



A.S.No.989 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.B. BALAJI

A.S.No.989 of 2014

MP No.1 of 2014 and MP No.1 of 2015

S.Chennaian

... Appellant/Defendant

Vs.

1. A.Akbar Basha

2. A.Amjath Basha

3. M.Julekha Bi

... Respondents /Plaintiffs

Prayer : Appeal Suit filed under Section 96 of Code of Civil Procedure against the judgment and decree dated 07.10.2014 rendered in O.S.No.40 of 2012 on the file of Principal District Judge, Krishnagiri.

For Appellants : Mr.V.Ayyaduari

For Respondents : Mr.K.Venkatasubban
For Sarvabhauman
and Associates for R1 to R3



WEB COPY



A.S.No.989 of 2014

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

Defendant in the suit in O.S.No.40 of 2012 on the file of Principal District Judge, Krishnagiri, is the appellant in the above appeal.

2. Respondents 1 to 3 in this appeal filed the suit in O.S.No.40 of 2012 for specific performance of an agreement of sale dated 09.02.2012. The case of the respondents / Plaintiffs is that the suit property belongs to the appellant and that he agreed to sell the suit property to the plaintiffs for a sale consideration of Rs.80,43,750/- at the rate of 3250 per Sq.ft. The suit property measuring to an extent of 2475 Sq.ft. (22.5 x 110) in Survey No.918 and 794 in Boohanapalli Village, Krishnagiri District. The suit property is also described with reference to four boundaries indicating that the appellant is holding his shop building and home on the western side.

3. It is stated that the plaintiffs paid an advance of Rs.25,00,000/-



A.S.No.989 of 2014

on the date of agreement and agreed to pay the balance of sale consideration, the sum of Rs.55,43,750/- on or before 02.04.2012. It is the further case of the plaintiff that on 30.03.2012, the plaintiffs approached the defendant in the morning and requested him to receive the balance of sale consideration and execute the sale deed at the cost of plaintiffs and that the defendant refused to execute the sale deed on the ground that he was unable to convince his family members who were objecting. It is stated further in the plaint that the plaintiffs issued a telegraphic notice dated 25.02.2012, calling upon him to receive the balance sale consideration and execute the sale deed on 02.04.2012. However, the defendant issued a reply notice dated 31.03.2012 by Courier which was delivered to the plaintiff on 02.04.2012. In the said reply, the defendant stated that the plaintiffs were not ready and willing to perform their part of contract and the agreement is rescinded and advance amount stood forfeited. It is also stated that the family members of the defendants are also objecting to the execution of the sale deed. Hence, the plaintiffs stated that they were constrained to file the suit for specific performance. It is also mentioned in the plaint that before filing the suit the plaintiffs had deposited the balance of sale consideration into the bank



A.S.No.989 of 2014

account on 03.04.2012 as the amount could not be deposited on 02.04.2012 due to the closure of bank on account of year ending. The suit was contested by the defendant / appellant by denying every averments in the plaint. The appellant described the agreement as an uncertain and contingent contract by stating that measurements were not taken and that the defendant should vacate the tenants which did not happen.

4. In the written statement, the main defence taken is that the plaintiffs were not always ready and willing to perform the essential condition as promised and that he was forced to cancel the agreement only on account of the unwillingness of the plaintiff to perform their contract. It is also stated that the defendant was in urgent need of money for his foreign trip to Europe, for discharging his debts and for several other urgent miscellaneous expenditure and therefore, time was the essence of the contract.

5. The defendants also took a stand that some of the essential terms of the contract as insisted by the defendant were not incorporated in



A.S.No.989 of 2014

the agreement and therefore, the plaintiffs are not entitled to any relief as they were trying to take unfair advantage unmindful of the objection of the defendant. Though the written statement contains all possible defense in a suit for specific performance, this Court does not find relevance to every pleading in the written statement having regard to the admitted fact.

6. Before the Trial Court, the 1st respondent was examined as PW1. Documents Ex.A1 to A5 were marked on the side of the plaintiffs. The defendant examined himself as DW1 and did not file any document. Ex.A1 is the suit agreement dated 09.02.2012. Ex.A2 is the telegraphic message sent by the plaintiffs to the defendant and Ex.A3 is the reply of defendant. Ex.A4 and A5 are the Bank Challans to show the deposit of money by the plaintiffs on 03.04.2012.

7. Considering the pleadings, evidence and documents referred, the Trial Court framed the following issues :-

1. வாதிகள், பிரதிவாதிக்கு இடையில் சட்டப்படியான நிறைவேற்றக்கூடிய ஒப்பந்தம்



A.S.No.989 of 2014

WEB COPY

ஏற்படவில்லை என்று சொல்வது சரியா?

2. கால அவகாசம் ஒரு முக்கிய உரத்தாக எழுதப்பட்டதா?

3. வாதிகள் மீதி பணத்தை செலுத்தி கிரயப்பத்திரம் பதிவு செய்ய எப்போதும் தயாராக

இருந்ததாகச் சொல்வது சரியா?

4. வாதிகள் மீதிப் பணத்தை பிரதிவாதிக்குச் செலுத்தி கிரயப்பத்திரம் எழுதிப் பெற

உரியவர்களா? மற்றும்

5. பிரதிவாதி கிரயப்பத்திரம் எழுதிக் கொடுக்க மறுக்கும்பட்சத்தில், முதி தொகையை

நீதிமன்றத்தில் செலுத்திவிட்டு நீதிமன்றத்தின் மூலம் கிரயப்பத்திரத்தை வாதிகள்

எழுதிப் பெற உரியவர்களா?

6. வாதிகள் பெறக்கூடிய வேறு பரிகாரம் என்ன?

8. The Trial Court specifically held that execution of agreement is admitted and that time is also the essence of the contract. Though the argument of defendant before the Trial Court was that the family members of the defendant did not want the defendant to execute the agreement, the Trial Court could not find any reason to hold that the agreement itself in not enforceable. On the issue whether the plaintiffs were ready and willing to perform their part of the contract, the trial Court considering the evidence and documents particularly Ex.A4 and A5 held that the plaintiffs have



A.S.No.989 of 2014

proved their readiness and willingness. The Trial Court also held that the plaintiffs are entitled to the relief of specific performance after rejecting all the contentions of the defendant.

9. Aggrieved by the judgment and decree of the Trial Court, the above appeal is preferred by defendant.

10. The learned senior counsel appearing for the appellant submitted that the plaintiffs have not proved their readiness and willingness by referring to the fact that the amount was not paid before the agreed date as per the sale agreement. He also persuaded us to hold that the plaintiffs were not ready and willing to perform their part of the contract as the plaintiffs have deposited the balance of sale consideration in Court only on 19.12.2014, though, the plaintiffs were directed to pay the balance amount of sale consideration within one month from the date of judgement dated 07.10.2014. The learned Senior counsel then pointed out that the plaintiffs have not come forward to measure the suit property before the execution of the sale deed and have not issued notice calling upon the defendant to



A.S.No.989 of 2014

execute the sale deed. He further submitted that the parties have agreed to execute the Sale deed after evicting the tenants who were in possession of the property. Since the plaintiffs have not come forward to take the property with tenants remain in the suit property, learned Senior counsel submitted that the plaintiffs have not proved their readiness and willingness in the manner acceptable to Court. The learned Senior counsel relied upon two judgments to support his arguments on the interpretation of Section 16 C and the Scope of Section 28 of the Specific Relief Act, regarding readiness and willingness. The learned Senior Counsel submitted that the conduct of plaintiff in not depositing the amount within the time limit fixed by Court is fatal.

11. Considering the nature of pleadings and the evidence adduced before the Trial Court and the arguments of learned Senior counsel for the appellant and the counsel for respondent, this Court frames the following points for determination :-

(a) Whether the suit agreement is enforceable without measuring



A.S.No.989 of 2014

the property and vacating the tenants?

WEB COPY (b) Whether the plaintiffs were always ready and willing to perform their part in terms of the suit agreement?

(c) Whether the plaintiffs are entitled to the equitable relief of specific performance despite non deposit of amount within one month as directed by Court or whether the said agreement can be rescinded in terms of Section 28 of the Specific Relief Act?

POINTS a, b and c

12. The following facts are not in issue :

- As per the agreement dated 09.02.2012, the total sale consideration is Rs.80,43,750/-.
- The suit property is described with reference to boundaries and measurements in the agreement and there is no dispute with regard to measurements as mentioned in the agreement.
- On the date of suit agreement, the plaintiffs paid a sum of Rs.25,00,000/- as advance and the defendant has acknowledged the receipt of the said sum. There is no dispute with regard to execution



A.S.No.989 of 2014

of the sale agreement or payment of advance.

WEB COPY

- The balance of sale consideration was to be paid on or before 02.04.2012 and the forfeiture clause was also incorporated in the agreement to the effect that the plaintiffs will lose their advance in case they did not come forward to pay the balance for getting the sale deed executed on or before 02.04.2012.
- The said agreement also contemplates vacant possession to be handed over to the plaintiffs after evicting the tenants who were in possession on the date of agreement before 02.04.2012.

13. The plaintiffs issued a telegraphic notice on 31.03.2012 specifically referring to the fact that they approached the defendant on 30.03.2012 and requested him to receive the balance of sale consideration and execute the sale deed. In the notice, the defendant was called upon to execute the sale deed after receiving the balance of sale consideration on 02.04.2012. It was mentioned that the plaintiffs would be waiting for the defendant. For the said notice, the defendant issued a reply on the same day in the following lines:-



A.S.No.989 of 2014

WEB COPY

“Your telegram at 6.30 pm. Today. The allegations are false. You have not been ready and willing to perform the contract as per the Agreement I. It is rescinded and advance forfeited. Two of your came with your father and other on 30.03.2012 and demanded to execute sale deed. This was informed to you and your father about a month ago through the brothers and other responsible people. You are not entitled to what you demand”.

14. Even after the reply by the defendant, repudiating the contract in unambiguous terms, the plaintiffs have deposited the entire balance amount in a separate account, as evident from Ex.A4 and A5. It is the case of the plaintiffs that the amount though was due for payment on 02.04.2012, the money was deposited only on the next day as the previous day was a bank holiday. Merely because the plaintiffs have not deposited the balance amount on or before 02.04.2012, it cannot be inferred that the plaintiffs were not ready and willing to perform their part of the contract. When the defendant issued a reply stating that the contract is rescinded and advance



amount is forfeited, the plaintiffs after receiving the reply on 31.03.2012 cannot be expected to pay the balance to the defendant. In other words, by repudiating contract, the defendant has expressed his unwillingness to perform his part of the contract and therefore, committed breach of contract. Under such circumstances, it is relevant to refer to Section 51 of the Contract Act which reads as follows :-

51. Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.—When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise. —When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise."

Illustrations

(a) A and B contract that A shall deliver goods to B to be paid for by B on delivery. A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery. (a) A and B contract that A shall deliver goods to B to be paid for by B on delivery. A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery." B need not pay for



the goods, unless A is ready and willing to deliver them on payment. B need not pay for the goods, unless A is ready and willing to deliver them on payment."

(b) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery. (b) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery." A need not deliver, unless B is ready and willing to pay the first instalment on delivery. A need not deliver, unless B is ready and willing to pay the first instalment on delivery." B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment. B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment."

15. Section 51 of Contract Act further compels this Court to hold that the defendant, who was not ready and willing to perform his promise or obligation under the agreement, cannot blame the plaintiffs for non payment of the balance of sale consideration on the date agreed. This Court finds valid reason for the plaintiffs to deposit the balance amount on the next day i.e on 03.04.2012 in their account to show their readiness. The conduct of



A.S.No.989 of 2014

plaintiffs would amply show that they were ready with the money and that they were also willing to perform their part of the contract. The defendant admitted that the plaintiffs came with their father and others on 30.03.2012 and demanded to execute the sale deed and the case of the plaintiffs is then strengthened by the admission of defendant in his reply.

16. Though the learned Senior counsel submitted that the plaintiffs have not come forward to finalize measurements to enable preparation of sale deed, the agreement does not contain any specific clause for the parties to come for measurement of the property. It is seen that there is no dispute with regard to measurement. The property is just lying on the western side of the defendant's property. Therefore, the measurement of 22.5 x 16 gives a clear picture that the parties had already measured the property and finalized the extent which is the subject matter of the suit agreement. Merely because, the plaintiffs and the defendant has agreed to prepare the sale deed showing exact measurements and details of the property, the said clause in the agreement cannot be interpreted differently to suit the defendant's case.



A.S.No.989 of 2014

17. The further arguments of learned Senior counsel is by referring to the specific clause in the agreement by which the defendant had agreed to vacate the tenants and hand over possession to the plaintiffs on or before 02.04.2012. The fact that the suit property was let out to the tenants is seen from the agreement. The plaintiffs have not complained for not handing over vacant possession before 02.04.2012. Assuming that possession of the property is with tenants, the clause in the agreement by which the defendant has undertaken to evict tenants and hand over vacant possession to the plaintiffs before 02.04.2012, cannot be relied upon by the defendant to non suit the plaintiffs. It is seen that the plaintiffs have not insisted the condition to get vacant possession from tenants before paying the balance. Even assuming that the tenants have not been evicted, the plaintiffs' willingness to come forward to pay the balance and get the sale deed cannot be cited as a reason to deny specific performance. It is not the case of the defendant that the plaintiffs insisted to hand over vacant possession after vacating the tenants before making further payment. Since the plaintiffs have come forward to make payment it only shows the readiness and willingness in terms of the agreement and there is nothing for the defendant



A.S.No.989 of 2014

to complain. Therefore, this Court is inclined to hold that the plaintiffs have proved their readiness and willingness in terms of Section 16(c) of Specific Relief Act.

18. The learned Senior counsel then brought to the notice of this Court that the Trial Court granted decree by giving one month time to the plaintiffs to pay the balance. Since the plaintiffs have deposited the money in to the account only on 19.12.2014, the learned Senior counsel contended that in terms of Section 28 of Specific Relief Act, the plaintiffs are not entitled to specific performance. The learned Senior counsel admitted the fact that the plaintiffs filed an application even during the pendency of the suit in I.A.No.102 of 2014 seeking permission to deposit the balance of sale consideration. Even if the payment has not come from the plaintiffs, there is nothing for the defendant to complain in view of explanation (i) to Section 16(c) of Specific Relief Act. It is pertinent to mention that this application was opposed by appellant only on the ground that the application is belated. The appellant did not question the bonafides of plaintiffs to deposit the balance. The said application was disposed of along



A.S.No.989 of 2014

with the suit by the Trial Court by holding as follows :-

WEB COPY

மனுதாரர் நீதிமன்ற உத்தரவு பெற்று மீதி கிரயத் தொகையை

செலுத்த தயாராக இருப்பதாக மனு தாக்கல் செய்துள்ளார். பிரதிவாதி தரப்பில் அது மறுக்கப்பட்டுள்ளது. இந்த நீதிமன்றம் வாதிகள் மீதி கிரயத்தொகையை செலுத்திவிட்டு கிரயப்பத்திரம் எழுதிப்பெற அருகதையுடையவர்கள் என்று தீர்மானித்திருக்கும் காரணத்தாலும், பிரதிவாதி கிரயம் எழுதிக் கொடுக்க மறுத்திருக்கிறார் என்ற காரணத்தாலும் மீதி கிரயத்தொகையை வாதிகள் நீதிமன்றத்தில் வைப்பீடு செய்துகொள்ள அனுமதிக்கத்தக்கவர்கள் என்பதால் இந்த மனு அனுமதிக்கத்தக்கது என்று தீர்மானித்து மனுதாரர்கள் வாதிகள் மீதி கிரயத்தொகையை நீதிமன்றத்தில் வைப்பீடு செய்ய உத்தரவிடப்படுகிறது.

19. From the entire evidence and conduct of plaintiffs, it is evident that the plaintiffs were always ready and willing to perform their part of the contract and it was only due to the conduct of defendant the money could not be paid to defendant. The plaintiffs have promptly filed an application seeking permission to deposit the balance in Court during the pendency of suit. This application was allowed while decreeing the suit for specific performance. However, the Trial Court granted specific relief to the plaintiffs in the following lines:-



A.S.No.989 of 2014

முடிவில், இந்த வழக்கானது செலவுத்தொகையுடன் அனுமதிக்கப்பட்டு வழக்குச் சொத்தை கிரய ஒப்பந்தத்தின் அடிப்படையில் பிரதிவாதியிடமிருந்து, வாதிகள் கிரயம் எழுதிப் பெற அருகதையுடையவர்கள் என்றும் பிரதிவாதி மீதி பணத்தைப் பெற்றுக்கொண்டு கிரயப் பத்திரம் எழுதிக்கொடுப்பதற்கு ஒரு மாத காலம் அவகாசம் வழங்கியும் தவறினால் பிரதிவாதிக்குரிய மீதி கிரயப்பணத்தை வாதிகள் நீதிமன்றத்தில் வைப்பீடு செய்து நீதிமன்றத்தின் மூலம் கிரயத்தை எழுதி சுவாதீனத்தைப் பெற்றுக்கொள்ள வேண்டும் என்று உத்திரவிட்டும் தீர்ப்பானை வழங்கப்படுகிறது.

Similarly, clause 3 and 4 of the decree in O.S.No.40 of 2012 read as follows :-

“3. பிரதிவாதி மீதி பணத்தைப் பெற்றுக் கொண்டு கிரயப் பத்திரத்தை ஒரு மாதத்திற்குள் எழுதிக் கொடுக்க ஆணையிடப்படுகிறது.

4. தவறினால் மீதி விரயப்பணத்தை வாதிகள் நீதிமன்றத்தில் வைப்பீடு செய்து நீதிமன்றத்தின் மூலம் கிரயத்தை எழுதி சுவாதீனத்தைப் பெற்றுக் கொள்ள வேண்டும் என்று ஆணையிடப்படுகிறது.”

Therefore, in terms of the judgment of the Trial Court, the decree was granted by directing the defendant to execute the sale deed after getting the balance amount of consideration within one month.



A.S.No.989 of 2014

WEB COPY

20. Section 28 of Specific Relief Act reads as follows :-

28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such



WEB COPY



A.S.No.989 of 2014

possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendor or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:

—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such



WEB COPY



A.S.No.989 of 2014

conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court.

21. When the suit for specific performance of a contract for sale is decreed subject to payment of the balance of purchase money or any other sum as the Court may direct the plaintiff to pay, the vendor may apply in the same suit to rescind the contract and the Court on such application may by order rescind the contract either so far as regards the party in default or altogether as the justice of the case may require.

22. As per section 28(2) when the contract is rescinded by the Court in terms of Section 28(1), the purchaser may be directed to restore such possession to the vendor and may direct payment to the vendor of all the rents and profits which have accrued in respect of the property from the



A.S.No.989 of 2014

date on which possession was obtained by the purchaser until restoration of possession. However, the Court may extend the time.

23. From the entire reading of section 28, this Court finds that the plaintiff may lose the battle if he does not deposit balance as directed by Court. The learned Senior counsel also relied upon Order 20 Rule 12 A of CPC which reads as follows :-

[12A. Decree for specific performance of contract for the sale or lease of immovable property

Where a decree for the specific performance of contract for the sale or lease of immovable property orders that the purchase money or other sum be paid by the purchaser or lessee, it shall specify the period within which the payment shall be made.]

24. From the combined reading of Order 20 Rule 12 A and Section 28, this Court has no second opinion that the Court while granting specific performance of a contract for the sale of immovable property, shall specify the period within which balance of purchase money shall be paid. In terms of Order 20 Rule 12 A of CPC, the Trial Court ought to have granted a



A.S.No.989 of 2014

decree by specifying the time within which the plaintiff should deposit the money in Court. Unfortunately in this case, the Trial Court has not specified any time limit for the plaintiff to pay the money. Before considering the issue further, this Court needs to record the further facts. After the judgement and decree dated 07.10.2014, the appellant filed an application in I.A.No.209 of 2014 in OS No.40 of 2012 to order rescission of agreement of sale dated 09.02.2012 on the ground that the plaintiff who was required to pay an amount of Rs.55,43,750/- did not deposit the aforesaid sum immediately on or before 07.11.2014. The fact that the entire balance was deposited on 19.12.2014 is admitted. The Trial Court dismissed the application after recording the fact that the balance amount had already been deposited on 19.12.2014. From the whole facts, this Court finds that the Trial Court has not passed the judgment and decree in terms of Order 20 Rule 12 (A) of CPC. The judgement and decree of the Trial Court cannot be construed to mean that there is a direction to the plaintiffs to deposit balance within specified time. This Court is not able to find any other provision under Order 20 of CPC indicating the effect of failure to direct the plaintiffs to deposit balance within a particular date.



A.S.No.989 of 2014

WEB COPY

25. Section 28 of Specific Relief Act is to avoid multiplicity of proceedings and gives protection to the defendant vendor from unwarranted delay in getting the balance of consideration even after the decree passed by the Trial Court for specific performance. However, in a case where there is no specific direction by the Trial Court, this Court is of the view that the plaintiff who was not expected to understand the decree as one directing him to make / deposit balance of consideration within any specified time cannot be non suited by referring to Section 28 of the Act. Further Section 28 of Specific Relief Act contemplates extension of time. Having regard to the conduct of the defendants in the present case, this Court find no justification to refuse the relief and rescind the contract by applying Section 28 of the Specific Relief Act. The fact that plaintiffs filed an application seeking permission to deposit the balance during pendency of suit and the over all circumstances only warrant the Court to extend the time as the delay is due to the improper way in which the operative portion of judgement and decree are worded.



WEB CONTENT

26. The learned Senior counsel relied upon the judgement of the Hon'ble Supreme Court in the case of ***[Prem Jeevan Vs. K.S.Venkata Raman and another]*** reported in 2017 11 SCC 57, wherein the Hon'ble Supreme Court has on the interpretation of Section 28 held as follows.

10. In above circumstances, the contention, advanced on behalf of the decree-holders, respondents herein, that unless the judgment-debtor seeks rescission of the contract in terms of [Section 28](#) of the Specific Relief Act, the decree remains executable in spite of expiry of period for deposit, with the only obligation on the part of the decree-holders to pay interest, cannot be accepted.

12. There is no doubt that the above provision permits the judgment-debtor to seek rescission of a contract and also permits extension of time by the court but merely because rescission of contract is not sought by the judgment-debtor, does not automatically result in extension of time.

The judgment relied upon by the learned Senior Counsel cannot be applied in the factual matrix of this case. In the present case, the defendant has filed an application to rescind the contract by relying upon Section 28 of the Specific relief Act and the same was dismissed after recording payment. Indirectly, the Trial Court has recognized the payment as one in



A.S.No.989 of 2014

terms of the judgement and decree in the suit. Having regard to the peculiar facts of the present case, we have reasons to hold that the plaintiffs were always ready and willing to perform their contract and the deposit is not in violation of the judgement and decree in the suit. The Hon'ble Supreme Court has recognized even the power of Appellate Court to extend time and in this case, the situation does not arise.

27. The learned Senior counsel further relied upon the judgment of the Hon'ble Supreme Court in [**P.R.Yelumalai Vs. NM Ravi**] reported in **2015 (2) CTC 559**. The relevant portion in the judgment read as follows:-

“ 12. From a perusal of the judgment and decree dated 15.2.2007 passed by the Trial Court, it is clear that the period of one month granted for depositing the balance consideration started from the date of decree. From the records it appears that the decree was signed on 27.2.2007. Therefore, the period of one month started from 27.2.2007 and ended on 26.3.2007. After extension of two months was granted, the last date for depositing the amount of balance consideration fell on 26.5.2007. As the Civil Court was not working on 26.5.2007 and next date i.e., 27.5.2007 was Sunday, the Plaintiff-



A.S.No.989 of 2014

WEB COPY

Buyer was to deposit the amount on 28.5.2007, which was the re-opening day. However, there is no evidence on record to show that he made efforts to deposit the balance consideration on 28.5.2007 or made an application on 28.5.2007. The R.O. is dated 29.5.2007 and deposit was made on 29.5.2007. Thus, the Plaintiff-Buyer failed to comply with the decree and the suit stood dismissed automatically. “

28. The learned Senior Counsel also relied upon a judgement of learned single judge of this Court in the case *[Narasimhan Vs. Balammal]* reported in **1988 (2) MLJ 95** wherein the revision petition filed by the legal representatives of defendant, as against the dismissal of application under Section 28 of the Specific Relief Act, to rescind the contract was allowed. Following the judgement of Hon'ble Supreme Court in *[Hunger Ford Investment Trust Vs. Haridass Mundhra]* reported in **AIR 1972 SC 1826** and a few other judgement this Court held that the respondent therein did not prove his readiness and willingness to perform his part of the contract within a reasonable time after decree. The plaintiffs took more than three years to file extension petition. Hence, it was held that the application filed



A.S.No.989 of 2014

under Section 28 of the Specific Relief Act has to be allowed. The said judgement cannot be applied in this case to rescind the contract.

29. The learned Senior counsel further relied upon the judgment of the Hon'ble Supreme Court in **[K.Karuppuraj Vs. M.Ganesan]** reported in **2021 10 SCC 777** wherein the Hon'ble Supreme Court considered the case where the defendant was required to evict the tenant and hand over physical possession at the time of execution of sale agreement on payment of sale consideration. Since the plaintiff insisted the defendant to evict the tenants even before the payment of sale consideration, the Hon'ble Supreme court held that the plaintiff in that case was not ready and willing to perform his contract. The said judgement is not applicable to the facts of the case as the plaintiff never insisted the defendant to vacate the tenants before paying balance eventhough the defendant agreed to vacate teneants before the time specified. The learned counsel Senior relied upon yet another judgment of a Division Bench of Madhya Pradesh High Court in the case of **[Sirmul Vs. Smt.Annapurna Devi Ravikumar Awasthy]** reported in **2001 (2) MPLJ 339**, wherein it is observed as follows :-



WEB COPY



A.S.No.989 of 2014

“15. The other submissions raised by counsel for the plaintiff appellant that the plaintiff was ready and willing to perform his part of contract and is still ready and willing, are not required to be considered in view of the aforesaid finding. However, as the submissions have been made in order to do justice to them, it may be seen that the plaintiff has pleaded in the plaint that he was ready and willing to pay the balance of consideration under the agreement, such pleading does not amount to readiness and willingness to perform one part of contract as generally plaintiff was ready and willing to perform his part under the agreement. Agreement specifically enjoins the duty upon the plaintiff that he has to bear the stamp duty and registration charges also. The plaintiff has not pleaded his readiness and willingness to meet the stamp duty and registration charges, which was incumbent upon him under the provisions of [Section 29\(1\)\(c\)](#) of the Stamp Act and [Section 55\(1\)\(d\)](#) of the Transfer of Property Act.”

This Court is not able to agree with the proposition in the judgment cited above. It is seen from the facts recorded that the agreement itself was held as fabricated. The case was not decided solely on the ground of absence of pleading that plaintiffs were ready and willing to pay stamp duty and registration charges.

30. We have already considered the admitted case and the evidence



A.S.No.989 of 2014

regarding readiness and willingness of the plaintiff and held that the plaintiffs were always willing to perform their part of the contract. In a suit for specific performance, it is true that it is the plaintiff who has to prove his/her readiness and willingness to perform his/her part of the contract throughout. It is also repeatedly pointed out by the Hon'ble Supreme Court, that the bar under Section 16 is personal and therefore, the plaintiffs have to prove their readiness and willingness irrespective of the fact whether the defendant is ready and willing to perform his part of the contract. The Court in a suit for specific performance needs to consider the entire evidence particularly the conduct of both the plaintiffs as well as defendant before coming to the conclusion. In the present case, this Court has pointed out the conduct of defendant rescinding the contract even before the date specified for paying balance. When the plaintiff expressed his readiness by issuing notice, the defendant not only rescinded the contract but also stated that the amount which was paid as earnest money stands forfeited. This Court would not expect the plaintiffs to pay the balance to the defendant. The conduct of plaintiff in depositing the money on 03.04.2012 would only impress the Court to hold that the plaintiffs cannot be blamed for non payment of



A.S.No.989 of 2014

balance money payable under the agreement to the defendant. The plaintiffs filed a petition to deposit the money in Court after the suit and the said application was opposed by defendant. The Court has to necessarily look into the conduct of the plaintiffs as well as defendant before exercising its discretion while granting the relief in the present case. We are convinced that the plaintiffs have proved their readiness and willingness to perform their part of the contract at all material times. However, it is the defendant who has committed breach and he has to blame himself for the inconvenience that was caused to him on account of the delay in getting the balance sale consideration. Though we have held that the plaintiffs were ready and willing to perform their part of the contract and the defendant has committed breach of contract, having regard to the special circumstances in this case and the fact that the money was deposited in Court only on 19.12.2014, this Court is inclined to direct further payment by plaintiffs on account of the fact that the major portion of sale consideration was in the hands of plaintiffs. Since the balance has to be paid on or before 02.04.2013 and the said amount did not reach the hands of defendant for nearly 32 months, this Court finds that it will be appropriate to direct the plaintiffs to



A.S.No.989 of 2014

pay a sum of Rs.17,50,000/- representing interest for the balance.

WEB COPY

31. The appeal suit is hence partly allowed and the judgment and decree of the Trial Court granting specific performance is confirmed with a modification by directing the plaintiffs to pay a further sum of Rs.17,50,000/- [Rupees Seventeen lakhs fifty thousand only] within a period of two months to the credit of EP, said to have been filed by the defendant before the Lower Court. No costs. Consequently, the connected miscellaneous petitions are closed.

(S.S.S.R., J.) (P.B.B., J.)
13.02.2023

rka

Internet : Yes

Index : Yes / No

To

1.The Principal District Judge, Krishnagiri.

2.The Section Officer,
VR Section, High Court,
Chennai.

Page 32 of 34



WEB COPY



A.S.No.989 of 2014

S.S. SUNDAR, J.
and
P.B. BALAJI, J.

rka

A.S.No.989 of 2014



WEB COPY



A.S.No.989 of 2014

13.02.2023