of immovable property. Instead, the Court may direct the plaintiff to pay an additional amount to defendant. It is further submitted that the plaintiff was always ready and willing to perform his part of Contract and therefore the plaintiff is entitled to a decree for specific performance. Since, the plaintiff has paid 50% of sale consideration before due date of execution of sale deed, the financial capacity of plaintiff to prove his readiness and willingness is irrelevant. And that, depositing balance sale consideration before filing suit not essential for proving readiness, in absence of Court order, as per explanation (1) to Section 16(c) of Specific Relief Act. The further submission of the learned counsel for the plaintiff is that, the time stipulated in the agreement was only to enable the seller to fulfil his obligation and therefore time was not essence of Contract. The learned trial Judge has rightly decreed the suit filed by the plaintiff and therefore, calls for no interference. To support her contention, the learned counsel plaintiff has relied upon the following decision cases reported in:

1.2015 (1) SCC 705



A.S.No.326 of 2011

WEB COPY

2.2008 (11) SCC 45

3. 2017 (1) CTC 46

4. 2017(2) CTC 656

5.2017(5) CTC 785

6.2017 (4) CTC 734

7. 2017 (5) CTC 154

8. 2019 (6) CTC 859

9.2020 (2) L.W. 418

10. 2021 (1) L.W.388

15.Heard on both sides, and perused the records.

The following points were emerged for determination in this appeal.

"1.Whether time is the essence of the Contract?

2.Whether the plaintiff had established that he has been ready and willing to perform his part of the Contract?



WEB COPY



A.S.No.326 of 2011

3. Whether the plaintiff is entitled for cost as claimed in the cross objection ?

4. To what relief plaintiff is entitled to? "

Point No.1

16. The law is well settled that in transaction of sale of immovable property, time is not essence of Contract. From an analysis of the case laws referred, by the plaintiff, it is clear that in the case of sale of immovable property, there is no presumption as time being the essence of Contract. However, even if time is not of the essence of the Contract, the Court may infer that it is to be performed in a reasonable time. In this context, the Hon'ble Supreme Court in ***Smt.Chand Rani (Dead) By Lrs. Vs. Smt. Kamal Rani (Dead) By Lrs.***, reported in ***[AIR 1993 SC 1742]*** held as under:

It is well accepted principle that in the case of sale of immovable property, time is never regarded as the essence of the Contract. In fact, there is a presumption against time being the essence of the Contract. Under the law of equity which governs the rights of the parties in the case of specific performance of contract to sell real estate, law looks not at the letter but at the substance of the agreement.



It has to be ascertained whether under the terms of the contract the parties named a specific time within which completion was to take place, really and in substance it was intended that it should be completed within reasonable time."

17. Therefore, from the above principles laid down by the Hon'ble Apex Court, time would be an essence of the Contract, when time is specifically stipulated or it clearly emerges by way of implication.

18. The learned counsel for the defendant also placed reliance on the observation made by the Hon'ble Apex Court in ***K.S.Vidyanadam vs. Vairavan*** reported in ***AIR 1997 SCC 1751*** which reads as follows:

"The rigor of the rule evolved by Courts that time is not of the essence of the contract in the case of immovable properties evolved in times when prices and values were stable and inflation was unknown requires to be relaxed, if the modified, particularly in the case of urban immovable properties. It is high time, the Court do so. In the instant case may be, the parties knew of the



circumstance regarding rising prices but they have also specified six months as the period within which the transaction should be completed. The said time-limit may not amount to making time the essence of the contract but it must yet have some meaning. Not for nothing could such time-limit would have been prescribed. Can it be stated as a rule of law or rule of prudence that where time is not made the essence of the contract, all stipulations of time provided in the contract have no significance or meaning or that they are as good as non-existent? All this only means that while exercising its discretion, the Court should also bear in mind that when the parties prescribe certain time-limit(s) for taking steps by one or the other party, it must have some significance and that the said time-limits cannot be ignored altogether on the ground that time has not been made the essence of the contract (relating to immovable properties."

19.In the above legal background, we will now look at the terms of the suit contract dated 02.02.2006. On perusal of EX.A.1 sale agreement, the agreement reads as follows:-

கீழ்க்கண்ட சொத்தானது 1-வது பார்ட்டிக்கு
மட்டில் சொந்தமாகி, அவரின் அனுபோகத்திலும்,



WEB COPY



A.S.No.326 of 2011

சுவாதீனத்திலும் இதுநாள்வரை இருந்து வருவதுமான
கீழ்க்கண்ட சொத்தை 2-வது பார்ட்டிக்கு
ரூபாய்.15,00,000/- பதினைந்து லட்சத்திற்கு சுத்தக்கிரயம்
செய்துக்கொடுப்பதாக ஒப்புக்கொண்டு இதற்கு
அச்சாரமாக இன்றைய தேதியில் 1-வது பார்ட்டி 2-வது
பார்ட்டியிடமிருந்து கீழ்க்கண்ட சாட்சிகள் முன்பு
ரொக்கமாக பெற்றுக்கொண்டத்தொகை
ரூபாய்.7,00,000/- ஏழு லட்சம் மட்டில், மேலும் 2வது
பார்ட்டி 25.03.2006-ம் தேதியில் மேற்கொண்டு
அட்வான்சாக ரூபாய்.3,00,000/- மூன்று லட்சத்தை 1-வது
பார்ட்டியிடம் கொடுத்துவிட்டு இந்த அச்சார
உடன்படிக்கையில் வரவு வைத்துக்கொள்ள இதன்மூலம்
இரு பார்ட்டிகளும் சம்மதிக்கிறார்கள்.

இன்று முதல் 25.05.2006-ம் தேதி கெடுவிற்குள் 1-வது
பார்ட்டி தன் சொந்த செலவில் கீழ்க்கண்ட
சொத்திற்குண்டான அனைத்து முறையான
ரிக்கார்டுகளையும், வில்லங்க சான்றிதழையும், பட்டா
சான்றிதழையும் எடுத்து முடித்தும், கீழ்க்கண்ட சொத்திற்கு
உண்டான இதரவரிகளை கட்சி முடித்தும் இவைகளை 2-



வது பார்ட்டியிடம் ஒப்படைத்துவிட்டு 2-வது பார்ட்டிக்கோ அல்லது அவர் குறிப்பிடும் நபர்களுக்கோ 2-வது பார்ட்டியின் செலவில் கிரயப்பத்திரம் எழுதி பத்திரம் பதிவாகும்போது மீதி கிரயத்தொகை ரூபாய் 5,00,000/- ஐந்து லட்சத்தையும் 1-வது பார்ட்டி 2-வது பார்ட்டியிடமிருந்து பெற்றுக்கொள்ள வேண்டியது.

மேற்குறிப்பிட்டபடி, மேற்படி கெடுவிற்குள் 1-வது பார்ட்டி கிரயம் செய்து கொடுக்கத்தயாராக இருந்தும் 2-வது பார்ட்டி கிரயம் செய்துக்கொள்ளத்தவறினால் தான் கொடுத்த அச்சாரத்தொகையை இழந்துவிட வேண்டியது.

மேற்குறிப்பிட்டபடி, மேற்படி கெடுவிற்குள் 2-வது பார்ட்டி கிரயம் செய்துக்கொள்ளத்தயாராக இருந்தும் 1-வது பார்ட்டி கிரயம் செய்துக்கொடுக்கத்தவறினால் 2-வது பார்ட்டி, 1-வது பார்ட்டி மீது “ஸ்பெசிபிக் பெர்பார்ம்ஸ் ரிலீப் ஆக்டின்படி” கோர்ட்டில் தாவா நடத்தி கோர்ட்டார் மூலம் சேல்ஹு பெற்று பாக்கி கிரயத்தொகையை கோர்ட்டில் கட்டி சொத்தை தன்வசம் கவாதீனப்படுத்திக்கொள்ள 1-வது பார்ட்டி 2-வது பார்ட்டிக்கு இதன்மூலம் சம்மதம் அளிக்கிறார். கீழ்க்கண்ட சொத்தை கிரயம் செய்துகொடுக்கும் தேதிவரை வேறு எவ்வித வில்லங்கத்திற்கும் உட்படுத்துவதில்லையென்றும்



A.S.No.326 of 2011

“இந்தியன் சிவில் சட்டப்படி” தன்னைத்தவிர வேறு யாருக்கும் எவ்வித உரிமையும் கிடையாதென்றும் 1-வது பார்ட்டி உறுதிபூறுகிறார். கீழ்க்கண்ட சொத்தை கிரயம் செய்துக்கொடுக்கும் தேதியன்றே 1-வது பார்ட்டி 2வது பார்ட்டியின் சுவாதீனத்திற்கு ஒப்படைத்துவிட வேண்டியது. இப்படி இரு பார்ட்டிகளும் சேர்ந்து சம்மதித்து எழுதிக்கொண்ட கிரய அச்சார உடன்படிக்கைப் பத்திரம். இதைப்போன்று இரு பிரதிகள் தயாரித்து பார்ட்டிக்கொன்றாக வைத்துக் கொள்ளப்பட்டது.

20.At the outset, this Court has perused Ex.A.2 sale agreement which is in two parts. The first part provides for the purchaser's obligation, while the second part details the obligation of the vendor to provide and execute the sale deed. Although, both the obligations were required to be completed within the stipulated period of three months. There is a substantive difference between these two sets of obligations. The obligation upon the vendor concern was to produce all the revenue records and also to pay the necessary Tax for the property. Whereas the obligation on the purchaser, was to make the complete payment of the sale consideration within three months. The



A.S.No.326 of 2011

agreement further mandates forfeiture of the advance amount if the payment obligation is not met within the time period stipulated therein.

21. Therefore, from the terms of the Contract it is clear that there was an obligation on the part of the plaintiff to pay a sum of Rs.8,00,000/- on or before 25.05.2006. Stipulating a fixed time for payment of balance sale consideration of Rs.8,00,000/-, failure to do so would render the Contract vitiated. It would constitute a breach of contract by the plaintiff as per Section 55 of the Contract Act. Section 55 of the Contract Act deals with the consequences of failure to perform an executory contract at or before the stipulated time. It provides that,

"When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee if the intention of the parties was that time should be of the essence of the contract."



WEB COPY 22.The evidence on record shows that in the present case, the plaintiff failed to perform his part of contract within the stipulated time. Therefore, in view of the aforesaid provisions, the defendant is entitled to rescind the contract as there was breach of condition, i.e, 'time was the essence'. Accordingly this point is answered.

Point No.2

23.The next point for consideration is that whether the plaintiff was always ready and willing to perform his part of Contract. The aforesaid requirement is one of the essential ingredients under Section 16 of the Specific Relief Act 1963 which reads as under:

16. Personal bars to relief.--Specific performance of a contract cannot be enforced in favour of a person.

*(a) who has obtained substituted performance of contract Under Section 20;
or*

(b) who has become incapable of



performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the Defendant.

Explanation.--For the purposes of Clause (c),--

(i) where a contract involves the payment of money, it is not essential for the Plaintiff to actually tender to the Defendant or to deposit incourt any money except when so directed by the court;

(ii) the Plaintiff must prove performance of, or readiness and willingness to perform, the



A.S.No.326 of 2011

contract according to its true construction.

WEB COPY

In this context, the Hon'ble Supreme Court in ***Civil Appeal No.5822 of 2022 (arising out of SLP (C) No.13565 of 2021)***, ***Civil Appeal No.5823 of 2022 (arising out of SLP (C) No.19920 of 2021)*** and ***Civil Appeal No.5824 of 2022 (arising out of SLP (C) No.19286 of 2021)*** held as under:

28. Clause (c) of Section 16 of the Act, which is relevant in the instant case, though amended w.e.f. 01st October, 2018 clearly states that unless the Plaintiff establishes his readiness and willingness to perform his part of the contract, he would not be entitled to a decree of specific performance. Prior to the amendment, the expression "who fails to aver and prove" was on the statute book and its substitution by the words "who fails to prove" does not bring about any drastic change to the object and intent of the clause. This is because failing to prove readiness and willingness to perform the essential terms of the contract would first require averments to that effect to be made in the plaint by the Plaintiff. The absence of such averments regarding readiness and willingness to perform the essential terms of the contract by the Plaintiff would not permit him to let In any evidence on that aspect. It is a settled principle of



law that no evidence can be permitted to be let in the absence of averments in the plaint/pleadings vide Bachhaj Nahar v. Nilima Mandal and Ors., MANU/SC/8199/2008: (2008) 17 SCC 491. In the said case, a Bench of this Court speaking through Raveendran J. laid down as follows:

(i) No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did not arise from the pleadings and which was not the subject matter of an issue, cannot be decided by the Court.

(ii) A Court cannot make out a case not pleaded. The Court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.

29. Therefore, notwithstanding the amendment to Section 16 of the Act whereby the expression "who fails to aver and prove" has been substituted with the phrase "who fails to prove," the law remains that no evidence can be let in on a plea that was never put forward in the plaint/pleadings. But, it is necessary to sound a caveat. Even the absence of the



words "ready and willing to perform the contract" in the *plaint* would now not have an adverse impact on the *Plaintiff's* case, so long as *Plaintiff's* readiness and willingness to perform the essential terms of the contract could be gathered on a holistic reading of the *plaint*.

30. In fact, even in relation to the earlier scheme of Section 16 of the Act which required a Plaintiff seeking the remedy of specific performance to 'aver and prove' that he was ready and willing to perform his obligations under an agreement, this Court had observed that it was sufficient if the averments in substance indicate continuous readiness and willingness on the part of the person suing, to perform his part of the contract vide Motilal Jain v. Ramdasi Devi, MANU/SC/0438/2000: A.I.R. 2000 SC 2408 Further, it had been declared that language in Section 16(c), as it stood prior to the Amendment Act of 2018, did not require any specific phraseology to be followed in relation to the averments as to readiness and willingness. That the compliance of requirements of readiness and willingness have to be in spirit and substance and not in letter and form vide Syed Dastagir v. T.R. Gopalakrishna Shetty, MANU/SC/0471/1999: (1999) 6 SCC 337.



That is why the deletion of the words "who fails to aver in Section 16(c) of the Act does bring about any real change in the position of law as it stood prior to the amendment.

31. Further, readiness and willingness cannot be considered in a straitjacket formula; it has to be inferred on a consideration of the entire facts and circumstances of each case and the intention and conduct of the parties concerned. Even if a party to the contract is ready and has the requisite funds he may not be willing to perform his part of the contract and vice versa.

32. In this regard, reference may be made to the decision of this Court in His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar, MANU/SC/0522/1996: (1996) 4 SCC 526 wherein this Court made a distinction between 'readiness' and 'willingness' and the manner in which the said parameters are to be scrutinised in deciding a suit for specific performance. The relevant findings of this Court are extracted as under:

2. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be



meant the capacity of the Plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform his part of the contract, the conduct has to be properly scrutinised.

The factum of readiness and willingness to perform Plaintiffs part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the Plaintiff was ready and was always ready and willing to perform his part of the contract. The facts of this case would amply demonstrate that the Petitioner/Plaintiff was not ready nor capacity to perform his part of the contract as he had no financial capacity to pay the consideration in cash as contracted and intended to bite for the time which disentitles him as time is the essence of the contract.

Thus, both readiness as well as willingness have to be established by the Plaintiff on whom the burden is cast in a suit for specific performance of an agreement. Therefore, the



WEB COPY



A.S.No.326 of 2011

question would arise as to whether the Plaintiff discharged such burden in the instant case.

33. Further, in J.P. Builders v. A. Ramdas Rao, MANU/SC/0977/2010: (2011) 1 SCC 429, this Court held as under, as regards the onus on a Plaintiff claiming the relief of specific performance, to prove that he had complied with Section 16(c) of the Act and had demonstrated 'readiness' and 'willingness to carry out his obligations under the agreement of sale:

25. Section 16(c) of the Specific Relief Act, 1963 mandates "readiness and willingness" on the part of the Plaintiff and it is a condition precedent for obtaining relief of grant of specific performance. It is also clear that in a suit for specific performance, the Plaintiff must allege and prove a continuous "readiness and willingness" to perform the contract on his part from the date of the contract. The onus is on the Plaintiff.

27. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that Plaintiff has to



comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the Court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. "Readiness and willingness" to perform the part of the contract has to be determined/ascertained from the conduct of the parties."

24. Therefore, in a suit for specific performance, the plaintiff has to prove with satisfactory evidence that he was always ready and willing to perform his part of Contract at all material time as mandatorily required under Section 16 (c) of the Specific Relief Act 1963.

25. In the present case, the analysis of evidence would point out that the plaintiff was not willing to pay the balance amount of Rs.8,00,000/- unless vacant delivery handed over to the plaintiff after vacating the person in occupation of a portion of the suit property. Though the time was stipulated



in the sale agreement that the sale transaction should be completed on or before 25.06.2006, there is no evidence to show that the plaintiff was always ready and willing to pay the balance sale consideration and complete the sale. The notices which were exchanged between the parties have to be looked into in determining readiness and willingness. It was the defendant who first caused the legal notice on 21.09.2006 (Ex.A.3) calling upon the plaintiff for registering the sale deed. The plaintiff responded to the said notice only on 05.12.2006 (Ex.A.4) after lapse of 2 ½ months. Only in the reply notice, the plaintiff insisted the defendant that he will be willing to purchase the property only after removal of the thatched hut put up by a third party in a portion of the suit property. If really the plaintiff was willing to purchase the suit property, even before the expiry of the time stipulated in the agreement, he would have caused legal notice to the defendant calling upon him to hand over vacant possession and complete the sale transaction. The insistence of the plaintiff to remove the thatched hut put up by a third party before the payment of balance sale consideration could only be regarded as trying to vary the terms of the agreement. It is clear that the plaintiff did not voluntarily adhere to the time stipulation under the contract. In order to by-



pass the condition of time being the essence, the plaintiff invoked the standard of good faith. Aforesaid standard prescribes a higher duty of care for parties entering into a contract. Unless such duty is expressly stipulated, good faith standard cannot be implicitly read into any contract.

26.This Court does not subscribe to acceptance of a general standard of good faith to imply broader good faith obligations only to give a go-by to the explicit conditions for maintaining the sanctity of contract. Such broad standards will have potentially far reaching consequences. On the whole, the transaction failed primarily on account of non payment of balance sale consideration on or before 25.06.2006. The fact that the plaintiff deposited the balance sale consideration would alone not be sufficient to establish his readiness to perform his part of Contract. The conduct of the plaintiff would prove that he is not willing to perform his part of contract until the person in possession is vacated.

27.In the light of the above, it is clear that Section 16(c) of the Specific Relief Act would only come into force if the purchaser was ready and willing



to perform the contract within the three month period prescribed under the agreement. In light of the fact that there is nothing on record which would demonstrate any step taken by the plaintiff to pursue the agreement, untill 05.12.2006, on which date, the reply notice was issued by the plaintiff responding to the notice issued by the defendant on 21.09.2006 calling upon the plaintiff to perform his part of contract over the suit property. No explanation has been provided as to why the plaintiff has not caused any legal notice prior to his reply notice calling upon the defendant to remove the encumbrance in the suit property and to complete the same. Only after receiving the legal notice issued by the plaintiff on 21.09.2006, the plaintiff by way of reply has stated that unless the person in occupation of the portion of the suit property is vacated, he would be able to complete the sale transaction. Such conduct of the plaintiff certainly not reflective of willingness, in terms of Section 16 (c) of the Act. From the conduct of the plaintiff, we can safely conclude that the purchaser was not ready or willing to perform his part of the contract within the time stipulated and accordingly, specific performance cannot be granted.



28. Under Section 20 of the Specific Relief Act, grant of specific performance of contract is discretionary. Though under Section 20 of Specific Performance Act, the decree for specific performance is discretionary, yet the Court is not bound to grant such a relief merely because it is lawful to do so.

29. At this juncture, whether it would be justified to award an additional amount of consideration to the seller, at the discretion of the Court, considering the increase in market value of the property from the date of contract. While I am mindful of the fact that Courts may grant such a relief to balance equities. But such a decree would be warranted only in cases where the plaintiff satisfactorily establishes compliance with Section 16 of the Act. That the measure of enhancement of compensation may be awarded at the discretion of the Court only if insufficiency of compensation is the only impediment to ensuring equity and preventing undue gain to one party. In the absence of compliance with the elementary requirements of Section 16 of the Act, enhancement of compensation cannot be employed as a device to allow specific performance in cases where the plaintiff has not performed his obligations under the contract as in the instant case.



WEB COPY 30. It is therefore, patently clear that the respondent has failed to prove his readiness and willingness to perform his part of contract from the date of execution of the agreement till date of decree which is a condition precedent for grant of relief of specific performance. Therefore, this Court finds that the plaintiff was not entitled to the relief of specific performance. The trial Court erred both in law and on facts in granting such relief. Accordingly, this point is answered.

Point No.3

31.The plaintiff has filed Cross Objection No. 188 of 2011 stating the trial Judge erred in refusing to award the cost in favour of the plaintiff/Cross Objector, without assigning any reason, when there was no fault on his part. The defendant has categorically admitted in his evidence about the illegal occupation by a third party in a portion of the suit property. No doubt, the defendant is liable to hand over vacant possession to the plaintiff to complete the sale transaction. However, the defendant failed to take steps to vacate the person in occupation of the suit property. Hence, the plaintiff is unable to fulfil his part of contract. Therefore, considering the facts and circumstances



of the case, this Court thinks fit that the plaintiff is entitled for the cost of the suit. Accordingly, this point is answered.

Point No.4

32.This Court is of the firm opinion that the contract was breached due to the conduct of the plaintiff, who is not willing to perform the contract after entering into a time sensitive agreement. In any case, it is an admitted fact that plaintiff had paid only part consideration. Though there is a forfeiture clause in the agreement, this Court with a view of rendering complete justice between the parties, deems it appropriate to direct the defendant to repay the said amount with interest at 12% per annum from the date such payment was made by the plaintiff to the defendants, till the entire amount is paid back within a period of three months from the date of receipt of a copy of this order. If the said amount is already deposited into Court to the credit of the suit account, the defendant is directed to pay the interest at the rate of 12% per annum from the date of such payment was made by the plaintiff to the defendant, till the date of deposit into Court to the credit of the suit account within a period of three months from the date of receipt of a copy of this order. The defendant is also directed to pay the plaintiff, the cost incurred by



A.S.No.326 of 2011

the plaintiff as stated in the cross objection. Accordingly, this point is answered.

33. In the result, the appeal and the cross objection are allowed on the above terms. The impugned judgment and decree of the trial Court are accordingly set aside. Consequently, the connected miscellaneous petition is closed.

18.04.2023

vsn

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order



WEB COPY



A.S.No.326 of 2011

K.GOVINDARAJAN THILAKAVADI, J.

Vsn

PRE- DELIVERY JUDGEMENT MADE IN

A.S.No.326 of 2011

and

Cross Obj.No.188 of 2011

and M.P.No.1 of 2011

18.04.2023